

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

Date: 01/21/2010

Time: 09:00:00 AM

Dept: 33

Judicial Officer Presiding: Lloyd Connelly

Clerk: C. Beebout

Reporter/ERM: S. Hicks CSR# 6343, J Weinrich CSR# 3060

Bailiff/Court Attendant: R. Sanchez-Jacobo

Case No: **34-2009-80000215-CU-JR-GDS** Case Init. Date: 04/10/2009

Case Title: **Leo Hart vs. New Testament Baptist Church of North Highlands, Inc., et al.**

Case Category: Civil - Unlimited

EVENT ID/DOCUMENT ID: 1318579,3079809

EVENT TYPE: Petition for Writ of Mandate - Writ of Mandate

MOVING PARTY: Leo Hart

CAUSAL DOCUMENT/DATE FILED: Petition for Writ of Mandate in Support of Order Under Code 9418, 04/10/2009

APPEARANCES

John Bilheimer, counsel, present for Petitioner(s).

Andre Hill, counsel, present for Respondent(s).

Petitioner Leo Hart is present.

Respondents Samuel Benn and Billy Cummings are present.

NATURE OF PROCEEDINGS: PETITION FOR WRIT OF MANDATE

The above-entitled cause came before this Court for further hearing on the merits of the petition for writ of mandate. The above-named parties were present.

The Court exercised its authority under Corporations Code section 9418 to resolve this case by identifying a person with short term authority to serve as the church's administrator/caretaker and scheduling an election to select an interim board of directors.

The parties shall identify a person to serve as interim administrator/caretaker until the new board of directors is elected. If the parties cannot agree on an administrator/caretaker, the Court shall hear the matter at 3:30 p.m. on January 27, 2010. The Court denied the petitioner's request to appear telephonically at this hearing.

The petitioner and respondents shall each identify one person per side to serve as an intermediary to the administrator/caretaker. To the extent possible, the intermediaries shall work together to make decisions and only approach the administrator/caretaker when they cannot reach an agreement. The administrator/caretaker shall resolve disputes between the intermediaries by making operational decisions for the church when there is not an agreement of the intermediaries. The administrator/caretaker shall reserve any major policy decisions for the new board to resolve after they are elected. The administrator/caretaker shall insure that church members have equal access to the church. If there are objections to the decisions of the administrator/caretaker, the opposing party could approach the Court for an ex parte hearing on the decision.

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The interim board of directors shall serve until the normal process under the bylaws occurs to select a new board of directors. The interim board will consist of seven members – two selected by Leo Hart, two selected by Billy Cummings, and three selected by majority vote of the church members. Nominations or statements of candidacy for the three open seats on the board shall be completed no later than February 8, 2010.

The election shall be held on February 26, 2010. Notice of the election shall be given at least 10 days in advance by the procedures as stated below. The parties shall identify a person they agree upon to serve as proctor for the election. The parties shall arrange for security at the election to be provided by the Sacramento County Sheriff's Department.

The members eligible to vote in the February 26th election shall be the members who the parties stipulated were eligible to vote in October 30, 2009 election. The Court reserved February 5, 2010 at 1:30 p.m. to hear any motions to challenge individual members on that stipulated list. The briefing schedule for the February 5th hearing shall be 1/27/10 for the petitioner's opening brief, 2/3/10 for the respondents' opening brief, and 2/4/10 by 4:00 p.m. for the petitioner's reply.

In response to the petitioner's request for an audit, the Court advised the parties that any member of the church could make a written demand to open the books for inspection pursuant to Sections 9512 and 9514 of the Corporations Code. Once the written demand is given, the books must be made available for reasonable inspection. Any party may approach the Court for additional enforcement of the law in this area.

The Court held in abeyance the petitioner's request to appoint a receiver and to resolve the issue of who is or is not a deacon of the church. The Court's intention is that these issues will be resolved by the new board of directors when they are elected.

The Court ruled that Pastor Cummings' contract with the church is renewed by operation of law for another 90-day period ending on February 28, 2010. The new board of directors will have the authority to renew that contract or not.

Election Procedures

The Court proposes the following procedures for the election of the NTBC Board of Directors pursuant to Corporations Code section 9418.

- **Location.** The election will be held in the room at the NTBC where church business meetings are ordinarily held.
- **Date and time.** The election will be held during a four-hour period on February 26, 2009 and at a time of day when a church business meeting would ordinarily be held.
- **Voters.** The list of church members eligible to vote which was approved by stipulation of the parties prior to the October 30, 2009 election shall be the list of eligible members for this election, absent an objection by the parties and a ruling to the contrary by the Court at the hearing on February 5, 2010. The approved list shall be posted at a location within the NTBC where official notices are customarily posted and on the NTBC website (<http://www.e-ntbc.org/contact.html>). The existence and posting of the list shall be announced at two consecutive Sunday services prior to the election.
- **Voting by secret ballot.** Persons on the list of eligible members shall vote in person by secret ballot.
- **Ballots.** The ballot shall present the list of people nominated to fill one of the three slots open on the Board of Directors. Each voter may vote for up to three people on the ballot. The three people with the

greatest number of votes shall be the new board members. A run-off election shall be held as soon as possible if there is a tie. No other matter shall be on the ballot. The form of ballot shall be submitted to the Court for approval.

- **Notice.** The persons on the approved list of eligible voters shall be provided notice of the election no less than 10 days prior to the election. The notice shall set forth the people running for election, indicate that board members will be selected by a majority of church members eligible to vote, indicate the manner in which votes will be cast and counted for the candidates, indicate that a list of members eligible to vote has been posted in the church and on the church website, state that votes shall be cast by secret ballot, and specify the date, time and location of the election. At least 10 days in advance of the election, the notice shall be posted on the home page of the NTBC website, posted at a location within the NTBC where official notices are customarily posted, and mailed by certified mail to the persons on the approved list of eligible voters. In addition, the information in the notice shall be announced at two consecutive Sunday services prior to the election.

- **Proctor.** The parties shall stipulate to a party to serve as the election proctor. That person may select one or more persons to assist him as long as the persons are unaffiliated with the church as members, employees, as relatives of church members or employees, or in any other capacity. As the proctor of the election, that person and any assistants he selects shall verify that each person who appears to cast a ballot is on the approved list of persons eligible to vote in the election, check off the name of the person on the approved list, give the person a ballot, receive the completed ballot from the person and deposit it in a box provided for the collection of the ballots, check off the person's return of the ballot beside the person's name on the approved list, tally the ballots at the end of the four-hour voting period, announce the tally, and transfer the ballots to a secure location to be identified by the parties and approved by the court.

- **Security.** Two Sacramento County Deputy Sheriffs shall be present, at an hourly rate of \$56.00 per deputy, to provide security during the four-hour voting period and during the tallying of the votes. The parties shall be responsible for paying equal shares of the cost of the deputies.

- **Results.** The election results shall be posted on the NTBC website and at a location within the NTBC where official notices are customarily posted. Any challenge to the results shall be lodged with the court within 48 hours after the vote tally is announced by the proctor.