




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

**FROM:** Daniel Morton-Bentley 

**SUBJECT:** New York State Board of Regents v. Hope Marable [as Trustee of the Mount Vernon Public Library]

**DATE:** February 14, 2023

**AUTHORIZATION(S):**  **SUMMARY**

**Issue for Decision**

Should the Board of Regents, pursuant to Education Law § 226 (4) and § 3.31 of the Rules of the Board of Regents, adopt the recommendation of the hearing panel for the removal of Hope Marable as Trustee of the Mount Vernon Public Library?

**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 hearing panel's recommended decision granting the Department's motion for summary judgment, respondent Hope Marable will be removed from Mount Vernon Public Library Board of Trustees effective immediately. Attachment A is a copy of the panel chair's decision and panel recommendation on the motion for summary judgment.

**Background Information**

The Regents may remove any trustee of a corporation created by them for 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 (see Education Law § 226 [4]). The procedures for such proceedings are contained in the Rules of the Board of Regents (8 NYCRR § 3.31) and, as applicable here, begin with a vote by the Board in February 2022 and service of an Order to Show Cause and Petition against the five (5) Trustees of the Mount Vernon Public Library. The Petition sought removal of said trustees for misconduct, neglect of duty and/or the failure or refusal of the Board to carry into effect the educational purposes of the Library due to

the alleged failure to complete registration as directed by the Department, to submit an Annual Report for 2020 (with corresponding loss of funding), and failure to maintain accurate financial records and account for spending.

Since that time, pleadings and memorandum of law were filed/exchanged and, in October 2022, the Cultural Education Committee, after reviewing the entire record in this matter and consulting with its Counsel, recommended that the Board of Regents determine that a hearing was warranted. The Regents agreed and the Chancellor accordingly designated a hearing panel and panel chair for such purpose.

Four of the five trustees, however, resigned during the pendency of this proceeding and no longer serve on the board. One was replaced by regular election in 2022, two new trustees were appointed by the Board of Regents at the November 2022 Regents meeting, and another was appointed by the Library Board. By order of the panel chair, the proceeding was therefore discontinued against four of the original respondents, without prejudice to reinstatement of the instant proceeding and pending hearing, upon 30 days' notice from Counsel for the State Education Department, should they again be elected to or appointed to a position on the Library's Board of Trustees. Only one of the original five trustees remains as a Respondent in the removal proceeding – Hope Marable.

As permitted under Regents Rules (8 N.Y.C.R.R. §§ 3.31 [u] [2] and [3]) the Petitioner moved for: (a) summary judgement against Respondent Hope Marable on the grounds that there are no material issues of fact in dispute and Respondent should be removed as a matter of law from her office as Trustee of the Mount Vernon Public Library (“MVPL” or the “Library”); (b) a Hearing Panel recommendation to the Board of Regents that Ms. Marable be removed as Trustee; and (c) such other and further relief that the Panel deems appropriate. Respondent Marable, through counsel, opposed the motion.

Vice Chancellor Finn (as panel chair) and Regents Tilles and Ferrer (as the balance of the panel) now recommend, as more thoroughly detailed in the decision and recommendation, that the Petitioner’s motion for summary judgment be granted and that Respondent Hope Marable be removed from the office of Trustee of the Mount Vernon Public Library effective immediately. Pursuant to Regents Rule 3.31, the Board of Regents may adopt or reject the recommendation, or remand to the panel for further proceedings.

### **Related Regents Items**

February 2022: [Proposed Commencement of a Proceeding by the Board of Regents for the Removal of the Trustees of the Mount Vernon Public Library](https://www.regents.nysed.gov/common/regents/files/222bra4.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/222bra4.pdf>)

October 2022: [New York State Board of Regents v. Oscar Davis, et al. \[as Trustees of the Mount Vernon Public Library\]](https://www.regents.nysed.gov/common/regents/files/1022cea1.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1022cea1.pdf>)

November 2022: [Supplemental Charter Application](https://www.regents.nysed.gov/common/regents/files/1122bra1supplemental.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1122bra1supplemental.pdf>)

### **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That, pursuant to Education Law § 226 [4] and 8 NYCRR § 3.31, the Board of Regents adopts the hearing panel's recommended decision granting the Department's motion for summary judgment for the removal of Hope Marable as Trustee of the Mount Vernon Public Library, and said trustee is hereby removed from office, for the reasons set forth in the decision, effective immediately.

**Timetable for Implementation**

If the hearing panel's recommendation is adopted at the February 2023 meeting, Trustee Hope Marable shall be removed from the Board of Trustees of the Mount Vernon Public Library, effective immediately.



**BOARD OF REGENTS OF THE UNIVERSITY  
OF THE STATE OF NEW YORK/STATE EDUCATION DEPARTMENT**

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In the Matter of the Application by the  
New York State Board of Regents, Petitioner,  
Pursuant to Education Law § 226 (4), for the  
Removal of:

Oscar Davis Jr.;  
Cathlin Gleason-Boncardo;  
Hope Marable;  
Vivien Salmon; and  
Judy Williams-Davis

**DECISION AND ORDER  
ON MOTION**

Respondents, as Trustees of the Mount  
Vernon Public Library.

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*Josephine Victoria Finn, Vice Chancellor*

**I. Introduction**

The Board of Regents (“prosecution”) has moved for summary judgment to remove Hope Marable (“respondent”) as a trustee of the Mount Vernon Public Library. The motion is granted.

## II. Facts and Procedural History

The Board of Regents are responsible for the general supervision of all educational activities within the State. They are the governing body of the University of the State of New York and the New York State Education Department (N.Y. Const. Article V, Section 4; Article XI, Sec. 2). The Regents' responsibilities include the chartering and oversight of education corporations in New York. The Regents may remove any trustee of a corporation created by them for 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 (*see* Education Law § 226 [4]).

This proceeding was commenced by service of an Order to Show Cause ("OTSC") and Verified Petition ("Petition") dated February 15, 2022 pursuant to Education Law § 226 (4) and 8 NYCRR 3.31, for the removal of Oscar Davis, Jr., Hope Marable, Vivien Salmon, Judy Williams-Davis and Cathlin Gleason-Boncardo as Trustees of the Mount Vernon Public Library ("trustees") due to alleged misconduct, neglect of duty and/or the failure or refusal of the Board to carry into effect the educational purposes of the Library. The Petition specifically alleged that the trustees: (1) failed to submit a complete/compliant application for library registration; (2) failed to file a 2020 annual report to the New York State Library ("NYSL"), which caused the MVPL to lose certain funding; and (3) oversaw the library when it engaged in numerous financial irregularities or otherwise failed to properly supervise the administration of the Library with respect to these financial matters. Respondents were personally served with copies of the OTSC and Petition. Deputy

Counsel for the State Education Department Aaron M. Baldwin assumed the prosecution of this matter on behalf of the Regents.

An attorney (“attorney 1”) initially appeared on behalf of all trustees. After reporting that respondents Salmon and Gleason had resigned, attorney 1 indicated to the prosecution “that it would be a conflict of interest for [him] to represent the Board and [the trustees] individually.” Thus, he recommended that “each [trustee] should retain their own lawyer in this matter.” Attorney 1 thereafter withdrew as counsel, requesting a 30-day extension to allow the trustees to obtain new counsel. This request was granted.

After a further extension of time was granted, a second attorney appeared on behalf of the board of trustees (“attorney 2”). On June 1, 2022, attorney 2 submitted a “Verified Answer” in the form of a letter brief.

On June 15, 2022, the prosecution submitted a reply affidavit from Lauren Moore, State Librarian, in further support of the Petition. The parties thereafter exchanged memoranda of law.

On or about July 22, 2022, respondent Marable, another trustee, and attorney 2 inquired as to the possibility of submitting individual statements or further materials in response to the Petition. SED’s Appeals Coordinator advised the Respondents and attorney 2 that the applicable Rules of the Board of Regents, which were served with the OTSC, did not allow additional pleadings unless permitted by SED’s Counsel and Deputy Commissioner for Legal Affairs (“Counsel”). The Respondents and their attorney were further advised that their email submissions made to date did not comply with these requirements and could not be considered. The Appeals Coordinator further reminded Respondents that “[n]o extension of time

to answer the petition or to reply to an answer will be granted by the Counsel unless timely application is made therefor, upon notice to all parties” (8 NYCRR 3.31 [o]). No such application for late or additional pleadings was made.

By Order and Notice of Hearing dated October 4, 2022, Respondents were advised that the Regents had reviewed the submissions by the parties and a recommendation of the standing committee and, having consulted with Counsel, accepted the recommendation of the standing committee to appoint a panel and schedule a hearing. This Order designated the undersigned as the Panel Chair and Regents Roger Tilles and Aramina Vega Ferrer as Panel Members.

Thereafter, I held two pre-hearing conferences in this matter in October 2022 and January 2023. Summaries thereof are contained in the record.

Between the October 2022 order and the second prehearing conference, two additional trustees resigned. I also issued orders discontinuing the instant action against each of the four trustees who resigned. Each order was without prejudice to reinstatement of the instant proceeding, on 30 days’ notice, should these individuals be elected to or appointed to a position on the Library Board of Trustees in the future. Thus, this proceeding remains pending against a single trustee: respondent Marable.<sup>1</sup> In accordance with a scheduling order issued in January 2023, the prosecution now moves for summary judgment, which Respondent opposes.

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<sup>1</sup> Ms. Marable submitted additional information via email in December 2022. Counsel indicated to Ms. Marable via email that he was not inclined to accept such information into the record, but that if she “deem[ed] a formal ruling from the Vice Chancellor necessary, such a request [could] be made at the [January 3, 2023] prehearing conference.” No such request was made; as such, this information has not been accepted and is not a part of the record.

### **III. The Parties' Contentions**

The prosecution argues that respondent's failure to deny the allegations in the Petition in a timely manner means that they have been established as true. The prosecution further argues that the un rebutted contentions in the Petition compel Ms. Marable's removal as a trustee.

Respondent contends that she relied upon the representation of attorney 2 to her detriment. She contends that attorney 2's "performance was clearly negligent, having failed ... to follow even the most basic requirements ... in responding to this matter." She further contends that had attorney 2 "interview[ed] individual trustees or discuss[ed] the requirement to file an answer on behalf of the named Trustees ... she would have easily determined that representing every Trustee created an unwaivable conflict of interest that would have required [her] to either secure conflict counsel for some of the Trustees or to remove herself from the representation entirely." Given this inadequate representation, respondent argues, the panel should "hold this motion in abeyance so that the allegations as to Trustee Marable can be decided on their merits."

### **IV. Applicable Law**

Education Law § 260 (1) states, in part, that "[p]ublic libraries authorized to be established by action of the voters or their representatives shall be managed by trustees who shall have all the powers of trustees of other educational institutions of the university as defined in this chapter." *See* Education Law § 260 (1). The powers and responsibilities of trustees are also set out in the Not-For-Profit Corporation Law, which is made applicable to Education Corporations pursuant to Section 216-a of the



Education Law. Under these laws, trustees are obligated to “discharge the duties of their respective positions in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances” (*see id.*, § 717 [a]; *see also* Education Law § 226 [6] [a]).

The procedures adopted by the Board of Regents concerning the removal of trustees authorize the panel chair “to entertain and rule upon dispositive motions” (8 NYCRR 3.31 [u]). This includes a motion for summary judgment—a procedural device by which a decisionmaker may resolve the legal issues in a case when there is no genuine dispute over any material fact (*see Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *see also Munter v. Gross*, 42 Misc 2d 690, 696 [Sup Ct, Kings County 1964] [hearing only required in quasi-judicial proceedings where the facts are in dispute]).

The party seeking summary judgment must submit sufficient evidence to show its entitlement to judgment as a matter of law (*Alvarez v. Prospect Hosp.*, 68 NY2d 320 [1986]; *Winegrad*, 64 NY2d at 853). Once shown, the burden shifts to the opposing party to prove, in fact, that there is a factual dispute requiring a trial or hearing. This requires the submission of proof in admissible form (*see e.g., Zuckerman v. City of New York*, 49 NY2d 557 [1980]; *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 NY2d 1065 [1979]). An opposing party’s failure to provide facts that raise a triable issue supports an award of summary judgment (*Antokol & Coffin v. Myers*, 30 AD3d 843 [3d Dept 2006]; *Seaboard Sur. Co. v. Nigro Bros., Inc.*, 222 AD2d 574 [2d Dept 1995] [unpled defenses should not have been considered by trial court in denying motion for summary judgment; failure to timely

amend an answer to assert defenses resulted in unfair surprise and prejudice to movant]).

## V. Discussion

The prosecution has met its burden of proof through the allegations in the sworn Petition. The Petition details the failure of each trustee to satisfy their obligations with respect to three crucial duties:

- **Library registration.** As a chartered library, MVPL is required to complete registration (8 NYCRR 90.1, 90.2). SED informed MVPL of new registration standards in July 2021 and that its registration was due by November 2021. Despite the provision of copious information, materials, training, and technical assistance, the MVPL did not complete registration by the time of the petition in February 2022—and *still* has not completed the registration at the time of the decision, a year after the filing of the Petition.<sup>2</sup>
- **2020 annual report.** Despite assistance from SED staff, the MVPL submitted an incomplete annual report in July 2021. The Westchester Library System requested an extension of time on behalf of the MVPL to submit this report to August 2021, which was granted. The MVPL missed this deadline, which resulted in its ineligibility for 2021-2022 local library services aid (\$19,221) and a “stop payment order” on all State funds to the library (\$101,078 in construction projects, as more specifically detailed in the Petition). The 2020 annual report has not been filed at the time of this decision.

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<sup>2</sup> I further note that MVPL has lost its status as the central library for the Westchester Library System.

- **Financial Stewardship.** A 2021 audit by a firm hired by the trustees revealed astonishing financial impropriety, including 1,408 transactions that did not appear in the district’s general ledger. This included payroll information, cash receipt and cash disbursements (liabilities) that were not posted within the proper period in accordance with accounting principles generally accepted in the United States of America, and—most alarmingly—“questionable transactions that [we]re not consistent with a library’s normal course of business.”

This conduct constitutes a fundamental breach of each trustee’s duty to the MVPL. As such, I find that the prosecution has met its *prima facie* case of proving that respondent neglected her duty as a trustee.<sup>3</sup>

As described above, respondent did not deny any of the allegations against her in an answer. The procedures governing the removal of trustees, adopted following the removal of the trustees of Adelphi University, are modelled after quasi-judicial appeals to the Commissioner of Education under Education Law § 310. In such appeals, the Commissioner has held that the failure to timely admit or deny allegations in the petition results in a finding that they are true statements (*Appeals of P.H.*, 59 Ed Dept Rep, Decision No. 17,698; *Appeal of Hamblin, et al.*, 48 *id.*, 421, Decision No. 15,902; *Appeal of Smith*, 48 *id.* 125, Decision No. 15,813). This is consistent with civil practice in both State and federal court (NY CPLR § 3018 [a] [“A party shall deny those statements known or believed ... to be untrue ... All other

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<sup>3</sup> In addition, this conduct constitutes the failure to carry into effect the educational purposes of the library (Education Law § 226 [4]). Any references herein to “neglect of duty” are for purposes of brevity and should be read to include the “educational purposes” clause.

statements of a pleading are deemed admitted ...”]; Fed Rules Civ Pro rule 6 [“An allegation ... is admitted if a responsive pleading is required and the allegation is not denied”). As such, I find that the allegations in the petition must be accepted as true.

Respondent has otherwise presented no admissible evidence to rebut the prosecution’s showing that it is entitled to judgment as a matter of law. Respondent’s only “defense” is that she was misled, or inadequately represented in this matter, by attorney 2. This claim concerns an issue of professional responsibility that is outside the scope of this proceeding. Respondent received timely notice of this proceeding and was advised of the potential consequences of failing to submit an answer.<sup>4</sup> This satisfied her right to notice of the proceeding and an opportunity to contest the charges.

## VI. Conclusion

The prosecution has presented un rebutted evidence that respondent, as well as each trustee who served on the MVPL in February 2022, neglected her duty as a trustee of the library. This conduct amply supports her removal.<sup>5</sup> The Fourteenth Librarian of Congress, Carla Hayden, has written that “[l]ibraries are a cornerstone of democracy—where information is free and equally available to everyone. People tend to take that for granted, and they don't realize what is at stake when that is put

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<sup>4</sup> I further note that, while respondent does not dispute service, she was served with a copy of the OTSC and Petition on February 24, 2022. The OTSC specifically states that she was “required to transmit [an] Answer ... with an affidavit of service” to Counsel for the State Education Department and that, if she did not, “the charges contained in the verified Petition [would] be deemed to be admitted by [her].” The order also included, as an attachment, a complete copy of the rules applicable to such removal proceedings.

<sup>5</sup> I agree with the prosecution that once neglect of duty has been proven, the only appropriate remedy under Education Law § 226 is removal.

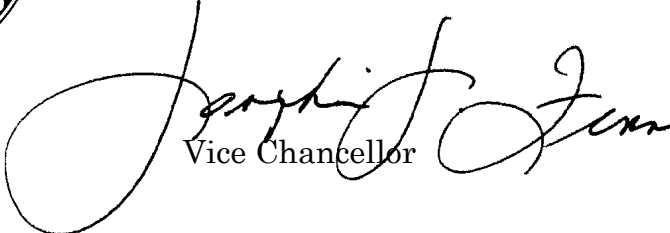
at risk.”<sup>6</sup> This panel is well aware of that risk—and unwilling to countenance the mismanagement of the library by respondent and others. As such, the prosecution’s motion for summary judgment must be granted.

Regents Tilles and Ferrer concur in the judgment.

IT IS ORDERED that summary judgment is entered against respondent Hope Marable. It is further recommended that the Board of Regents remove Hope Marable from the office of trustee of the Mount Vernon Public Library.



IN WITNESS WHEREOF, I, Josephine Victoria Finn, Vice Chancellor of the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 13<sup>th</sup> day of February 2023.

  
Vice Chancellor

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<sup>6</sup> Catherin Orenstein, “Women of the Year: 2003,” Ms. (Winter 2003), *available at* [https://web.archive.org/web/20170327034721/http://www.ms magazine.com/dec03/woty2003\\_hayden.asp](https://web.archive.org/web/20170327034721/http://www.ms magazine.com/dec03/woty2003_hayden.asp) (last accessed Feb. 8, 2023).