



**TO:** The Honorable the Members of the Board of Regents

**FROM:** Alison B. Bianchi

**SUBJECT:** Philip Warner vs. Gary Flaherty, in his official capacity as president, and Tammy Flaherty, in her official capacity as curator, of the Canaan Historical Society.

**DATE:** December 12, 2017

**AUTHORIZATION(S):**

**SUMMARY**

**Issue for Decision**

Should the Board of Regents approve the recommendation of the Cultural Education Committee that a hearing should not be held in the above-referenced matter pursuant to Education Law §226(4) and §3.31(t) of the Rules of the Board of Regents?

**Reason(s) for Consideration**

Required by State statute (Education Law §226[4]) and Regents Rules (8 NYCRR §3.31).

**Proposed Handling**

If the Board of Regents adopts the Cultural Education Committee's recommendation in this matter, no hearing will take place and the petition will be dismissed (Attachment A is a copy of the Cultural Education Committee's recommendation and Attachment B is a proposed written decision dismissing the application to be issued by the Board).

**Background Information**

The Canaan Historical Society ("CHS"), located in the Town of Canaan and the County of Columbia, received its provisional charter from the New York State Board of Regents on May 24, 1963 and its absolute charter on September 24, 1971. The purposes

for which this education corporation were formed included: a) To stimulate a keener interest in the Town of Canaan and appreciation of its heritage, its history and its geography; b) To provide a common meeting ground for those who are interested and willing to explore the past of the Town of Canaan; c) To assemble and display appropriate mementos, tools, furniture and documents of Canaan's early days; and d) To maintain at one or more locations in the Town of Canaan a building or museum for the housing of such items as shall be deemed to be of interest in connection with the history of the Town of Canaan.

Petitioner, Phillip Warner, has served on respondents Gary and Tammy Flaherty and filed with the State Education Department's Office of Counsel a petition for the removal of respondent Gary Flaherty, as president of CHS, and respondent Tammy Flaherty, as curator of CHS. Petitioner seeks respondents' removal based on allegations of "misconduct, for not preserving and properly protecting [Captain William] Warner artifacts." Petitioner, a descendant of Captain Warner, requests that, in addition to the removals, "Capt. Warner's artifacts be returned to the Warner Family" for disposition to another institution named in the petition. Petitioner further requests that the "Warner artifacts be professionally protected and preserved...." Respondents have submitted an answer in which they deny all allegations and request that the Board of Regents dismiss the petition.

### **Recommendation**

Your Cultural Education Committee recommends that the Board of Regents adopt the Committee's recommendation as set forth in Attachment A.

Recommendation of the Cultural Education Committee

VOTED: that the Board of Regents determines that a hearing in this matter is not required and adopts the attached recommended decision which dismisses the petition in its entirety, pursuant to §3.31(t) of the Rules of the Board of Regents. Petitioner has sought relief not available under Education Law §226(4), and petitioner has alleged facts which, even if proven true, would not warrant removal under Education Law §226(4).



PHILIP WARNER,

Petitioner,

-against-

DECISION

GARY FLAHERTY, IN HIS OFFICIAL  
CAPACITY AS PRESIDENT, AND  
TAMMY FLAHERTY, IN HER OFFICIAL  
CAPACITY AS CURATOR, OF THE  
CANAAN HISTORICAL SOCIETY,

Respondent.

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On March 18, 2017, petitioner, Phillip Warner, properly served Gary Flaherty, president of The Canaan Historical Society ("CHS"), and Tammy Flaherty, curator of CHS (collectively, "respondents"), with a petition to the Board of Regents ("Regents") for respondents' removal pursuant to Education Law §226(4) and §3.31 of the Rules of the Board of Regents. This proceeding was brought by petitioner on his "own initiative" and was not "instituted by the Board of Regents" under §3.31(a) of the Rules of the Regents. The petition must be dismissed.

The petition was personally served on respondents on March 18, 2017 and filed with the State Education Department's Office of Counsel ("O.C.") on March 20, 2017. The record indicates that respondents apparently mailed a copy of a document substantially the same as the answer in this matter directly to petitioner by certified mail on April 6, 2017. Having received no communication from respondents, O.C. inquired about the status of the answer. Subsequently, respondents sent O.C. a copy of the purported answer, explaining that they believed this matter was, in essence, solely between themselves and petitioner and did not involve the New York

State Education Department. Respondents also stated that they believed they had to review this matter with the board of trustees of CHS before responding. The document sent to O.C. did not comport with the regulations because it was not verified and was not properly served upon petitioner (see 8 NYCRR §3.31[e] and §3.31[g][2]). Respondents were informed, by letter dated April 19, 2017, of these defects and attempted to correct them by filing a verified answer, which was served on petitioner on May 1, 2017. I note that respondents are appearing pro se. I further note that while service of respondents' answer on May 1, 2017 was late, petitioner has submitted no objection to its consideration. Furthermore, petitioner has not submitted a reply in this matter, and neither party has submitted a memorandum of law. Due to the nature of these proceedings, that fact that both parties are appearing pro se, and in the interests of justice, the late answer has been accepted for consideration.

CHS, located in the Town of Canaan and the County of Columbia, received its provisional charter from the Regents on May 24, 1963 and its absolute charter on September 24, 1971. The purposes for which this education corporation was formed included: a) To stimulate a keener interest in the Town of Canaan and appreciation of its heritage, its history and its geography; b) To provide a common meeting ground for those who are interested and willing to explore the past of the Town of Canaan; c) To assemble and display appropriate mementos, tools, furniture and documents of Canaan's early days; and d) To maintain at one or more locations in the Town of Canaan a building or museum for the housing of such items as shall be deemed to be of interest in connection with the history of the Town of Canaan.

In addition to the removal of respondents from their official positions, petitioner requests that "Capt. Warner's artifacts be returned to the Warner Family" for disposition to the West Point Museum, and that the "[Capt.] Warner artifacts be professionally protected and preserved...." The primary artifacts at issue are a sword and a military uniform.

Petitioner alleges that respondent Gary Flaherty has not properly assured that the "artifacts" are "protected and preserved" and that respondent Tammy Flaherty has not protected the artifacts from the "possibility of fire, water damage, and theft by storing them in a [sic] old, wooden church that is in poor condition." Petitioner claims that "[t]hese artifacts are rarely shown and, when displayed, are merely draped over pews. Visitors can touch and handle the artifacts." Additionally, petitioner states that he is a cousin to Capt. Warner and a lifetime member of CHS, and he asserts that the CHS physical facility violates §3.27(c)(5) of the Rules of the Board of Regents because it is not equipped properly with protection from smoke,

water, fire, intruders, pollution, or vermin (rodents). Petitioner argues that the Capt. Warner artifacts are beyond the capacity of CHS to care for under §3.27(c)(7) of the Rules of the Board of Regents and should be transferred to the Warner family for gifting to the West Point Museum. Petitioner further claims that CHS will not produce transfer or ownership papers for the Capt. Warner "collection," and he notes that other Warner family artifacts are preserved in other institutions.

Respondents state that the society's physical facility is not infested with rodents; that "blown out" panes of missing windows are repaired as needed; that, while CHS does not have an alarm system, it does utilize alternative security measures to protect the facility; and that there is no imminent danger from water or pollution. Respondents admit to not having located the paperwork showing transfer of ownership for the Capt. Warner artifacts to CHS, but records show they have been in the possession of CHS since at least 1966. Furthermore, respondents assert that representatives of West Point have indicated that they have no interest in taking possession of the Capt. Warner artifacts, and respondents further claim to be unaware of any other Warner family artifacts being preserved at other institutions. Respondents argue that the Capt. Warner artifacts are well cared for and preserved in an appropriate manner. Moreover, respondents deny that individuals are allowed to handle the Capt. Warner artifacts, and specifically in regard to the photographs included with the petition, respondents allege that petitioner was allowed to handle the Capt. Warner artifacts only as a special courtesy extended to him and his family/associates, upon petitioner's request.

Pursuant to Education Law §226(4), the Regents "may remove any trustee of a corporation created by them" because of "misconduct, incapacity, neglect of duty, or where it appears to the satisfaction of the regents that the corporation has failed or refuses to carry into effect its educational purposes."

Section 3.31(t) of the Rules of the Board of Regents states:

Upon completion and review of the record by the counsel, the appropriate standing committee of the Board of Regents, as designated by the Chancellor of the Board of Regents, shall, after consultation with the counsel, make a recommendation to the full Board of Regents as to whether or not a hearing should be conducted pursuant to Education Law section 226(4). In determining whether a hearing is to be conducted, the Board of Regents may accept or reject the recommendations of the standing committee. **The**

**Board of Regents may determine that a hearing is not required where, among other things, petitioner has not raised facts which, if proven true, would warrant removal under Education Law section 226.** If the board determines that a hearing is not required, it shall issue a written decision dismissing the application and such decision shall constitute the final determination of the board in such proceeding (emphasis added).

After careful review of the record, it is determined that the petition must be dismissed. This is because, among other things, even viewing the submission in the light most favorable to petitioner, he has "not raised facts which, if proven true, would warrant removal under Education Law Section 226" (see 8 NYCRR §3.31[t]).

In the case of respondent Tammy Flaherty, the authority of the Regents under Education Law §226(4) is limited to the removal of a "trustee" of an education corporation. Petitioner has not proved that Ms. Flaherty, as a curator, is currently a member of the CHS board of trustees. A staff-person or volunteer, such as a "curator," who is not a trustee is not a position the Regents have authority to remove under Education Law §226(4).

The allegations presented by petitioner regarding the condition of the CHS facility and its maintenance, even if proven true, do not rise to the level of misconduct, incapacity, or neglect of duty, such as would warrant removal. Respondents have denied petitioner's allegations and have affirmatively stated that the conditions about which petitioner complains either do not exist or have been corrected. Specifically, as noted above, respondents state that the society's physical facility is not infested with rodents; that "blown out" panes of missing windows are repaired as needed; that, while CHS does not have an alarm system, it does utilize alternative security measures to protect the facility; and that there is no imminent danger from water or pollution. On this record, therefore, petitioner has not established that respondents engaged in any conduct that would warrant removal under Education Law §226(4).

Finally, petitioner's request that the Regents order the involuntary transfer of an article or articles from the collection of an education corporation to another institution is not relief permitted under Education Law §226(4) and §3.31 of the Rules of the Board of Regents, which govern the removal of trustees. Moreover, petitioner's chosen institution has, according to respondents' submissions, declined to accept the artifacts even if

offered them and petitioner has submitted no evidence to the contrary.

It is also noted that that a removal application to the Regents is not the proper forum for the adjudication of an alleged dispute over ownership of the Capt. Warner artifacts between petitioner and CHS. It is urged that in such matters, the parties attempt work together constructively, if possible, or for them to handle their disputes privately in a court of competent jurisdiction.

In light of the above disposition, the parties' remaining contentions need not be considered.

THE PETITION IS DISMISSED.

Dated:

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Betty A. Rosa, Chancellor