

SUBORDINATE FORUM OF SAN FRANCISCO LODGE NO.3

BENEVOLENT AND PROTECTIVE ORDER OF ELKS

UNITED STATES OF AMERICA

ARTHUR BRUNWASSER,

Accuser,

vs.

SECOND AMENDED COMPLAINT

WILLIAM B. DARR, JR. ,

,

Accused.

Arthur Brunwasser, a Member in good standing in Lodge No. 3, B.P.O.E Elks, under the Obligation of the Order, hereby accuses William B. Darr, Jr., a member of the Lodge and Treasurer of the Board of Directors, of San Francisco Lodge No. 3 Building Association, a California non-profit corporation entirely owned by Elks Lodge No. 3, of violation of the Laws of the Order. B.P.O.E. This Second Amended Complaint amends the Complaint filed March 14, 2013, by the Accuser jointly against Josh Hachadourian and William B. Darr, Jr. and the Amended Complaint filed February 13, 2014.

The Building Association is a California non-profit corporation and the titular owner of the building at 450, 454, 456, 458 and 460 Post Street, San Francisco (commonly known and hereinafter referred to as "450 Post Street"), where the Lodge maintains its premises. The Articles of Incorporation specifically provide that all enterprises conducted on the premises and all revenue derived therefrom is to be used for maintaining the Lodge Room and Club House of Lodge No. 3, there is to be no gain or profit to the members of the Corporation (which includes the Board of Directors and corporate officers), there is to be no capital stock, and that all rules, regulations and discipline of the Lodge are deemed to be incorporated by reference into the Articles. The later has the effect of making all Directors and officers of the Corporation subject to the Laws of the Order.<sup>1</sup>

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<sup>1</sup> The violations alleged herein are also violations of the Accused's oaths as a Member and as a Lodge Officer to uphold our Order's Constitution and Grand Lodge Statutes. Given that the Accused's position as a director/officer of the Building Association is dependent upon his position as a Trustee of Lodge #3 (which in turn is dependent upon his being a Member of Lodge #3), his position with the Building Association is but an extension of his primary position as a fiduciary of Lodge #3, and is thus ancillary and subordinate to it. This action is therefore primarily against the Accused in his capacity as an Officer and representative of Lodge #3, to which his duty is paramount.

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3pm

The Accused's initial offences are predicated upon the following conduct:

Prior to on or about February 19, 2013, the Accuser made written demand on the Accused to inspect the financial records of the Corporation. On or about March 5, 2013, the Accused Darr responded by stating that the requested records were not going to be produced for the identical reasons stated to the Accuser by the Chair of the Board, Josh Hachadourian, on or about February 19, 2013, apparently referring to an alleged "fiduciary duty" owed to the directors, despite the Corporation and its directors being subordinate to Lodge No. 3, and subject to Grand Lodge Statutes under GLS §16.030 and provisions thereunder.

The Accused's further offences are predicated upon the following, these allegations being made on information and belief:

At all times relevant herein below, it is alleged and believed that the Accused was a member of the Board of Directors of the Building Association, as well as the holder of one or more of its various corporate officer positions from time to time.

While under the corporate leadership of the Accused, the Building Association conducted business and instituted transactions in violation of GLS §16.030 and §16.050. These statutory violations include, but are not limited to, the following:<sup>2</sup>

- a) Willful failure to present *to the Lodge* "a separate and comprehensive budget for the proposed operation of the [Building Association] corporation."
- b) Willful failure to submit *to the Lodge* "a monthly written report...showing the financial condition of the [Building Association] corporation and the condition of the budget relating to the same."
- c) Willful lease of its real property (commonly known as 450 Post Street) for a term of more than five (5) years, whether as an original term or under an arrangement for renewal or extension, without prior permit approval from the Board of Grand Trustees. GLS §16.050(g).<sup>3</sup>

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<sup>2</sup> The Accuser is unable to list all of the potential offenses at this time. It is hoped that once full daylight is allowed to shine upon the books and financial records of this corporation, a clearer picture will be revealed.

<sup>3</sup> Since on or around October 1, 1981, the Lodge "450 Post Street" building has been subject to a long-term master lease. This arrangement's historic necessity need not be recounted here, as it no longer exists (i.e. the Lodge is presently solvent, and could easily hire a number of honest and competent building management companies operating commercial buildings in the city, without effectively making them "partners" with an actual ownership interest in the building). It is worth noting that this lease arrangement has been contentious. According to a recent lawsuit (San Francisco Superior Court Case No. CGC-09-492478, filed in 2009), the master leaseholder refused to repair and maintain the structural aspects of the building, including the third floor balcony, which had all been allowed to fall into disrepair. Thus, despite there being no need to renew the long-term lease, and despite a litigious relationship with the master leaseholder, the Accused caused the Building Association to renew the lease with this same master leaseholder (presumably as part of a legal settlement to induce the master leaseholder to undertake repairs and restoration work to which it was *already obligated* under the original master lease).

- d) Willful contracting for services related to building management having a value over the life of the contract in excess of \$25,000.00, without prior permit approval from the Board of Grand Trustees. GLS §16.050(e).

It is noted here that the violations under (a) and (b) above have been ongoing, and that all alleged violations have occurred within the four-year limitations period.<sup>4</sup> It is further noted that given the number of years the Accused has served in the leadership of this Lodge and this Order, it is inconceivable that he could, with any credibility, claim ignorance of these statutes. Indeed, it is believed and alleged to be quite the opposite, with the full details of the business arrangements, income and financial expenditures intentionally kept behind a veil of secrecy.<sup>5</sup>

(The Accuser is aware that during monthly Building Association meetings, spreadsheet reports purporting to be financial summaries are temporarily made available, they being routinely collected back from the recipients at the end of each meeting. Given the stonewall the Accuser ran into when attempting to verify the details of certain Lodge #3 expenditures/officer reimbursements,<sup>6</sup> the guarded attitude around the Building Association is not surprising.<sup>7</sup>)

The true reason for this stonewalling around the Building Association is unknown to the Accuser, as is the reason why the Accused may have caused the above believed and alleged violations of GLS §16.030 and §16.050. While the motive behind this apparent opposition to financial transparency would be speculative at this point, the potential consequences of the feared violations of §16.050 are not.

If, as believed, the Accused has wilfully caused a violation of GLS §16.050, the Accused has put this Lodge at great risk: "If a Lodge *shall permit* a violation of this Section, the Grand Exalted Ruler, with the consent of the Board of Grand Trustees, shall have the power to suspend

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<sup>4</sup> GLS §9.190.

<sup>5</sup> One recurring inquiry is over a commercial tenant of "450 Post Street" with valuable street-level frontage space that had reportedly not been paying his rent for years. The common non-response has been that the tenant was "a brother Elk," as if long-term Lodge membership gave one the benefit of free commercial space on Union Square to conduct one's own private business. The Accused's conduct, when taken as a whole, appears to be predicated on the presumption that the Building Association is answerable to no one. That said, it should be stressed that this action, based on the Accused's refusal to provide corporate/financial information required to be available to Members under the Laws of the Order and under California corporate law (under California Corporations Code §1600 et seq., Lodge #3 having a right to exercise oversight with regard to a subordinate corporation, with a Member of Lodge #3 having essentially the equivalent standing of a "minority shareholder" to inspect Lodge records, these including the records of the subordinate corporation), and for other violations of Grand Lodge Statutes, is *not* an action against the Building Association, but an action against a San Francisco Lodge #3 Officer (in this case, a Trustee).

<sup>6</sup> See *Arthur Brunwasser v. Robert Merjano* (original Notice of Intent filed January 7, 2013), where the Lodge Treasurer, in violation of GLS §16.110(f) and Opinion 01 thereunder, and GLS §12.050 (Opinion 08) and §14.130 (Opinion 06), took the financial records of the Lodge away from the possession of the Lodge Secretary, refusing to allow their inspection by a Member. This subordinate forum action is still pending.

<sup>7</sup> It is noted here that, as the alleged violations contained herein were likely affirmed or otherwise permitted by a majority of the Members of the Building Association at the time of their occurrence (for the Accused could not have possibly acted alone in all of these violations), additional filings may be forthcoming once the full extent of the violations and those involved with them is determined.

or revoke its Charter." Under GLS §9.170, this could lead to a subsequent appointment of Grand Lodge trustees with the power, among other things, to sell our "450 Post Street" building if, in their best business judgment as fiduciaries, such a sale is prudent.

This action by the Accuser is thus intended not only to bring the Accused to account, but to protect Lodge #3 from being found to have *wilfully permitted* a violation of GLS §16.050 by it having done nothing to stop or disaffirm such a violation, or by it having done nothing to prevent or remove from Lodge office a willful perpetrator of such a violation.

Therefore, on behalf of San Francisco Lodge #3, the Accuser hereby disavows any and all violations of GLS §16.050 made or aided by the Accused, in whatever capacity, and whether through this Lodge or through its Building Association.<sup>8</sup>

THIS COMPLAINT SHOULD BE ALLOWED TO PROCEED WITHOUT  
MEDIATION BECAUSE THE MEDIATION PROCESS HAS BEEN BLOCKED BY THE  
LODGE MEDIATOR

There has been no mediation in this case because the Lodge Mediator has failed and refused to initiate mediation proceedings although requested by the Accuser several occasions to do so. On March 7, 2013, the Accuser filed his original Notice of Intent To File Complaint against Accused Hachadourian and William B. Darr, Jr., who serves as Treasurer of the Building Association. with the Secretary of the Lodge. A Complaint was filed on March 14, 2013, but was returned by the Lodge Secretary under order of the Presiding Justice, marked, "Returned Unfiled-Prematurly Submitted- No Mediation Statement on File Dated: 7/16/2013." The Amended Notice of Intent to File Complaint against Accused Darr was filed October 2, 2013. More than five (5) business days have passed thereafter, and *neither the Lodge nor its Mediator has made any effort to arrange for mediation as required by §8.015b. It is almost one full year.* since this proceeding began, and the Lodge Mediator has not and apparently will not initiate mediation in this case. The Accuser has attempted to comply with the mediation process in good faith, but has been blocked by the Lodge Mediator.

From the above, the Accused, by his conduct, willfully violated the following Laws of the Order, all of which are incorporated by reference in the Articles of Incorporation of the Corporation:

a. The policy of the Laws of the Order that all Lodge records be made available to all members at reasonable times. E.g., GLS Statutes §16.110, Op.01.

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<sup>8</sup> As the Members of Lodge #3 were largely ignorant of the alleged §16.050 violations, it is hoped that consequence falls solely upon the Accused (and any other responsible persons). Moreover, given the Accused's apparent inability or unwillingness to properly safeguard Lodge #3's interests, and the potential continued risk and harm to Lodge #3, action under §9.070(g) is urged for the immediate removal of the Accused from his Lodge-related offices.

b. §9.070 (d) and (h)(1), contumacy, for intentionally causing the violation of the right of members to inspect all Lodge records, and for intentionally causing the violation of the reporting requirements of the Building Association to the Lodge under §16.030; §9.070 (h)(ii) for violating the Ritual of the Order to be honest in dealing with Lodge members; and §9.070 (h)(iv) for committing offences against the moral law including deceit, misrepresentation and fraud in blocking the Accuser's inspection of the Corporation's records.

c. §9.070(g) for willfully causing violations under §16.050(e) and (g) and thus putting the Lodge at risk of having its B.P.O.E. charter revoked.

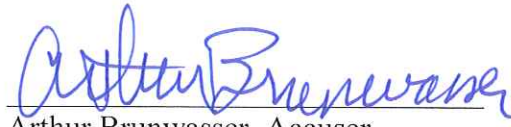
d. §9.070 j -"conduct unbecoming an Elk."

DATED: June 11, 2014

  
Arthur Brunwasser, Accuser

I, Arthur Brunwasser, under the Obligation of the Order, says that he is the above-named Accuser, that he has read the foregoing Second Amended Complaint, knows the contents thereof, and believes the same to be true. I am submitting to the Lodge Secretary a check in the amount of \$100 a a deposit against the costs of the Lodge.

DATED: June 11, 2014

  
Arthur Brunwasser, Accuser

SUBORDINATE FORUM OF SAN FRANCISCO LODGE NO.3

BENEVOLENT AND PROTECTIVE ORDER OF ELKS

UNITED STATES OF AMERICA

ARTHUR BRUNWASSER,

Accuser,

vs.

SECOND AMENDED COMPLAINT

JOSH HACHADOURIAN,

Accused.

Arthur Brunwasser, a Member in good standing in Lodge No. 3, B.P.O.E Elks, under the Obligation of the Order, hereby accuses Josh Hachadourian, a member of the Lodge and Chair of the Board of Directors, of San Francisco Lodge No. 3 Building Association, a California non-profit corporation entirely owned by Elks Lodge No. 3, of violation of the Laws of the Order. B.P.O.E. This Second Amended Complaint amends the Complaint filed March 14, 2013, by the Accuser jointly against Josh Hachadourian and William B. Darr, Jr. and the Amended Complaint filed February 13, 2014.

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<sup>1</sup> The violations alleged herein are also violations of the Accused's oaths as a Member and as a Lodge Officer to uphold our Order's Constitution and Grand Lodge Statutes. Given that the Accused's position as a director/officer of the Building Association is dependent upon his position as a Trustee of Lodge #3 (which in turn is dependent upon his being a Member of Lodge #3), his position with the Building Association is but an extension of his primary position as a fiduciary of Lodge #3, and is thus ancillary and subordinate to it. This action is therefore primarily against the Accused in his capacity as an Officer and representative of Lodge #3, to which his duty is paramount.

*Handwritten:* MW red 3PM 2/12/14

The Accused's initial offences are predicated upon the following conduct:

Prior to on or about February 19, 2013, the Accuser made written demand on the Accused to inspect the Articles of Incorporation, By-Laws, and Minutes of Board of Directors' meetings of the Corporation. Accused Hachadourian, President and Chair of the Board, after requiring the Accuser to personally appear at a Directors' meeting on or about February 19, 2013, announced at that time that the requested records were not going to be produced because of an alleged "fiduciary duty" owed to the directors, despite the fact that the corporation and its officers and directors being subordinate to Lodge No. 3, and subject to Grand Lodge Statutes under GLS §16.030. He said there would be written notification of the decision on production, but did not provide that written notification. To date, he has not stated that the records would be produced and has not produced them, thus acting in violation of GLS §16.030.

The Accused's further offences are predicated upon the following, these allegations being made on information and belief:

At all times relevant herein below, it is alleged and believed that the Accused was a member of the Board of Directors of the Building Association, as well as the holder of one or more of its various corporate officer positions from time to time.

While under the corporate leadership of the Accused, the Building Association conducted business and instituted transactions in violation of GLS §16.030 and §16.050. These statutory violations include, but are not limited to, the following:<sup>2</sup>

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- b) Willful failure to submit *to the Lodge* "a monthly written report...showing the financial condition of the [Building Association] corporation and the condition of the budget relating to the same."
- c) Willful lease of its real property (commonly known as 450 Post Street) for a term of more than five (5) years, whether as an original term or under an arrangement for renewal or extension, without prior permit approval from the Board of Grand Trustees. GLS §16.050(g).<sup>3</sup>

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It is noted here that the violations under (a) and (b) above have been ongoing, and that all alleged violations have occurred within the four-year limitations period.<sup>4</sup> It is further noted that given the number of years the Accused has served in the leadership of this Lodge and this Order, it is inconceivable that he could, with any credibility, claim ignorance of these statutes. Indeed, it is believed and alleged to be quite the opposite, with the full details of the business arrangements, income and financial expenditures intentionally kept behind a veil of secrecy.<sup>5</sup>

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If, as believed, the Accused has wilfully caused a violation of GLS §16.050, the Accused has put this Lodge at great risk: "If a Lodge *shall permit* a violation of this Section, the Grand Exalted Ruler, with the consent of the Board of Grand Trustees, shall have the power to suspend or revoke its Charter." Under GLS §9.170, this could lead to a subsequent appointment of Grand Lodge trustees with the power, among other things, to sell our "450 Post Street" building if, in their best business judgment as fiduciaries, such a sale is prudent.

This action by the Accuser is thus intended not only to bring the Accused to account, but to protect Lodge #3 from being found to have *wilfully permitted* a violation of GLS §16.050 by it having done nothing to stop or disaffirm such a violation, or by it having done nothing to prevent or remove from Lodge office a willful perpetrator of such a violation.

Therefore, on behalf of San Francisco Lodge #3, the Accuser hereby disavows any and all violations of GLS §16.050 made or aided by the Accused, in whatever capacity, and whether through this Lodge or through its Building Association.<sup>8</sup>

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From the above, the Accused, by his conduct, willfully violated the following Laws of the Order, all of which are incorporated by reference in the Articles of Incorporation of the Corporation:

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<sup>8</sup> As the Members of Lodge #3 were largely ignorant of the alleged §16.050 violations, it is hoped that consequence falls solely upon the Accused (and any other responsible persons). Moreover, given the Accused's apparent inability or unwillingness to properly safeguard Lodge #3's interests, and the potential continued risk and harm to Lodge #3, action under §9.070(g) is urged for the immediate removal of the Accused from his Lodge-related offices.

a. The policy of the Laws of the Order that all Lodge records be made available to all members at reasonable times. E.g., GLS Statutes §16.110, Op.01.

b. §9.070 (d) and (h)(1), contumacy, for intentionally causing the violation of the right of members to inspect all Lodge records, and for intentionally causing the violation of the reporting requirements of the Building Association to the Lodge under §16.030; §9.070 (h)(ii) for violating the Ritual of the Order to be honest in dealing with Lodge members; and §9.070 (h)(iv) for committing offences against the moral law including deceit, misrepresentation and fraud in blocking the Accuser's inspection of the Corporation's records.

c. §9.070(g) for willfully causing violations under §16.050(e) and (g) and thus putting the Lodge at risk of having its B.P.O.E. charter revoked.


d. §9.070 j -"conduct unbecoming an Elk."

DATED: June 11, 2014

  
Arthur Brunwasser, Accuser

I, Arthur Brunwasser, under the Obligation of the Order, says that he is the above-named Accuser, that he has read the foregoing Second Amended Complaint, knows the contents thereof, and believes the same to be true. I am submitting to the Lodge Secretary a check in the amount of \$100 as a deposit against the costs of the Lodge.

DATED: June 11, 2014

  
Arthur Brunwasser, Accuser