

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF MONROE

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EUGENE BALDINO, SHAWN BAKER, ROBERT CALCAGNO,  
JAMES MCCONEGHY, and DOUGLAS FOSS,

Petitioners,

**Bench Trial Decision  
and Judgment**

-against-

ROBERT SANSONE, in his capacity as President and  
Governor, CHAD ELLIS, in his capacity as Chief Operating  
Officer, General Manager, and Member of the Executive  
Committee, PHILIP PECORA, PHILIP DIPASQUALE, DANIEL  
CANNAN, PHILIP SPELLANE, VINCENT LEO, DAVID LYTTLE,  
RANDY WHITE, AND JAMES MAGEE, in their capacities as  
Governors, and OAK HILL COUNTRY CLUB BOARD OF  
GOVERNORS,

Respondents,

Index No. E2024017676

-and-

OAK HILL COUNTRY CLUB,

Nominally, as  
Potentially Necessary  
Party.

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**Appearances:**

Kelly S. Foss, Esq., Kaitlin E. O'Brien, Esq., and Harrison L. Hartsough, Esq., LIPPES  
MATHIAS LLP, for Petitioners

Brian J. Capitummino, Esq., WOODS OVIATT GILMAN LLP, and Michael-Anthony  
Jaoude, Esq., and Katherine E. Rahmlow, Esq., HARTER SECRETST & EMERY

LLP, and, for Respondents Chad Ellis, Philip Pecora, Philip DiPasquale, Daniel Cannan, Philip Spellane, Vincent Leo, David Lyttle, Randy White, and James Magee, and Oak Hill Country Club Board of Governors (Respondents “Oak Hill”)

David Rothenberg, Esq., and Michael Rothenberg, Esq., ROTHENBERG LAW, for Respondent Robert Sansone

**Daniel J. Doyle, J.,**

Petitioners initiated this special proceeding by the filing of a petition in October of 2024 alleging, in sum and substance, that Petitioner Eugene Baldino (hereinafter “Baldino”) was denied due process and improperly removed from the Respondent Board of Governors (hereinafter “board”), asking for his reinstatement, indemnifying him for all legal expenses, and granting to the petitioners the right to inspect books and records of Respondent Oak Hill Country Club (hereinafter “Oak Hill”).

The Court conducted a bench trial on selected dates between December 1, 2025, and January 14, 2026.<sup>1</sup> The parties submitted proposed findings of fact and conclusions of law on April 10, 2026.

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<sup>1</sup> Although on mandamus to review the Court is generally limited to a review of the information before the body that made the determination being reviewed, the parties herein could not agree on the information considered by the board in making its decision to remove Baldino. Furthermore, the petitioners challenged the accuracy of the information provided to the board, and the Court previously ruled that “Petitioners are free to present any ““competent and relevant proof \* \* \* showing that any of the underlying material on which the [Board] based its determination has no basis in fact,” or challenging the expertise of the members of the Board, or in support of his contention that the Board’s determination was irrational or arbitrary (*Matter of Mandle v. Brown*, 5 N.Y.2d 51, 65, 177

For the reasons that follow, the Petition is DISMISSED.

### ***Amended Petition's Allegations<sup>2</sup>***

As the Court has previously outlined the allegations in the amended petition in its previous Decision and Order dated August 6, 2025 (NYSCEF Docket # 211) the Court will provide a brief summary of the allegations relevant to the issues herein.

In the amended petition, petitioners alleged Baldino was improperly removed by the Club's board based upon fabricated (or exaggerated) allegations that Baldino engaged in actions that would potentially constitute a hostile work environment, i.e., his alleged negative interaction with an employee, Hanna Halpin (hereinafter "Halpin"). In support of an argument that Baldino's removal was arbitrary and capricious, petitioners alleged that two other previous board members engaged in misconduct violating the Club's rules but neither board member was investigated nor suffered negative consequences. Petitioners also alleged that certain respondents were biased against Baldino due to his attempts to remove the Club's

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N.Y.S.2d 482, 152 N.E.2d 511; *Matter of Newbrand v. City of Yonkers*, 285 N.Y. 164, 178, 33 N.E.2d 75; *Matter of Hodgins*, 196 N.Y. 123, 126-127, 89 N.E. 423; *Matter of Holy Spirit Assn. for Unification of World Christianity v. Tax Comm. of City of N.Y.*, 62 A.D.2d 188, 404 N.Y.S.2d 93; cf. *Simpson v. Wolansky*, 38 N.Y.2d 391, 395-396, 380 N.Y.S.2d 630, 343 N.E.2d 274)." (*Poster v. Strough*, 299 AD2d 127, 142-43 [2nd Dept. 2002].)

<sup>2</sup> In a Decision and Order dated August 6, 2025, the Court deemed the proposed amended petition to be filed with the exception for a proposed amended claim for relief under CPLR § 7803 (4). The proposed amended complaint may be found at NYSCEF Docket # 184.

general manager. Petitioners alleged an alternative theory for relief- that Baldino's removal was arbitrary and capricious or an abuse of discretion.

The petitioners also alleged a cause of action pursuant to N-PCL § 621 to inspect Oak Hill's books and records, an accounting, and a declaration that "Club Governors have an absolute and unfettered right to access Club books and records".<sup>3</sup>

### *Findings of Fact<sup>4</sup>*

Oak Hill is a not-for-profit social club governed by a constitution and by-laws.<sup>5</sup> As relevant herein, the constitution defines the powers and duties of the board of governors and how a governor can be removed. Specifically, it states that "[a] governor[] may be removed for cause by a majority vote of members or by the majority vote of Governors provided there is a quorum of not less than a majority

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<sup>3</sup> The amended petition seeks the following records (for the three-year period immediately prior to the petition filing date): The general ledger, together with associated balance sheet (and supporting reconciliations), income statement, and statements of cash flows; b. Copies of all: (1) customer invoices; (2) vendor invoices; (3) customer contracts; (4) vendor contracts; (5) purchase orders; (6) expense reports and supporting detail; (7) payroll registers; (8) pay authorization documents; (9) employment contracts; (10) employee bonus payments; and (11) sales tax schedules; c. Any and all financial analysis documents prepared, including, but not limited to: (1) dues schedules (by type and by year); (2) initiation fee schedules; (3) department budgets, together with and spending analysis; (4) profitability analysis; and (5) capital projects that are completed, planned, and in process; and d. Any and all tax documents and filings.

<sup>4</sup> The facts set forth below were determined by the Court after assessing the witnesses' credibility and upon a review of the submitted exhibits. Unless otherwise noted, citations to specific trial testimony or facts derived therefrom is a determination that the Court found the cited witness or fact to be credible.

<sup>5</sup> P. Ex. 1; R. Ex. 501, 502.

present at the meeting of Governors as which such action is taken”.<sup>6</sup> What constitutes “cause” for removal of a governor is not defined in the constitution.

The constitution also requires- among other duties- that the board of governors present to the members an annual report.<sup>7</sup>

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<sup>6</sup> By comparison, the constitution requires greater procedural protections for members who face suspension or removal. For removal of a member, the constitution states:

SECTION 2. Expulsion. Should, in the opinion of the Board, a member’s conduct, sufficient for suspension, warrant, the Board of Governors, upon prior written notice, may expel such member at any duly constituted meeting of the Board of Governors by the affirmative vote of at least two-thirds of the Governors present thereat. Notice of possible expulsion shall include specification of charges and shall state the time and place [sic] at which the Board of Governors shall consider such action. The Notice shall further state that such member may be present at such meeting to answer such charges, such notice to be mailed at least 10 days before the holding of such meeting.

<sup>7</sup> The constitution states:

#### Annual Report

The Board of Governors shall present at the Annual Meeting of members a report verified by the President and Treasurer or by the majority of the Governors or certified by an independent public or certified public accountant selected by the Board showing in appropriate detail the following:

- a. The assets and liabilities including the trust funds of the Club as of the end of the twelve-month fiscal period terminating not more than six months prior to said meeting.
- b. Principal changes in assets and liabilities including trust funds during the year immediately preceding the date of the report.
- c. The revenue or receipts of the Club both unrestricted and restricted to particular purposes for the year immediately preceding the date of the report.
- d. The expenses or disbursements of the Club for both general and restricted purposes during the year immediately preceding the date of the report.

Members of Oak Hill are governed by a Code of Conduct.<sup>8</sup> It states that each member shall “treat[] every Member, guest and employee at the Club with dignity and respect” and that “[b]ehavior that is unbecoming will be subject to disciplinary action up to and including termination of membership”.

Apart from Baldino, the petitioners are not governors of Oak Hill. They are senior members.

Baldino joined Oak Hill in 2013. Prior to joining Oak Hill Baldino was employed as CEO of a private equity firm that specialized in purchasing distressed businesses, restructuring those businesses, and selling them for a profit. This prior employment experience often involved changing the management structure of the distressed company.<sup>9</sup>

In late June of 2019 (while only a member), Baldino received a letter -dated June 27, 2019- from Al Mahar, Secretary of Oak Hill. The letter concerned an incident between Baldino and several Oak Hill employees that occurred on June 7, 2019, and Baldino’s appearance before the board on June 18, 2019, to address same. The letter

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- e. The number of members of the Club as of the date of the report together with a statement of increase or decrease in such number during the year immediately preceding the date of the report and a statement of the place where the names and places of residence of the current members may be found.

<sup>8</sup> P. Ex. 3; R. Ex. 503.

<sup>9</sup> Trial Minutes (hereinafter “TM”) 480; 482.

states that witnesses to the June 7<sup>th</sup> incident characterized Baldino's behavior as "us[ing] a loud voice in public setting" while "forcefully berat[ing] a young staff member bringing her to tears" while "using gross profanity" and "ridicul[ing] staff and management" creating an "embarrassing situation for everyone present". The letter informed Baldino that the board believed he did not show remorse when he appeared before the board to discuss the incident, and he minimized his behavior. Finally, the letter stated that the board determined his behavior was improper and directed Baldino to "write a letter of sincere and genuine apology taking responsibility for [his] actions", that a record of the incident would be maintained, and that should there be "future ungentlemanly behavior" the letter would serve as "recommendation for suspension to any future Board".<sup>10</sup>

On July 1, 2019, Baldino sent a letter addressed to the "Grill Room staff" (and others) wherein he stated that "if my demeanor, language or tone were perceived to be out of line, unprofessional or ungentlemanly in any form, I truly apologize". He further stated he "deeply regret[s] and apologize[s] for how I chose to conduct myself on the date in question and will take heed to make sure that the staff and management always know how much I appreciate all they do for me and my fellow

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<sup>10</sup> R. Ex. 548. *See gen.* TM 790-797.

members” and assuring them that “all future actions and interactions will be nothing less than exemplary in nature”.<sup>11</sup>

While a member of Oak Hill other members approached Baldino with issues related to Oak Hill management. Based upon these concerns, Baldino decided to run for governor on a platform of financial management and accountability, sharing his thoughts on those issues with “anyone who would give me the time to listen”. He was elected to the board in 2022.<sup>12</sup>

As a governor, Baldino’s interactions with Robert Sansone (hereinafter “Sansone”), another governor, and Oak Hill General Manager Chad Ellis (hereinafter “Ellis”) were- at times - contentious.<sup>13</sup> At his first board meeting Sansone told the board that Baldino “didn’t deserve to be a governor” as Baldino had not been a member long enough and had not served on enough committees.<sup>14</sup> Baldino joined the board’s finance committee in October of 2022 and was elected to be assistant secretary to Oak Hill in October of 2023. Thereafter, Baldino – consistent with his election platform- began to advocate for changes to the club which often lead to

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<sup>11</sup> R. Ex. 548. *See gen.* TM 797-803.

<sup>12</sup> TM 483-484; 652.

<sup>13</sup> Another governor, Jett Mehta, testified that Sansone told him that Baldino was “asking too many questions” and if that continued Sansone would “find a way to eliminate him from the Board”. (TM 235-236.) Sansone denies stating this. (TM 1590-1591.)

<sup>14</sup> TM 484-485.

openly criticizing Ellis, Chris Roth – executive chef and later director of food and beverage (hereinafter “Roth”)- and Oak Hill management about lack of transparency and mismanagement.<sup>15</sup>

Baldino would often criticize Ellis leading to “frustration and tension” between Ellis and Baldino during board meetings.<sup>16</sup> Baldino also openly criticized Ellis for not following board directives such as developing a new organizational chart approved by the board and was vocal to the board about Ellis’ perceived shortcomings mentioning it “more than once”.<sup>17</sup>

In August of 2023 Baldino wrote a lengthy email to the president (James Merkley), vice-president (Ronald Billitier), and the assistant treasurer (Jett Mehta, hereinafter “Mehta”), criticizing Oak Hill management stating (among other criticisms) that “Oak Hill is dealing with an ineffective, dysfunctional, and with the recent unauthorized execution of an unapproved organizational structure, now rogue leader and management team”.<sup>18</sup>

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<sup>15</sup> As to Roth, Baldino raised concerns that Roth and another employee (Kody Derhak) were using Oak Hill resources to develop a private venture owned by Roth and Derhak. (TM 584.)

<sup>16</sup> TM 128.

<sup>17</sup> TM 1352-1353.

<sup>18</sup> TM 488-496. P. Ex. 9.

Baldino called for Ellis to be fired from Oak Hill on multiple occasions, eventually requiring a board vote on Ellis' potential termination in January of 2024. The board voted to keep Ellis as general manager with a vote of 9-6.<sup>19</sup>

Baldino also raised issues regarding Oak Hill's IRS Form 990. Baldino objected to the fact that although the 990 form completed by Oak Hill stated otherwise, the board did not review executive compensation, the board did not review employment contracts, the board did not review executive credit card expenditures, and the board did not review the 990 prior to it being filed with the Internal Revenue Service.<sup>20</sup>

In late 2023 Baldino began raising concerns regarding the "holiday fund" which was a fund of voluntary contributions from members designed to provide bonuses to Oak Hill employees. During a board meeting Baldino inquired as to the formula for distributing those payments and to whom the payments were made. Baldino was informed by Ellis that there was an algorithm used to determine who was paid and in what amounts.<sup>21</sup>

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<sup>19</sup> P. Ex. 88 at 99-100.

<sup>20</sup> TM 573-581.

<sup>21</sup> TM 548-549. It is a fair inference that due to the inquiries made by Baldino, Mehta, and fellow board member James Ryan, Oak Hill commissioned three members who were CPAs to conduct an investigation of the holiday fund. Those members issued a report with various recommendations to improve how the fund distributed funds to Oak Hill staff. (See *gen.* TM 258-281; P. Ex. 64.)

Not satisfied with Ellis' explanation, Baldino met with Brandon Greeley, Director of Finance (hereinafter "Greeley"). Greeley explained to Baldino how the fund was administered and showed Baldino a spreadsheet Greeley maintained which recorded the payments to employees. Baldino asked for a copy of the spreadsheet, but Greeley informed him that as it had payroll information on it, he could not provide it to Baldino. After showing Baldino this information, Baldino thanked Greeley.<sup>22</sup>

Baldino, in conjunction with Mehta, also raised concerns regarding Oak Hill's failure to reconcile its accounts on a timely basis, the audited financial statements, concerns regarding Ellis' credit card expenditures, and the "master plan" expenditures. Greeley met with Baldino several times to discuss the reconciliation process, and the audited financial statements. Baldino was satisfied with the responses Greeley provided and did not further inquire about either issue.<sup>23</sup> Greeley also provided Mehta requested information on the master plan and Ellis' credit card expenditures.<sup>24</sup>

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<sup>22</sup> TM 1104-1107.

<sup>23</sup> TM 1090-1097. Baldino also requested information on employee deferred compensation, revenue from the PGA, and a sales tax issue. Greeley provided Baldino with the requested information. Baldino did not inquire further about these issues. (TM 1097-1100.)

<sup>24</sup> TM 1100-1103.

However, shortly after Baldino met with Greeley to discuss the holiday fund Sansone implemented a new policy that required governors to seek records through the relevant chair of the committee that had oversight over the requested records.<sup>25</sup> This policy was not approved by the board.<sup>26</sup>

Soon after Greeley provided Mehta with Ellis' credit card records, Baldino received a telephone call from Governor Merkley informing Baldino that Ellis was upset.<sup>27</sup>

In January of 2024 Hanna Halpin began her employment with Oak Hill as the food and beverage manager. As soon as she began employment, she observed that the work environment was "tough", and the culture was "unhealthy" at times. Observing that Oak Hill's restaurants did not have standard operating procedures, Halpin began working on implementing them with her team.<sup>28</sup>

Initially, Halpin had a decent relationship with her supervisor, Chef Roth. However, eventually Roth became less collaborative and informed Halpin that she should not interact with Mehta and Baldino as they were "tough characters" and

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<sup>25</sup> TM 563-564. P. Ex. 88 at 26.

<sup>26</sup> P. Ex. 88 at 29.

<sup>27</sup> TM 570-571.

<sup>28</sup> TM 335-337.

were critical of Roth. Roth also informed Halpin that certain employees were “dinosaurs” who Halpin should observe closely to see if they violated policies.<sup>29</sup>

In the afternoon of April 12, 2024, Roth, Halpin and the staff met to discuss the tension between Roth and some of the employees. The meeting became emotional with the staff criticizing Roth and Roth becoming defensive and upset. After the meeting concluded, Halpin asked Roth and another manager to “cover the floor” of the restaurant so she could take a break in her office.<sup>30</sup>

After spending a short time in her office another manager came in and informed Halpin that a member wished to express a concern in the restaurant and could not find a manager. Halpin immediately left her office and ran to the restaurant to determine what was happening. There, she observed Baldino next to the hostess stand. Baldino and Halpin then began to have a “conversation” in a hallway a short distance from the stand.<sup>31</sup>

The conversation was observed by three members, Fred Beltz (hereinafter “Beltz”), Randy White (hereinafter “White”), and Kevin Stickles (hereinafter “Stickles”).<sup>32</sup>

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<sup>29</sup> TM 338-340.

<sup>30</sup> TM 341-343.

<sup>31</sup> TM 343-344.

<sup>32</sup> The essence of the conversation between Baldino and Halpin concerned whether another member (Jim Viscardi) and his wife were properly denied a table in the Grill Room. As the

Beltz and his wife and White and his wife were walking down the hallway towards the Grill Room.<sup>33</sup> Prior to turning the corner to enter the Grill Room Beltz – who was several steps ahead of White - heard an “angry voice” similar to “a parent severely chastising a child”. Upon turning the corner, he observed Baldino and Halpin with Baldino in a “very aggressive posture” and “inside [Halpin’s] space” and characterized Baldino’s demeanor as a “bully”. Baldino – seeing Beltz - glared at him. Later that evening Beltz apologized to Halpin stating “this is not the gentlemanly behavior you should expect from Oak Hill members”.<sup>34</sup>

White was a few steps behind Beltz. When he turned the corner, he saw the “confrontation” between Baldino and Halpin and Baldino “in her space” with a “stern face”. Upon reaching his table and sitting down with his wife and Beltz and his wife, he said “what the F was that” to them. He then excused himself and approached Halpin asking her if she “was ok” and had she been “wire brushed” by Baldino and apologizing to her saying that what he observed “was not conduct we [] condone or accept” at Oak Hill. Halpin responded saying “this is normal in a restaurant . . .

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content of the conversation is not relevant to the issues herein, it is not set forth in detail. (See *gen.* TM 669-678.)

<sup>33</sup> This hallway is the only internal hallway linking the entrance of the clubhouse to the Grill Room. (TM 1261; 1602-1603.)

<sup>34</sup> TM 1151-1156.

people get upset". Later that evening White texted Sansone about what had occurred.<sup>35</sup>

Stickles was present in the Legends Terrace with his wife and daughter and was able to observe the interaction between Baldino and Halpin. He estimated that the conversation between Baldino and Halpin lasted approximately ten minutes,<sup>36</sup> and that after the conversation Halpin came to his table and Halpin was "visibly upset" and her "eyes were welled up".<sup>37</sup>

During his testimony, Baldino denied raising his voice during the conversation with Halpin, making inappropriate gestures, threatening Halpin, cursing at Halpin, and stated that through the entirety of the interaction with her he treated Halpin "with dignity and respect".<sup>38</sup>

Halpin testified that during the conversation Baldino did not threaten her, that he cursed during the conversation (but not at her), and denied that Baldino yelled or raised his voice.<sup>39</sup> However, Halpin confirmed that immediately after the conversation with Baldino (1) another staff person said to her "holy cow, are you

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<sup>35</sup> TM 1258-1263; 458.

<sup>36</sup> Halpin testified that the conversation lasted "probably between 15 and 20 minutes". (TM 345.)

<sup>37</sup> TM 1601-1605.

<sup>38</sup> TM 678-679; 681; 900. The Court did not find Mr. Baldino's description of his interaction with Halpin to be credible.

<sup>39</sup> At the time of her testimony at trial, Halpin had initiated her own lawsuit against Oak Hill. (TM 465.)

okay”, (2) that Beltz, White, and Stickles inquired whether she was alright, and (3) that Baldino’s wife approached her to say “sorry about Gene, sorry about that”.<sup>40</sup> Furthermore, in a later text conversation with a fellow employee, Halpin said Baldino “was an asshole” during their conversation.<sup>41</sup>

When asked during her testimony to explain what she meant by calling Baldino an “asshole”, Halpin testified that she “meant that his approach and language. . . was worthy of using that word about it”. She testified further that Baldino was “extremely blunt” and “very critical” and his demeanor during the conversation is what likely lead Halpin to refer to Baldino as an “asshole”.<sup>42</sup>

Later in the evening on April 12<sup>th</sup>, Governor Vincent Leo (hereinafter “Leo”) was in the Grill Room and ran into Halpin as he was walking towards the restroom. Intending to colloquially greet her with “how are you doing” he instead misspoke and said, “you okay tonight”? Halpin looked at him, “[h]er eyes welled up” and she said, “what have you heard?”.<sup>43</sup>

After Sansone received the text from White (the evening of April 12<sup>th</sup>), he texted Roth to inquire about the conversation between Halpin and Baldino, and

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<sup>40</sup> Diane Simon, Baldino’s wife, denied making this statement. (TM 43.)

<sup>41</sup> TM 460-461.

<sup>42</sup> TM 469-471.

<sup>43</sup> TM 1172-1173.

Roth then informed Ellis about the incident. The next morning (April 13<sup>th</sup>) Sansone called Philip Spellane (hereinafter “Spellane”), a fellow board member who was an attorney, to inform him of what had occurred between Baldino and Halpin. Later that day, Sansone, Spellane and Halpin met at Oak Hill to discuss the incident. During this meeting, Halpin relayed what had occurred and Spellane observed that she was “clearly upset about what happened”.<sup>44</sup>

Prior to Halpin’s meeting with Spellane and Sansone, Halpin also met with Ellis, Roth, and Ellender (HR Director). Ellender took notes memorializing this conversation with Halpin and those notes were later included in a memo that was later provided to the Oak Hill Board of Governors.<sup>45</sup>

Thereafter an investigation was initiated. Sansone requested that Spellane handle the “member side” of the investigation and interview those members who observed the interaction between Baldino and Halpin. Spellane had prior experience investigating allegations of member misconduct. Ellender – as HR Director- was

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<sup>44</sup> TM 1301-1302; 1305. R. Ex. 511, 512, 513. Halpin testified that during this meeting she stated she would accept an apology from Baldino. (TM 362.)

<sup>45</sup> This memo is dated April 13, 2024, outlines Ellender’s investigation of the incident between Halpin and Baldino. It was included in the packet of materials provided to the Board of Governors during their May 1<sup>st</sup> meeting to review the incident. At trial, it was admitted as R. Ex. 548.

tasked with the responsibility of interviewing Oak Hill staff who observed the interaction.<sup>46</sup>

During Ellender's investigation she received information from several employees who witnessed the underlying incident. Additionally, Oak Hill received two "red flag" reports about the incident from staff.<sup>47</sup> Both were received on April 15<sup>th</sup>. Ellender construed that to mean there was concern among the employees about the incident between Halpin and Baldino.<sup>48</sup>

Ellender and Spellane each produced documents outlining their investigation. Ellender reviewed her final report with Halpin prior to submitting it to Spellane. Halpin did not object to any portion of the report that was reviewed by Ellender. These documents were then collated by Spellane for later distribution to the board.<sup>49</sup>

During her testimony Halpin equivocated when asked whether the report accurately stated that she had told Ellis, Roth, and Ellender at their initial meeting that she was "in a state of shock", that Baldino "disrespected" her, that the meeting

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<sup>46</sup> TM 1297; 1438. P. Ex. 88 at 171.

<sup>47</sup> Oak Hill's "red flag" reporting allowed staff to submit anonymous concerns to an independent organization that would then provide a summary to Oak Hill about the allegations contained in the report. TM 1442-1445.

<sup>48</sup> TM 1462.

<sup>49</sup> TM 1482.

was “unbelievably long and very excessive”, that Baldino had “no regard” for her, and that she was “starting to tear up”. However, she explicitly denied telling them that Baldino verbally harassed her, that she was an unwilling participant in the conversation with Baldino, she was “extremely anxious”, and that Baldino disrespected her “maybe because she is a woman”.<sup>50</sup>

On April 19<sup>th</sup>, Spellane called Baldino to inform him that he was “being investigated for a conversation that [he] had with Hanna Halpin”.<sup>51</sup> Spellane asked if Baldino was available on May 1<sup>st</sup> to meet with the board to review the incident.<sup>52</sup>

On April 25<sup>th</sup>, Sansone sent the following email notifying the governors of a special meeting to occur on May 1<sup>st</sup>. In the email, Sansone wrote:

. . . The subject of the meeting will be interactions between a current member of the Board and member of the OHCC staff, inclusive of a member of the Dining Room staff that occurred on Friday evening, April 12, 2024 in the hallway leading to the Legends Terrace. We will review what transpired at that time. The meeting will also consider a prior incident in 2019 involving this member of the Board and a member of the Grill staff as well as the response by the then BOG. The meeting will assess what action, if any, is appropriate at this time.<sup>53</sup>

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<sup>50</sup> TM 369-381.

<sup>51</sup> TM 706. Spellane testified that this meeting was on April 19<sup>th</sup>.

<sup>52</sup> TM 1318-1319.

<sup>53</sup> P. Ex. 28; R. Ex. 534.

Baldino testified that he knew this meeting notice referred to his interaction with Halpin and that the board was going to consider the 2019 incident as well.<sup>54</sup>

The next day, April 26<sup>th</sup>, Spellane and Baldino met for lunch to discuss the incident and the pending board meeting. Spellane relayed what he knew of the investigation to-date. Baldino told Spellane what he felt had occurred. During this meeting, Baldino did not request that Spellane speak with any other witnesses. Baldino testified that at this meeting Spellane informed him that “there would be a motion, that there would be a second, and it didn’t look good for me”. Presumably Baldino was referring to a motion to remove him from the board.<sup>55</sup>

On April 30<sup>th</sup>, Baldino – responding to Sansone’s April 25<sup>th</sup> email- sent a lengthy email to the board.<sup>56</sup> In the email, Baldino acknowledges that “Spellane orally informed [him] on Thursday, 4/18 that I am apparently the primary subject of an investigation” . . . for allegedly creating a hostile work environment. . . [Spellane] further informed me that [Sansone] intended to commence proceedings to remove me as a Governor. . . It seems clear to me that the purpose of [the special meeting]

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<sup>54</sup> TM 822.

<sup>55</sup> TM 1319-1321; 729-732.

<sup>56</sup> In addition to this email, Baldino corresponded with other governors prior to the May 1<sup>st</sup> meeting, including Mehta, Kaija Wadsworth (hereinafter “Wadsworth”), and Phil Pecora, providing them information he believed to be relevant about the incident with Halpin. (R. Ex. 539, 540, 542.)

is for [Sansone] to seek a vote on whether to remove me". Baldino requested copies of witness statements and made extensive document demands.<sup>57</sup>

Sansone did not produce the requested documents, instead he responded with an email stating "[t]omorrow's meeting will convene as per the prior notice".<sup>58</sup>

On May 1<sup>st</sup>, the board met for their special meeting. Baldino arrived with counsel. Spellane objected to the presence of Baldino's counsel at the meeting and board debated whether it would be appropriate for counsel to remain. The board thereafter agreed that possible disciplinary action would not proceed at that meeting, and Baldino's counsel was asked to leave the room. Thereafter, the meeting continued with the discussion of the incident between Baldino and Halpin.<sup>59</sup>

At the meeting Spellane distributed copies of the "board packet". The packet included Ellender's report of her investigation, Spellane's notes from his interviews with members, the letter from Al Mahar to Baldino dated June 27, 2019, and the July 1, 2019, letter from Baldino to the Oak Hill staff.<sup>60</sup>

The meeting lasted approximately 2 ½ to 3 hours. At the meeting Spellane reviewed the board packet with the board members. All of the board members-

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<sup>57</sup> P. Ex. 29.

<sup>58</sup> *Id.*

<sup>59</sup> TM 71-74; 645; P. Ex. 88 at 228-234.

<sup>60</sup> R. Ex. 548.

including Baldino- read the information contained in the packet.<sup>61</sup> All board members were allowed to speak, and Baldino was given the opportunity to address the allegations made against him. Baldino did not request that any witnesses be produced. Baldino explained what occurred during the interaction but did not appear apologetic. Randy White relayed his observations about the interaction between Baldino and Halpin as well.<sup>62</sup>

During the meeting Spellane also raised with the board the potential risk to Oak Hill that he believed Baldino created with his interaction with Halpin. Specifically, he informed the board that as Baldino was a “repeat offender” due to the 2019 incident, that the failure to act would impose possible legal liability should Baldino engage in similar behavior again.<sup>63</sup>

Near the end of the meeting Sansone proposed a possible resolution wherein Baldino would resign officer and committee positions but remain on the board. Baldino thanked him for the proposal and said he “would seriously consider it and come back to him”. Sansone and Baldino agreed to meet to discuss it and the meeting was adjourned.<sup>64</sup>

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<sup>61</sup> It appears that Baldino made notes on his copy of the board packet and kept the packet when he left the meeting. (P. Ex. 36.)

<sup>62</sup> TM 74-75; 159; 306; 742-748; 838-840; 846; 1174; 1328-1333. P. Ex. 88 at 234, 236.

<sup>63</sup> TM 1334-1336.

<sup>64</sup> TM 86; 747-748. P. Ex. 88 at 236-237.

After the May 1<sup>st</sup> meeting the board received additional information. On May 2<sup>nd</sup> – the day after the special meeting- Halpin met with Ellender – and then with Ellender and Ellis- to discuss her concerns. After those meetings concluded, Ellender updated her report to reflect what was discussed, and forwarded the updated report to Spellane, who forwarded it to the board.<sup>65</sup> On May 12<sup>th</sup>, Governor Jim Ryan sent an email to the board attaching statements from Jim Viscardi (the member who was denied seating on April 12<sup>th</sup>).<sup>66</sup>

On May 8<sup>th</sup>, Sansone and Baldino met to discuss a potential settlement. They were unable to agree on a settlement at that meeting. After that meeting, Sansone sent the board an email in which he stated the continuation of the special meeting would occur on May 13<sup>th</sup>, he would provide a report of his meeting with Baldino, and the board would “assess what action, if any, is appropriate at this time”.<sup>67</sup>

On May 12<sup>th</sup> – after having consulted with Governors Wadsworth and Mehta – Baldino sent the board a two-page letter stating his position on the incident with Halpin, expressing his belief that his potential removal from the board was due to his inquiring about financial expenditures and challenging Oak Hill management,

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<sup>65</sup> TM 1484-1498; P. Ex. 41. In her testimony Halpin disputed some of the statements attributed to her by Ellender in the updated report. (TM 396-401.)

<sup>66</sup> TM 296; 310-314. R. Ex. 604.

<sup>67</sup> TM 851-854. R. Ex. 552.

and requesting that the board not expel him from the board as he was elected by the membership.<sup>68</sup>

On that same date, Baldino's counsel sent a letter to the board in which counsel demanded that the board provide Baldino an extensive number of documents regarding the investigation. The board did not supply the documents demanded by counsel for Baldino.<sup>69</sup>

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<sup>68</sup> TM 749-750; 860-861. P. Es. 45; R. Ex. 558.

<sup>69</sup> The letter requested that the board (1) supply Baldino with documents and communications concerning the formation of the investigatory committee including, without limitation, any documents reflecting notification to the Board of Governors or any member thereof regarding establishment of the committee and documents and communications reflecting selection and appointment of the committee members; (2) provide him with a list of all witnesses interviewed by the investigatory committee; (3) provide him with copies of all witness statements associated with the investigation, including all drafts of such statements, all transmissions of such statements, for instance, by email and all modifications to such statements; (4) supply him with a list of all persons known to be at the Club restaurant, Grill Room, Legends Terrace or hallway leading to the Legends Terrace between five p.m. and seven p.m. on Friday, April 12th, including, without limitation, a list of staff members working in or around those areas during any portion of the time period in question; (5) supply him with documents reflecting policies, rules or regulations concerning reservation of tables at the Club restaurant as well as any pages of the Gold Book addressing such matters and including, without limitation, any Board of Governors resolutions addressing such matters in memoranda to staff addressing such matters; (6) supply him with a copy of Jim Viscardi's receipt from his dinner on Friday, April 12<sup>th</sup>; (7) supply him with any documents concerning his own presence at the Club on Friday, April 12th, including any receipts or documents reflecting his time of arrival and time of departure; (8) supply him with a list of all individuals with whom he or any member of the investigatory committee had spoken about the accusations against him; (9) supply him with the specific charges, i.e., factual allegations and supporting evidence which you believe justifies removing him for cause under Article VI, Section 7 of the Constitution and By-Laws; (10) supply him with all documents to be offered in support of an effort to remove him for cause; (11) supply him with all communications and documents exchanged concerning the investigation and accusations against him, including, without limitation,

Sansone and Baldino continued possible settlement discussions which lead to the May 13<sup>th</sup> meeting being canceled with Sansone informing the board that “in direct discussion with [Baldino] we have a pathway for a final resolution”.<sup>70</sup>

The board had a regularly scheduled meeting on May 21, 2024. Prior to that meeting Governors Wadsworth, Merkley, Spellane, and Sansone met with Baldino to discuss a potential settlement. At this meeting the participants believed that they established a framework for a settlement wherein Baldino would resign from the board.<sup>71</sup> At the conclusion of the meeting, Baldino provided his proxy to Governor

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internal email correspondence and text messages exchanged against any members of the Board of Governors or committee members or exchanged with Club staff members; (12) supply him with documents concerning any meetings at which these allegations against him were addressed, including, without limitation, meetings of committee and meetings with staff; (13) supply him with copies of all documents concerning a prior incident in 2019; (14) supply him with a list of witnesses to be presented against him; (15) supply him with records relating to allegations of misconduct against any officer or member of the Board of Governors including any documents reflecting any prior effort to remove, discipline or admonish a member of the Board of Governors; (16) supply him with any records associated with the Club's treatment of a governor's high volume, profanity-laced public tirade against a member he believed had cut in front of him in a line to tee off on the west course; and (17) supply him with information regarding legal authorities about due process for removal of governors. (TM 103-112.)

<sup>70</sup> P. Ex. 49; R. Ex. 560.

<sup>71</sup> The parties dispute whether an agreement was reached. Petitioners allege that only a “framework” of an agreement was reached, with material terms to be addressed in a written settlement agreement agreed to on a later date. (TM 117-119; 238; 752-755.) Respondents allege that at the meeting Baldino agreed to resign from the board. (TM 172.) The Court credits Wadsworth's testimony that at the meeting the parties agreed upon the material elements of a settlement agreement to be finalized by counsel for each of the parties. (TM However, the Court also credits Spellane's testimony that one significant change in the settlement agreement forwarded by Baldino was his demand that he received \$20,000 and this was not discussed at the meeting or agreed to. (TM 1345-1346.)

Wadsworth, as he was voluntarily excusing himself from attending Oak Hill meetings.<sup>72</sup>

Immediately following this meeting, the board met for its scheduled board meeting. At the board meeting the terms of the settlement with Baldino were explained to the board and the board voted to adopt the proposed settlement. The minutes state that “Baldino agreed to voluntarily resign from the Board of Governors with additional terms to be memorialized and set forth in a settlement agreement negotiated and drafted by counsel for Mr. Baldino and outside counsel for the Board of Governors”.<sup>73</sup>

Thereafter counsel for Baldino and counsel for the board, Heather Giambra (hereinafter “Giambra”) attempted to finalize a settlement agreement. The parties were unable to agree on the terms of the settlement agreement.<sup>74</sup>

On June 13, 2024, Halpin resigned from Oak Hill. At the trial Halpin explained that she resigned from Oak Hill due to working long hours, need to care for family, and “lack of support” at Oak Hill. She acknowledged the incident with Baldino was

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<sup>72</sup> Wadsworth testified that Baldino provided her his proxy “to vote to approve a resolution that the five of us reached at the 3:30 meeting”. (TM 116; 175.)

<sup>73</sup> TM 176-177; R. Ex. 568.

<sup>74</sup> TM 773 1345-1346.

a contributing factor but stated that some members' belief she was leaving because of Baldino was not true.<sup>75</sup>

On June 18<sup>th</sup> the board conducted its regularly scheduled board meeting. There was nothing on the agenda regarding the Halpin incident. Baldino did not attend; instead, he provided his proxy to Wadsworth.<sup>76</sup> At the meeting Spellane informed that board that Giambra (Oak Hill counsel) advised Spellane that Halpin's departure might increase the legal liability to Oak Hill.<sup>77</sup> Thereafter, Governor Philip DiPasquale (hereinafter "DiPasquale") brought a motion to remove Baldino from his position as a governor and from all committee positions. The motion was seconded and carried with a vote of eight governors- Sansone, Daniel Cannon, DiPasquale, Leo, Lyttle, Spellane, and White.<sup>78</sup> Each of those governors based their vote upon the information contained in the board packet presented during the May 1<sup>st</sup> meeting, Baldino's statements made during the May 1<sup>st</sup> meeting, the fact that the incident between Baldino and Halpin was not his first negative interaction with Oak Hill staff, the board's 2019 recommendation, and the Oak Hill Code of Conduct.<sup>79</sup>

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<sup>75</sup> TM 411-413.

<sup>76</sup> TM 775-776. R. Ex. 572.

<sup>77</sup> TM 1340-1342; 1268; 1290; 1346-1348. P. Ex. 88 at 333.

<sup>78</sup> Five governors voted against the motion- Baldino (through Wadsworth), Mehta, Merkley, Ryan, and Wadsworth. Two governors abstained.

<sup>79</sup> R. Ex. 612. TM 1177-1178; 1268-1269; 1268-1269; 1349.

By letter dated June 21, 2024, Secretary Wadsworth informed Baldino that he had been removed as a governor.<sup>80</sup> The letter referenced the Oak Hill constitution's provisions for removal of a governor and officer, and specifically stated that Baldino's removal was due to his conduct during the interaction with Halpin on April 12<sup>th</sup> as such conduct was "antithetical to the Club's Core Values, in violation of the Club's Code of Conduct, and to the detriment of the members, valued employees, and global reputation of Oak Hill Country Club".

At the trial, the petitioners admitted additional evidence regarding two other board members who had allegedly committed misconduct violative of Oak Hill rules but were not punished- Governor Costello and Governor Billitier.

The incident concerning Governor Costello (hereinafter "Costello") occurred on September 16, 2023. Costello was part of a group of golfers waiting to tee-off. After being informed by an Oak Hill staff member that it was their turn to tee-off, another group of golfers cut in front of them and teed off. Costello then engaged in loud profanity towards one of the members of the other group that was heard by other golfers and Oak Hill staff. Governor Costello was not investigated by Ellender or Spellane, and he suffered no adverse consequences. However, he spoke with the

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<sup>80</sup> P. Ex. 58; R. Ex. 575.

board about the incident and apologized to both the board and to the member of the other golf group that he profaned.<sup>81</sup>

The incident concerning Governor Billitier involved allegations that he was involved in allowing underage drinking at an Oak Hill event and possibly a fight at an establishment in the Town of Pittsford. Baldino raised these concerns with Merkley, Spellane, Wadsworth, and a former club president but no investigation was initiated, and Billitier suffered no negative consequences.<sup>82</sup>

Several of the petitioners (James McConeghy, Shawn Baker, and Robert Calcagno) testified that they believed they would suffer negative repercussions from initiating the special proceeding, including possible loss of club membership.<sup>83</sup>

Finally- relevant to the petitioners' claims for access to corporate records and an accounting- Oak Hill provides its members copies of the audited financial statements, and a copy of the proposed budget each year.<sup>84</sup>

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<sup>81</sup> TM 135-136; 685-689. P. Ex. 10. P. Ex. 88 at 141.

<sup>82</sup> TM 132-133. P. Ex. 88 at 131-132.

<sup>83</sup> TM 947; 1022; 1031.

<sup>84</sup> TM 1188; 1193-1194; 922.

## *Conclusions of Law*

### Baldino Received the Required Due Process for Directors Facing Removal

The Petitioners urge this Court to hold that non-for-profit corporations who seek to remove a director must afford that director due process consisting of formal, written charges, witness testimony, assistance of counsel, and the right of the director facing amotion to cross-examine witnesses. Petitioners argue that the failure of the board to serve written, formal charges upon Baldino and conduct an adversarial hearing (with witness testimony and opportunity to cross-examine) violated Baldino's due process rights and renders the board's decision to remove Baldino a nullity. Although the Court agrees that directors facing amotion are entitled to due process, the Court declines to adopt the petitioners' arguments that anything less than what they propose violates due process.

Although Oak Hill's constitution states that "[a] governor[] may be removed for cause by . . . majority vote of Governors provided there is a quorum of not less than a majority present at the meeting of Governors as which such action is taken", and does not mention procedural due process protections to be afforded governors facing amotion, common law due process protections require such governors to receive notice and an opportunity to be heard.

“Before an officer may be removed for cause, “specific charges must be served, adequate notice must be given, and full opportunity of meeting the accusations must be afforded” (*Matter of Koch*, 257 N.Y. 318, 322, 178 N.E. 545; *see also*, *Matter of Auer v. Dressel*, 306 N.Y. 427, 432, 118 N.E.2d 590).” (*Bd. of Managers of Townhomes of Eastbrooke Condominiums One, Two & Three v. Padgett*, 185 AD2d 650, 650 [4<sup>th</sup> Dept. 1992].)<sup>85</sup>

As to the required notice to be afforded a director facing removal, the language from *Matter of Koch* (257 NY 318 [1931]) referring to “specific charges” does not equate with documents designed to afford notice to an accused of criminal charges (*see e.g.*, CPL § 200.50) or to a defendant in a plenary or special proceeding (*see e.g.*, CPLR §§ 404, 3013), as the private right affected is not as significant.<sup>86</sup>

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<sup>85</sup> The bylaws at issue in *Bd. of Managers of Townhomes of Eastbrooke Condominiums One, Two & Three v. Padgett*, *supra*, contained a provision that managers may be removed for cause by a majority vote of the homeowner-members. (See Appellant’s Brief at page 8; Respondent’s Brief at page 6.) However, the by-laws did not contain any notice provisions. (See Respondent’s Brief at page 19; 26.)

<sup>86</sup> “(D)ue process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484 (1972). Accordingly, resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected. *Arnett v. Kennedy*, *supra*, 416 U.S., at 167-168, 94 S.Ct., at 1650-1651 (Powell, J., concurring in part); *Goldberg v. Kelly*, *supra*, 397 U.S., at 263-266, 90 S.Ct., at 1018-1020; *Cafeteria Workers v. McElroy*, *supra*, 367 U.S., at 895, 81 S.Ct., at 1748-1749. More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any,

Instead, given the interest involved (Baldino's interest in the elected position of governor of Oak Hill), the notice that is required is sufficient notice of the misconduct alleged to have been committed by the director and the possible sanction to be imposed.<sup>87</sup>

“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278, 132 A.L.R. 1357; *Grannis v. Ordean*, 234 U.S. 385, 34 S.Ct. 779, 58 L.Ed. 1363; *Priest v. Board of Trustees of Town of Las Vegas*, 232 U.S. 604, 34 S.Ct. 443, 58 L.Ed. 751; *Roller v. Holly*, 176 U.S. 398, 20 S.Ct. 410, 44 L.Ed. 520. The notice must be of such nature as reasonably to convey the required information, *Grannis v. Ordean*, *supra*, and it must afford a reasonable time for those interested to make their appearance, *Roller v. Holly*, *supra*, and *cf. Goodrich v. Ferris*, 214 U.S.

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of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See, e. g., Goldberg v. Kelly*, *supra*, 397 U.S., at 263-271, 90 S.Ct., at 1018-1022.” (*Mathews v. Eldridge*, 424 U.S. 319, 334-35 [1976].)

<sup>87</sup> A member seeking disenfranchisement is entitled to greater due process than a governor seeking removal. The by-laws specifically require notice of charges, notice of the meeting, and the right to be present. (*See e.g., Capossela v. Wykagyl Country Club*, 258 AD2d 522 [2<sup>nd</sup> Dept. 1999].)

71, 29 S.Ct. 580, 53 L.Ed. 914. But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met the constitutional requirements are satisfied.” (*Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314-15 [1950].)

Here, Baldino was provided sufficient notice of the misconduct he was alleged to have committed that was to be addressed by the board, and the possible sanction that may be imposed, in advance of the May 1<sup>st</sup> meeting. First, Sansone’s email to the board in advance of the meeting provided sufficient details to Baldino that it was referencing his interaction with Halpin on April 12<sup>th</sup>. Second, Spellane both informed Baldino by telephone of the allegations and met with Baldino (the day after Sansone’s email) where he informed Baldino of the evidence he had accumulated to date. Finally, on April 30<sup>th</sup>, Baldino acknowledged both that he was aware of the allegations that would be discussed at the May 1<sup>st</sup> meeting and that he was facing a possible sanction of removal. Baldino’s assertion that he was not provided sufficient notice is without merit.

Petitioners argue that in addition to formal, written charges directors facing removal must be afforded live witness testimony, assistance of counsel, cross-examination, and the right to call witnesses, citing to *Matter of Koch, supra*. However, the reference made in *Koch* to those due process protections was made in

dicta. *Koch* does not hold that any director removed by motion is entitled to these due process protections. Instead, *Koch* stands for the proposition that “full opportunity of meeting the accusations must be afforded” (*See Bd. of Managers of Townhomes of Eastbrooke Condominiums One, Two & Three v. Padgett, supra.*)<sup>88</sup>

Furthermore, the general rule is that “[p]rocedural due process safeguards apply only where the aggrieved party can show deprivation of a protected right as a result of “State action”. Purely private conduct is not subject to the requirements of due process.” (*Montalvo v. Consol. Edison Co. of New York*, 92 AD2d 389, 393 [1<sup>st</sup> Dept. 1983], *aff’d*, 61 NY2d 810 [1984].) Petitioners have made no showing that Baldino suffered the deprivation of a protected right, and no showing that there is a sufficient nexus between the board and the State such that the board’s decision could be attributed to the State. “Purely private conduct, however egregious or unreasonable, does not rise to the level of constitutional significance absent a significant nexus between the State and the actors or the conduct (*see Civil Rights*

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<sup>88</sup> The reference made in *Koch* to those procedural protections was made by the Court in noting that none of those claimed protections were requested by the petitioners in the proceeding below (a removal proceeding by a religious corporation), and that in failing to make those arguments below, “they could not thereafter, in a court of law, justly be heard to complain that their case was not properly called for trial, or that the corporate body which heard it was without power to render decision”. (*In re Koch, supra* at 325.)

Cases, 109 U.S. 3, 11, 3 S.Ct. 18, 27 L.Ed. 835).” (*Sharrock v. Dell Buick-Cadillac, Inc.*, 45 NY2d 152, 158 [1978].)<sup>89</sup>

Here, Baldino had a full opportunity to address the misconduct allegations. First, he attended the May 1<sup>st</sup> meeting, was provided an opportunity to read the same information all the board members were asked to consider (the “board packet”) and to provide any information to the board he believed was relevant. Second, Baldino was not prohibited from providing the board with any further information he believed relevant prior to the board voting at their June 18<sup>th</sup> meeting. Indeed, Baldino sent the board correspondence outlining his position on potential removal, and sent additional information to individual board members that he believed were supportive of his positions. There is nothing in the record which would allow an inference that he was prevented from presenting any information he believed relevant to the board’s ultimate determination prior to the June 18<sup>th</sup> vote of removal.<sup>90</sup>

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<sup>89</sup> Oak Hill, as a private not-for-profit corporation, is akin to a private university. “Further, the relationship between a private university and its students and student organizations is essentially a private one such that, absent some showing of State involvement, their disciplinary proceedings do not implicate the “full panoply of due process guarantees” (*Matter of Mu Ch. of Delta Kappa Epsilon v Colgate Univ.*, *supra*, at 13).” (*Rensselaer Soc. of Eng’rs v. Rensselaer Polytechnic Inst.*, 260 AD2d 992, 994 [3<sup>rd</sup> Dept. 1999].)

<sup>90</sup> Petitioners also cite to *Grace v. Grace Inst.* (19 NY2d 307, 313 [1967]) in support of their arguments. However, that case does not hold that a director facing removal is entitled to due process protections including witness testimony and the right of cross-examination.

Finally, the Court rejects the petitioners' argument that Baldino was entitled to extensive discovery prior to the May 1<sup>st</sup> meeting. Nothing in the relevant statutes, decisional law, or Oak Hill's governing documents require that Baldino be afforded "discovery". Respondents are correct in noting that this would provide a governor facing removal greater discovery than that afforded litigants in a special proceeding. (See CPLR § 408.) The denial of Baldino's discovery demands did not deprive him of his opportunity to meaningfully address the allegations against him.

The Court is mindful of the fact that not-for-profit corporations – and their boards- are not often comprised of individuals who are practicing attorneys. The Court is also mindful that “[i]t has been the consistent policy of the courts of this State to avoid interference with the internal management and operation of corporations. (*Chelrob, Inc. v. Barrett*, 293 N.Y. 442, 57 N.E.2d 825).” (*Grace v. Grace Inst.*, 19 NY2d 307, 313 [1967].) What may be the ideal procedures to be used to remove a director - such as those employed in *Grace v. Grace Inst.* - may not be suitable for all not-for-profit corporations. Baldino was afforded the due process required by common law, and his removal was not due to a violation of lawful procedure. (CPLR § 7803 [3].)

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Although the petitioner in that case was afforded those rights, *Grace* does not compel the conclusion that those rights must be afforded every director facing amotion.

### The Board's Removal of Baldino was not Arbitrary and Capricious

Although Oak Hill is a private, not-for-profit corporation, its actions are subject to judicial review in an article 78 proceeding in the nature of mandamus to review. “These corporations, having accepted a charter and having thus become a quasi-governmental body (*see*, Siegel, *New York Practice*, s 558; 8 Weinstein-Korn-Miller, *N.Y.Civ.Prac.*, par. 7802.01), can be compelled in an article 78 proceeding to fulfill not only obligations imposed upon them by state or municipal statutes but also those imposed by their internal rules (*see, e. g., Matter of Auer v. Dressel*, 306 N.Y. 427, 118 N.E.2d 112).” (*Gray v. Canisius Coll. of Buffalo*, 76 AD2d 30, 33 [4<sup>th</sup> Dept. 1980]. *See also* CPLR § 7802 [a].)

“In a mandamus to review proceeding, however, no quasi-judicial hearing is required; the petitioner need only be given an opportunity “to be heard” and to submit whatever evidence he or she chooses and the agency may consider whatever evidence is at hand, whether obtained through a hearing or otherwise. The standard of review in such a proceeding is whether the agency determination was arbitrary and capricious or affected by an error of law. (*citations omitted*).” (*Scherbyn v. Wayne-Finger Lakes Bd. of Co-op. Educ. Servs.*, 77 NY2d 753, 757-58 [1991].)

It is well settled that an action is arbitrary and capricious when it is “without sound basis in reason and ... without regard to the facts” (*Matter of Pell v. Board of*

*Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d 222, 231, 356 N.Y.S.2d 833, 313 N.E.2d 321)". (*Guesno v. Vill. of E. Rochester*, 118 AD3d 1460, 1460-61 [4<sup>th</sup> Dept. 2014].)

Here, the board's action in removing Baldino as a governor, and officer, was not arbitrary and capricious.

The Oak Hill constitution grants the board the authority to remove a governor "for cause".<sup>91</sup> Although "cause" is not defined in the constitution, the board's reference to Baldino's violation of the Oak Hill by-laws and Code of Conduct as justification in removing Baldino would fall under any reasonable definition of "cause". (*See gen. Steinberg v. State Comm'n on Jud. Conduct*, 51 NY2d 74 [1980]: Judicial Canons and regulations, along with general moral and ethical standards expected of judicial officers by the community, add meaning to statutory term "for cause" in relation to removal of judges, and provide guidelines for Commission on Judicial Conduct and Court of Appeals to use in determining when and to what extent sanctions should be imposed.) Baldino- as a member of the "Traditions

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<sup>91</sup> "As Judge Bartels said in *Sarisohn v. Appellate Div., Second Dept., S.Ct. of St. of N.Y., D.C.*, 265 F.Supp. 455, 458: "The words 'for cause' mean for a cause to be enumerated and specified in each particular instance so that the defendant may be duly notified and adequately prepared to defend the charges." (*Friedman v. State*, 24 NY2d 528, 539 [1969].)

Committee” charged with enforcing club rules- cannot claim he was unaware of Oak Hill’s Code of Conduct.<sup>92</sup>

The by-laws and Code of Conduct for Oak Hill require all members to “treat[] every Member, guest and employee at the Club with dignity and respect” and that “[b]ehavior that is unbecoming will be subject to disciplinary action up to and including termination of membership”. The evidence before the board provided the board with a rational basis to conclude Baldino violated this provision. (*Grant v. Wyncote Club, Inc.*, 195 AD3d 930 [2<sup>nd</sup> Dept. 2021]; *Purpura v. Richmond Cnty. Country Club*, 114 AD2d 460 [2<sup>nd</sup> Dept. 1985].) The board packet containing witness information of what occurred between Halpin and Baldino, Spellane’s recitation of the observations of members Beltz, White, and Stickle, and the board’s evidence of the letter from the board to Baldino in 2019 admonishing him for similar conduct was sufficient evidence for this Court to conclude that the board had a rational basis for its decision to remove him as a governor. (*Kafir v. Safir*, 96 NY2d 32, 39 [2001]: court review limited to facts and records adduced before the agency.)

The Court rejects the petitioners’ argument that the board’s decision was pretextual and made out of bias against Baldino. “Moreover, the petitioner’s mere allegation of bias on the part of the board will not suffice. There must be a factual

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<sup>92</sup> TM 723-725.

demonstration to support the allegation of bias and proof that the outcome flowed from it' ” (*Matter of Marandino v Westchester Country Club, Inc.*, 33 AD3d 800, 801 [2006], quoting *Matter of Warder v Board of Regents of Univ. of State of N.Y.*, 53 NY2d 186, 197 [1981], *cert denied* 454 US 1125 [1981]; see *Caposella v Pinto*, 265 AD2d 362 [1999]).” (*Kelly v. Northport Yacht Club, Inc.*, 44 AD3d 858, 859 [2<sup>nd</sup> Dept. 2007].) The petitioners did not meet their burden.

Additionally, the Court rejects the petitioners’ argument that the information provided to the board was fabricated or exaggerated. Petitioners insinuate that Ellender fabricated statements attributed to Halpin during the investigation- in exchange for a bonus from the holiday fund - and those false statements were presented to the board.<sup>93</sup> Petitioners’ also insinuate that Beltz’s testimony was unworthy of belief as he was “bribed” with the offer of honorary membership in Oak Hill, which would be a financial benefit to him.<sup>94</sup> They further insinuate that Ellis – having a motive to seek Baldino’s removal - somehow influenced Ellender’s investigation. The Court found both Ellender and Beltz to be credible witnesses.<sup>95</sup> Beyond insinuation, petitioners presented no actual facts which would support a

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<sup>93</sup> TM 281.

<sup>94</sup> TM 1694-1696.

<sup>95</sup> Beltz’s testimony was also corroborated by other witnesses to the interaction Baldino had with Halpin.

determination that Baldino's interaction with Halpin was handled by him with "dignity and respect" and instead a conspiracy was hatched to present to the board a fabricated version of events to justify Baldino's removal "for asking questions". The Court finds that there is no credible evidence to support the petitioners' theory that Beltz, White, Stickles, Ellender, Spellane, Ellis, Sansone, and Giambra all conspired to fabricate (or embellish) facts as to the interaction between Baldino and Halpin.

Nor did the petitioners establish that the board's action in removing Baldino as a governor was so disparate to the treatment of other governors who committed misconduct that it rendered the board's decision arbitrary and capricious. Unlike the Costello incident or the Billitier incident, Baldino was previously sanctioned in 2019 for similar behavior and warned that should he again engage in disrespectful conduct he would be sanctioned. There was no showing made by petitioners that Costello and Billitier had been previously sanctioned for violation of Oak Hill rules. Furthermore, the facts of what occurred between Baldino and Halpin versus what occurred in the Costello and Billitier matters are not "essentially the same". (*See gen. Tall Trees Const. Corp. v. Zoning Bd. of Appeals of Town of Huntington*, 97 NY2d 86, 93 [2001]: "Moreover, "[a] decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reasons for reaching a different

result on essentially the same facts is arbitrary and capricious' ” (*Knight v Amelkin*, 68 NY2d 975, 977 [citation omitted]).”)

Finally, the board decision to remove Baldino as a governor and officer “is “neither disproportionate to the offense ... nor shocking to one's sense of fairness” (*Matter of Beilis v Albany Med. Coll.*, 136 AD2d 42, 45)” (*Rensselaer Soc. of Eng'rs v. Rensselaer Polytechnic Inst.*, 260 AD2d 992, 994 [3<sup>rd</sup> Dept. 1999]) as Baldino was a “repeat offender” and was previously warned that such conduct would lead to sanctions.

Thus, the board’s decision to remove Baldino was not arbitrary and capricious, or an abuse of discretion. (CPLR § 7803 [3].)

As a Removed Governor Baldino is no Longer Entitled to Inspect Corporate Records

Petitioners seek from the Court a declaration that “Club Governors have an absolute and unfettered right to access Club books and records”. The Court declines to do so.

Petitioners are correct that a governor has an absolute right to inspect corporate records. As noted by the Court of Appeals in *Cohen v. Cocoline Prods.*:

In order properly to perform his directing duties, a corporate director must, of course, keep himself informed as to the policies, business and affairs of the corporation, and as to the acts of its officers. He owes a stewardship obligation to the corporation and its stockholders, and he may be subjected to liability for improper management during his term of office. Because of these positive duties and potential liabilities, the

courts of this State have accorded to corporate directors an absolute, unqualified right, having its roots in the common law, to inspect their corporate books and records (*Matter of Overland v. Le Roy Foods*, 279 App. Div. 876, *affd.* 304 N. Y. 573; *Matter of Hafter v. Eagle Fish Co.*, 270 App. Div. 995, *affd.* 296 N. Y. 808; *People ex rel. Wilkins v. Ascher Silk Corp.*, 207 App. Div. 168, *affd.* 237 N. Y. 574, motion for reargument denied 237 N. Y. 630; *Matter of Davis v. Keilsohn Offset Co.*, 273 App. Div. 695; *People ex rel. Leach v. Central Fish Co.*, 117 App. Div. 77; *People ex rel. McInnes v. Columbia Bag Co.*, 103 App. Div. 208; *People ex rel. Muir v. Throop*, 12 Wend. 183; *People ex rel. Onderdonk v. Mott*, 1 How. Prac. 247).

(309 NY 119, 123 [1955].)

However, “when a director is removed from office, even if this is done while his suit to compel inspection of the books and records is pending before Special Term, his absolute right to such an inspection terminates forthwith (*Matter of Overland v. Le Roy Foods*, *supra*; *Matter of Hafter v. Eagle Fish Co.*, *supra*).” (*Id.* at 123-124.) Here, having been removed from the board, Baldino has no right of access to corporate books and records.

Furthermore, as none of the remaining petitioners are members of the board of governors, they do not have standing to vindicate the rights of governors.<sup>96</sup> Thus, the Court declines to issue the declaration sought by the petitioners.<sup>97</sup>

#### The Petitioners did not Establish Entitlement to Inspect Corporate Records

Petitioners, as members of Oak Hill, also seek an accounting and access to corporate books and records pursuant to N-PCL § 621 and the common law.

As to the petitioners' claim for an accounting, Oak Hill's constitution requires the board of governors to provide to the members a report, certified by independent auditors, containing the same information required by N-PCL § 519. The evidence at trial established that an annual report, compliant with N-PCL § 519, was provided to the membership annually. The petitioners' demand for an accounting is denied.

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<sup>96</sup> The petitioners have not met their burden to show "third party standing". "While generally a party has no standing to raise the legal rights of another (*Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 773, 570 N.Y.S.2d 778, 573 N.E.2d 1034 [1991] ), a party establishes third-party standing when (1) there is a substantial relationship between the party asserting the claim and the rightholder; (2) it is impossible for the rightholder to assert his or her own rights; and (3) the need to avoid a dilution of the parties' constitutional rights (*New York County Lawyers' Assn. v. State of New York*, 294 A.D.2d 69, 74-75, 742 N.Y.S.2d 16 [1st Dept. 2002] )." (*Fleischer v. New York State Liquor Auth.*, 103 AD3d 581, 583, [1st Dept. 2013].) Here, petitioners seek access to corporate records pursuant to their common law right and thus cannot show that "it is impossible for [petitioners] to assert [their] own rights" to provide them standing to seek the proposed declaration on behalf of the governors.

<sup>97</sup> The respondents raised lack of standing in their answer as a defense. (NYSCEF Docket # 216 at page 52.)

Petitioners also demand corporate records pursuant to N-PCL § 621. That section specifically limits a corporate member access to “minutes of the proceedings of its members and list or record of members and to make extracts therefrom”- assuming a proper demand is made, accompanied by the required affidavit. (See N-PCL § 621 [b] and [c].) Members are also entitled to receive “an annual balance sheet and profit and loss statement or a financial statement performing a similar function for the preceding fiscal year, and, if any interim balance sheet or profit and loss or similar financial statement has been distributed to its members or otherwise made available to the public, the most recent such interim balance sheet or profit and loss or similar financial statement.” (N-PCL § 621 [e].)<sup>98</sup>

Furthermore, the petitioners’ record demands far exceed what is authorized under the relevant statute (see FN 2, *supra*). Indeed, the petitioners do not request the documents which must be provided by the corporation pursuant to N-PCL § 621 (minutes, list of members, and financial statements) and instead request numerous documents not contemplated by N-PCL § 621. Thus, petitioners’ demand for records

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<sup>98</sup> Notably, members of a homeowners association are granted greater access to corporate records, as upon request they are entitled to review “invoices, ledgers, bank accounts, reconciliations, contracts, and any documents related to the expenditure of homeowners association dues.” (N-PCL § 621 [e-1].) Oak Hill – of course- is not a homeowners association.

under N-PCL § 621 is denied. (*Mathews v. Onondaga Cnty. Deputy Sheriff's Benev. Ass'n, Inc.*, 225 AD2d 1048 [4<sup>th</sup> Dept. 1996].)

Petitioners also seek to compel production of corporate records under their common law right of access.

“The general rule is that a stockholder has a right to examine the original papers and vouchers of the corporation, where some property right is involved, or some controversy exists, or some specific and valuable interest is in question, to settle which an inspection of these documents is necessary.’ (2 Cook, Corporations (8th ed.), ch. 30, s 511, pp. 1764—1765.) When asserting a common-law right of access the petitioner must plead and prove that inspection is desired for a ‘proper purpose’ (see Model Business Corporation Act, Ann., s 52, par. 4.05(5)).” (*Crane Co. v. Anaconda Co.*, 39 NY2d 14, 18 [1976].)

Petitioners – assuming *arguendo* that they satisfied the proper pre-suit demands for access to corporate records- did not establish a “proper purpose”. The scope of the petitioners’ demands is enormous, consisting of almost every conceivable financial document generated by Oak Hill. Petitioners fell far short of establishing a proper purpose for receiving wholesale access to all of Oak Hill’s financial records.

The evidence at trial established- at most- the petitioners' dissatisfaction with the management of Oak Hill and failed to establish corporate waste or fraudulent behavior. Petitioners' "asserted purposes for the inspection were speculative, vague, and conclusory. As such, they were insufficient to establish a proper purpose for the inspection (see *Lapsley v. Sorfin Intl., Ltd.*, 43 A.D.3d 1113, 1114, 843 N.Y.S.2d 141; *Eklund v. Pinkey*, 27 A.D.3d 878, 878-879, 810 N.Y.S.2d 547; see generally *Crane Co. v. Anaconda Co.*, 39 N.Y.2d at 19, 382 N.Y.S.2d 707, 346 N.E.2d 507)". (*JAS Fam. Tr. v. Oceana Holding Corp.*, 109 AD3d 639, 643 [2<sup>nd</sup> Dept. 2013].)

The evidence at trial established that Baldino and Mehta were provided sufficient information by Greeley in response to their demands. In response to requests for information concerning the holiday fund, PGA payments, deferred compensation, sales tax issues, reconciliation of accounts, the audited financial statements, and Ellis' credit card expenditures, Greeley or other Oak Hill staff provided the requested information and Baldino or Mehta did not demand additional information. Thus, to the extent the demand for corporate records is designed to address these concerns, the petitioners did not establish a sufficient proper purpose.

Finally, to the extent the petitioners are claiming needed access to the requested corporate records based upon alleged mismanagement, the Court

determines that the petitioners did not establish a proper purpose. The petitioners' "doubts about proper [Oak Hill] management", without more, are not sufficient to establish a proper purpose to grant the access to the records sought by petitioners. (*Camhe-Marcille v. Sally Lou Fashions Corp.*, 289 AD2d 162 [1<sup>st</sup> Dept. 2001].)

The common law request for access to corporate records is denied.

Petitioners Unpled Theory Regarding "Whistleblower" Protections is Meritless

Despite not pleading in their amended petition relief under N-PCL § 715-b, petitioners- in their proposed conclusions of law- argue that they are collectively entitled to "whistleblower protection". The Court disagrees.

First, none of the petitioners are employees and it is unclear whether the statute creates a private right of action on behalf of members of a not-for-profit corporation. Although there is a private right of action for employees of not-for-profits under this section (*see Ferris v. Lustgarten Found.*, 189 AD3d 1002 [2<sup>nd</sup> Dept. 2020]), whether a member may maintain a cause of action under this section is unresolved.

As N-PCL § 112 (a)(7) allows the Attorney General to maintain an action or proceeding to enforce N-PCL § 715-b to protect members of a not-for-profit corporation, the Court concludes that the petitioners do not have a private right of action under that section. (*See gen. Ferris v. Lustgarten Found.*, *supra* at 1004-1005.)

Second, there was no proof at trial that any of the petitioners made a good faith report of illegal or fraudulent conduct, or a violation of Oak Hill policies that lead to any adverse repercussions for petitioners. The isolated comments from Governor DiPasquale to Petitioner Shawn Baker<sup>99</sup> and to Petitioner James McConeghy<sup>100</sup> are insufficient to establish “harassment” or other adverse consequence under the statute. Petitioners remaining claims regarding potential adverse consequences are wholly speculative (*e.g.*, disenfranchisement).

Finally, as noted above, petitioners’ “whistleblower” claim is made for the first time in their proposed conclusions of law. Although the Court may have jurisdiction to grant requested relief (*see* CPLR § 3017), the request was made without notice to the respondents, and they were unfairly prejudiced in their inability to adduce facts during trial relevant to the petitioners’ request for “whistleblower” protections. The Court declines to consider a claim not raised in the amended petition or addressed at trial. (*Roberts v. Borg*, 83 AD3d 947, 949 [2<sup>nd</sup> Dept. 2011]: “The Surrogate’s Court erred in imposing the constructive trust. Although a court may grant relief “whether or not demanded” in the pleadings (CPLR 3017 [a]), under the circumstances presented in this case, Borg was prejudiced by the court’s decision to entertain the

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<sup>99</sup> TM 1022.


<sup>100</sup> TM 947-948.

administrator's argument, raised for the first time in her posttrial summation papers, that a constructive trust was warranted (*see Cole v. Mandell Food Stores*, 93 N.Y.2d 34, 40, 687 N.Y.S.2d 598, 710 N.E.2d 244; *D'Angelo v. D'Angelo*, 109 A.D.2d 773, 774, 486 N.Y.S.2d 287; *DiMauro v. Metropolitan Suburban Bus Auth.*, 105 A.D.2d 236, 240, 483 N.Y.S.2d 383).")

Based upon the foregoing, it is hereby

ORDERED, and ADJUDGED, that the Petition is DISMISSED.

Dated: May 15, 2026

  
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Honorable Daniel J. Doyle, JSC