





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

**FROM:** Daniel Morton-Bentley 

**SUBJECT:** "Friends of LongHouse," Represented by Susan R. Gelman, Steven Felsher, Regina Sender Levin, Jane Johnson, Julie Jensen, Carole Rosenberg, and Marcia Wilson vs. Dianne Benson, Nina Gillman, Derick George, Deborah Nevins, Mark Levine, James Zajac, Alexandra Munroe, Sherri Donghia, Richard Dranitzke, Ayse Kenmore, Peter Olsen, and Suzanne Slesin as Trustees of LongHouse Reserve

**DATE:** June 12, 2023

**AUTHORIZATION(S):** 

**SUMMARY**

**Issue for Decision (Consent)**

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

**Reason(s) for Consideration**

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

**Proposed Handling**

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

## **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 actions are contained in the Rules of the Board of Regents (8 NYCRR 3.31).

LongHouse Reserve is an education corporation located in the Town of East Hampton and the County of Suffolk that received a provisional charter from the New York State Board of Regents on July 18, 2002, and an absolute charter on November 19, 2013. LongHouse Reserve is the surviving corporation resulting from a July 18, 2002, order of consolidation, which consolidated the education corporation with a New York State Department of State entity known as LongHouse Reserve Ltd., formed on December 16, 1991, as The LongHouse Foundation, Inc. The purposes for which LongHouse Reserve were formed include the establishment, operation, preservation and maintenance of an arboretum, sculpture garden and art museum in East Hampton, New York.

Petitioners, a collection of individuals who comprise “the Friends of LongHouse,” commenced this proceeding seeking the removal of respondents as trustees of the LongHouse Reserve based on allegations that the trustees made corporate decisions contrary to the corporate purposes of LongHouse Reserve; undermined relationships with donors and community members; unreasonably fired long-term employees; failed to fulfill their fiduciary duties by not investigating the validity of a change to an estate document; and placed certain personal relationships and interests over their fiduciary duties. Petitioners argue that respondents have engaged in a “pattern of improper behavior in disregard of their fiduciary duties to LongHouse [Reserve] which directly impacts their ability to carry out LongHouse [Reserve]’s educational purposes.” Most respondents answered the Petition, denying the allegations and requesting that the Board of Regents dismiss the petition.

## **Related Regents Items**

Not applicable.

## **Recommendation**

The Cultural Education Committee recommends that the Board of Regents adopt the Committee’s recommendation (Attachment A):

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

### **Timetable for Implementation**

If the Cultural Education Committee's recommendation is adopted at the June 2023 meeting, this matter will be dismissed, effective immediately.



Susan R. Gelman, Steven Felsher, Regina Sender Levin, Jane Johnson, Julie Jensen, Carole Rosenberg, and Marcia Wilson, representing "Friends of LongHouse"

Petitioners,

-against

DECISION

Dianne Benson, Nina Gillman, Derick George, Deborah Nevins, Mark Levine, James Zajac, Alexandra Munroe, Sherri Donghia, Richard Dranitzke, Ayse Kenmore, Peter Olsen, and Suzanne Slesin, as Trustees of "LongHouse Reserve"

Respondents.

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Olsoff, Cahill, Cossu LLP, attorneys for petitioners, Pamela L. Grutman, Esq. and Paul S. Cossu, Esq., of counsel

Polsinelli PC, attorneys for respondents Benson, Gillman, George, Nevins, Levine, Zajac, Mumoe, Donghia, Kenmore, and Slesin, as Trustees of LongHouse Reserve, Andrew Grumet, Esq. and Frank Spano Esq., of counsel

Phillips Nizer LLP., attorneys for respondent Olsen, as Trustee of LongHouse Reserve, Jared R. Clark, Esq. and Rachel J. Rodriguez, Esq., of counsel

Petitioners bring this matter before the New York State Board of Regents, seeking respondents' removal and other relief pursuant to Education Law § 226 (4) and § 3.31 of the Rules of the Board of Regents. The petition must be dismissed.

Given the disposition of this matter, a detailed recitation of the procedural history is unnecessary. The record indicates that petitioners, the "Friends of Longhouse," are individuals who identify themselves as "donors" of the LongHouse Reserve.<sup>1</sup> Respondents are members of the board of trustees of LongHouse Reserve. All but two respondents submitted a joint answer to the petition ("Joint Answer"). Respondent Peter Olsen answered individually ("Olsen Answer"), and respondent Richard Dranitzke did not submit an answer.<sup>2</sup>

LongHouse Reserve was formed on July 18, 2002 as the sole surviving corporation of two prior organizations, LongHouse Reserve and LongHouse Reserve, Ltd. LongHouse Reserve operates an arboretum, sculpture garden and art museum in East Hampton. Among other things, it publishes catalogs and organizes activities, such as lectures, classes and workshops. The Regents granted LongHouse Reserve an absolute charter to operate as an education corporation on November 19, 2013.

The founder and artistic director of LongHouse Reserve, Mr. Jack Lenor Larson, passed away on December 22, 2020. Petitioners allege that, "since the time

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<sup>1</sup> It is unclear if this association is incorporated.

<sup>2</sup> It appears that respondent Dranitzke no longer serves on the board of trustees of LongHouse Reserve ("Who We Are," <https://longhouse.org/pages/who-we-are>, last accessed January 5, 2023). Additionally, while petitioners assert that Trustee Levin resigned her position as a trustee on October 19, 2021, she is represented by counsel in this proceeding, who has not admitted such.

of LongHouse [Reserves]'s founding,” it was widely known that Mr. Larsen planned to leave the majority of his estate to LongHouse Reserve. The record reflects that the Larsen estate is controlled by the “Jack Lenor Larsen Revocable Trust,” created on October 26, 1995 and amended thereafter. Petitioners claim that, trust amendments notwithstanding, Mr. Larsen continued to bequeath or devise the “majority of his estate to the direct benefit of LongHouse [Reserve].”

In fall 2020, Mr. Larsen executed a final amendment and restatement of the Larsen Trust, dated November 3, 2020 (“November 2020 Restatement”). Petitioners assert that this restatement “drastically” altered Mr. Larsen’s bequests such that it primarily benefitted a single trustee, Peter Olsen, to the detriment of LongHouse Reserve. Petitioners further allege that this November 2020 Restatement was executed under suspicious circumstances as Mr. Larsen was in intensive care and died a few weeks thereafter.

In the petition, petitioners assert that the November 2020 Restatement was made as a result the “of undue influence” of trustee Olsen. Petitioners suggest that the “stark contrast” between the November 2020 Restatement and previous estate plan raised serious questions that the other LongHouse Reserve trustees failed to investigate. Moreover, petitioners assert that certain trustees had “knowledge of [trustee] Olsen’s improper actions yet turned a blind eye to them.” Petitioners also generally assert that respondents did not act in the organization’s best interest by undermining the Board’s relationships with donors and community members, jeopardizing the corporation’s ability to fulfill its educational purposes, and

“haphazardly” firing long-term employees, including the Executive Director. For relief, petitioners seek respondents’ removal for neglect of duty or otherwise failing to effectuate the educational purpose of the organization. Petitioners also request that the Board of Regents appoint new trustees; appoint an independent third-party to review and oversee the division of property between LongHouse Reserve and trustee Olsen; refer the matter to the New York State Attorney General (“OAG”) for further investigation, including nullification of the November 2020 Restatement and the recovery of organizational assets; and reimbursement for all professional fees, including attorneys’ fees, incurred since January 2021.

In their Joint Answer, respondents raise several procedural objections, asserting that most of petitioners’ requested relief falls outside the power of the Board of Regents to grant; OAG is already investigating this matter; petitioners are not “aggrieved” and lack standing to bring the instant action; respondents’ actions were protected by New York’s business judgment rule (*see* Not-For-Profit Corporation Law § 717); and service upon respondents was deficient. On the merits, respondents argue that they did not act improperly, neglect any duty, or undermine the educational mission and purpose of LongHouse Reserve. In addition, trustee Olsen’s Answer provides factual insight into his personal relationship with Mr. Larsen, Mr. Larsen’s medical condition, and the circumstances under which Mr. Larsen amended his estate.

Pursuant to Education Law § 226 (4), the Board of Regents may remove any trustee of a corporation created by them because of “misconduct, incapacity, neglect

of duty, or where it appears to the satisfaction of the regents that the corporation has failed or refuses to carry into effect its educational purposes.” The procedures for such actions are outlined in Section 3.31 of the Rules of the Board of Regents. Removal is “a drastic remedy that should be taken only in extreme circumstances” (*Appeal of Powell*, 50 Ed Dept Rep, Decision No. 16,216 [describing similar authority of Commissioner of Education to remove school officers]).

Upon review of the record, we accept the recommendation of the Cultural Education Committee to dismiss the petition. Even if true, petitioners’ allegations—principally, Mr. Larsen’s intention to bequeath resources to the corporation, testamentary capacity at the time of the November 2020 Restatement, and the termination of the Executive Director—do not rise to the level of misconduct, incapacity, or neglect of duty that warrant a hearing for respondents’ removal (*see* 8 NYCRR 3.31 [t]). The petition also describes discrete, internecine conflicts that do not implicate the corporation’s fundamental ability “to carry into effect its educational purposes” (*compare Adelphi Univ. v Board of Regents of State of N.Y.*, 170 Misc2d 135, 136, [Sup Ct, Albany County 1996 [removal hearing warranted where Board of Trustees repeatedly granted the University’s president excessive compensation and benefits, despite alleged poor performance; acted on matters notwithstanding the existence of conflicts of interests; failed to investigate employee theft and misuse of funds; failed to oversee the University’s administration and faculty; and other various acts of misconduct and negligence]). Additionally, petitioners’ claims may be shielded by what is commonly referred to as the “business judgment rule” (*See* Not for Profit Corporation Law § 717 [made applicable to



education corporations by Education Law § 216-a)), which provides that the merits of ordinary business decisions are not subject to second-guessing by third-parties (*see also Auerbach v. Bennett*, 47 NY2d 619, 630-631 [1978]).

Petitioners' claims for relief other than the removal of trustees—the sole remedy authorized by Education Law § 226 (4)—must be dismissed for lack of jurisdiction. The Board of Regents has no authority to, for example, order restitution, award costs, or appoint a third-party overseer. Petitioners' claims—which are, at their core, a trusts and estates dispute—would be more appropriately assessed by OAG's Charities Bureau and resolved by a court of competent jurisdiction.

Finally, while State law would permit a referral to OAG,<sup>3</sup> such a referral is unnecessary as OAG is already aware of this matter.

In light of the above disposition, we need not address the parties' remaining contentions.

THE PETITION IS DISMISSED.

Dated:

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Lester W. Young, Jr.,  
Chancellor of the New York State  
Board of Regents

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<sup>3</sup> Education Law § 216-a (4) (d) (1); Not-for-Profit Corporation Law § 112.