

RELIGION LAW

Expert Analysis

Religious Institutions and Trustees: An Unorthodox Relationship

New York lawyers in private practice, in-house counsel and business executives generally understand the broad powers that trustees and boards of directors of business enterprises have in governing their businesses' affairs, subject to powers conferred by statute upon shareholders. It may be surprising, therefore, for them to discover that the authority of trustees to direct the actions of religious institutions is quite restricted in some instances.

Trustees of not-for-profit entities incorporated under New York's Religious Corporations Law (RCL) certainly have extensive powers to determine the course of their institutions' operations. The New York legislature has determined, however, and the courts have recognized, that in certain situations trustees of religious organizations are governed by different rules.

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This column discusses some examples highlighting the rather unorthodox relationship between religious organizations and their trustees, beginning with *Blaudziunas v. Egan*, 18 N.Y.3d 275 (2011), a leading decision by the New York Court of Appeals upholding the power of trustees of a hierarchical church to take certain action without congregational approval, and indeed against the will of certain parishioners.

Closing a Church

The *Blaudziunas* case had its origins in 1909, when Our Lady of Vilna Church—a Roman Catholic church established to serve a Lithuanian community in New York City—was incorporated by a board of trustees then composed of the archbishop of the Roman Catholic Diocese of New York, the vicar general of the

diocese, the rector of Our Lady of Vilna, and two laymen trustees selected and appointed by the ex officio members, pursuant to the RCL. The land on which the church building and former rectory were located was deeded to the church corporation in 1910 and 1912.

At a special meeting of the board of trustees in 1980, the church adopted bylaws, consistent with the RCL and Canon Law of the Roman Catholic Church, regarding the governance

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of the church corporation and the rights and duties of the trustees. Among other things, the bylaws explained the powers of the board of trustees, and the limitations on the board, stating, "The Trustees of the Corporation shall constitute its governing body. ... No act or proceeding of the Trustees shall be valid without

the sanction of the Archbishop.” The bylaws also conferred on the trustees “custody and control of all the temporalities and property belonging to the Corporation ... in accordance with the discipline, rules and usages of the Roman Catholic Church and of the Archdiocese for the support and maintenance of the Church.”

In 2006, the archbishop of the Diocese of New York, Edward Cardinal Egan, issued a decree of suppression, an ecclesiastical decision to close the church building and extinguish the parish, due to “a serious decline in its parish population, the need to provide for enhanced stewardship of Archdiocesan resources, and optimum use of Archdiocesan clergy and lay personnel to better serve the People of God.” As stated in the decree, the archbishop proceeded pursuant to “Canon [Law] 515.2, after having first heard the Presbyteral Council of the Archdiocese of New York and consulted with the Regional Vicar, the administrator, and neighboring pastors.”

In October 2007, the board of trustees of the religious corporation convened a special meeting. According to the meeting’s minutes, the archbishop reported on his “ecclesiastical suppression of the parish and closure of the church building due to the longstanding decline in parish population, lack of attendance and paucity of requests for baptisms, weddings and funerals, rarely held Lithuanian language Masses and the need to enhance and preserve resources to better serve the faithful.” Additionally, a report concerning the condition of the building

detailed an “historical overview of the problems with the building ... the building’s condition ... [and a] conclu[sion] that there was a significant issue with respect to structural condition.” After noting that there were “no plans to reopen the church for worship,” the board of trustees unanimously adopted a resolution to demolish the building.

Thereafter, a number of former parishioners of the church asked a court to enjoin the board from demolishing the church building. The Supreme Court, New York County, dismissed their complaint. The Appellate Division, First Department, affirmed, and the dispute reached the Court of Appeals.

The court affirmed.

In its decision, the court explained that RCL §5 vests the custody and control of a religious corporation’s real property in the board of trustees and directs the administration of such property “in accordance with the discipline, rules and usages of the corporation.” The court pointed out that §5 also states that the trustees of an incorporated Roman Catholic Church “shall not transfer any property ... without the consent of the archbishop or bishop of the diocese to which such church belongs,” and that RCL §§91 and 92 also apply to the disposition of parish property.

The court then ruled that RCL §§5, 91 and 92 recognize “the authority of the board of trustees and the archbishop to control church property” and do not grant parishioners the collective right to veto the trustees’ decision to demolish the church.

The court concluded that, given that the deed to the church property was in the name of the religious corporation and the corporation’s bylaws and the RCL “unequivocally” granted the trustees, as well as the archbishop specifically, the power to control and administer the property of the church corporation, the authority to demolish the church building was within the trustees’ purview without any need for the consent of the members of the worshiping community. Thus, the former parishioners had “no basis to challenge the actions properly voted upon by the board of trustees and sanctioned by the archbishop.”

It is important to keep in mind that the rule announced by the court in the *Blaudziunas* case applies only to certain hierarchical religious corporations organized under the RCL, which provides distinctive sets of rules for a number of specific religious denominations. In contrast, trustees of religious corporations having a congregational form of government (including a substantial percentage of Jewish and Protestant congregations) are forbidden to sell or mortgage their real property without member consent. See, e.g., *In re Beth Israel of Brownsville*, 187 N.Y.S. 36 (N.Y. Sup. Ct. 1921).

The Rabbi’s Contract

One of the important limits on the powers of a religious corporation’s trustees can be seen in the decision by the Appellate Division, Second Department, in *Kamchi v. Weissman*, 125 A.D.3d 142 (2d Dep’t 2014).

The case was brought by members of a congregation challenging the decision of their synagogue's board of trustees to refuse to renew or extend the rabbi's employment agreement.

The rabbi had been employed under an agreement that was to expire on July 31, 2011. According to the plaintiffs, on several occasions, members of the congregation called for a congregation-wide vote on the matter. However, they asserted, the board refused to allow such a vote.

The plaintiffs went to court, alleging that the board had usurped the congregation's authority to choose its own spiritual leader, in violation of both RCL §200 and the congregation's bylaws, by not only declining to extend or renew the rabbi's contract, but also by blocking the congregation members' efforts to be heard and to participate in the decision.

The Supreme Court, Rockland County, dismissed the complaint, concluding that neither RCL §200 nor the congregation's bylaws prohibited the board from making the determination not to renew or extend the rabbi's contract.

The dispute reached the Second Department, which reversed.

In its decision, the appellate court explained that while RCL §5 grants trustees of a religious institution the authority to take certain specified actions in furtherance of their general powers and provides that duly adopted bylaws will control their actions, RCL §200 provides that trustees "shall have no power to settle or remove or fix the salary of the minister." (RCL §2

makes clear that the term "minister" includes a duly authorized rabbi.)

Interpreting and applying RCL §200, the Second Department ruled that the trustees had no power to settle or hire the rabbi, no power to remove or terminate the engagement of the rabbi, and no power to fix the rabbi's salary.

The Second Department found it significant that the rabbi's contract not only had been allowed to lapse, terminating his engagement as the congregation's rabbi, but that the board had "affirmatively barred" the congregation from voting on

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the issue of extending or renewing the rabbi's contract. In the appellate court's opinion, by refusing to allow the congregation to act, the board had "usurped" the congregation's authority under the RCL and under the congregation's bylaws, which authorized congregation members in good standing to vote "on any question" affecting the congregation.

Other Limitations

New York law imposes other limits on trustees of a religious institution. For one thing, trustees may not

control the institution's ecclesiastical affairs, including decisions "to fix or change the times, nature or order of the [institution's] public or social worship," except in some instances (for example, in congregational churches organized under RCL Article 10) when the trustees are also the spiritual officers of the religious institution. RCL §5 states that trustees of a religious corporation are required to exercise their powers of administration over the property of the corporation "in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject"—a broad statement that potentially could expand or restrict trustees' powers, depending upon their institution's ecclesiastical heritage. And except with respect to a religious institution organized under Article 9 of the RCL, trustees may not revise a religious institution's bylaws, which instead requires a meeting of the religious organization itself for that purpose.

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