



1000 University Ave., W. Suite 222  
Saint Paul, MN 55104  
651-330-8062 (Main)  
www.mendozalawoffice.com

Anthony S. Mendoza, Esq.  
Direct Dial: 651-340-8884  
tony@mendozalawoffice.com

August 22, 2017

## **FIDUCIARY RESPONSIBILITIES OF NON-PROFIT OFFICERS AND DIRECTORS IN TROUBLED TIMES**

It is inevitable that in the life of a non-profit organization periods of internal disagreement and dissension will occur. Responsible governance during these periods is crucial to the health and even the survival of the organization. Non-profit officers and directors charged with governance during these times are well advised to familiarize or re-familiarize themselves with the fiduciary responsibilities owed to their organizations.

In Minnesota, fiduciary responsibilities of officers are laid out in state law, Minnesota Statutes §317A.251 and 317A.361. Officer and directors of a non-profit corporation owe a duty to the corporation to act in good faith, with honesty in fact, loyalty, in the best interests of the corporation, and with the care of an ordinary, prudent person under similar circumstances. In 2001, the Minnesota Court of Appeals issued an opinion in a case, *Shepard of the Valley Lutheran Church v. Hope Lutheran Church*, 626 N.W.2d 436 (Minn. App. 2001), the facts of which illustrate how wrong things can go for a non-profit corporation experiencing a period of intractable disagreement and dissent.

*Shepard of the Valley* involved an intra-congregational dispute around the communion practices of the Shepard of the Valley (SOTV) pastor resulting in SOTV separating into two churches. A movement to terminate the pastor was initiated by SOTV's Vice President, Gregory Collins. SOTV's Board determined there was no basis to remove the pastor, but Collins persisted. Collins and his faction discontinued patronage and financial support of SOTV. Collins began organizing meetings that consisted of only members of his faction. Collins led his faction to create a new non-profit corporation, constitution, and bylaws, and designated himself as President of a new church, which he named Hope Lutheran Church (Hope). Collins retained his position as Vice President of SOTV throughout all of this activity. Collins did not inform any other SOTV officers or the general congregation of his plans to separate and form a new church, and encouraged secrecy within his faction. Collins finally informed SOTV's President of his intent to separate the congregation at an upcoming annual meeting. At the annual meeting, the congregation voted to separate and to transfer all of SOTV's real estate and personal property to Hope without any payment of money or other consideration back to SOTV. Following the annual meeting, Collins changed the locks on the church building and informed SOTV they were no longer welcome. SOTV filed suit, alleging a breach of fiduciary duty by Collins, seeking damages and equitable relief in the form of a return of the property to SOTV. A jury found Collins breached his fiduciary duty to SOTV, and awarded SOTV damages and the return of the church property. Hope and Collins appealed the verdict, arguing that the evidence did not support a breach because his actions were consistent with the wishes of *some* SOTV's members.

The Minnesota Court of Appeals reiterated that an officer of a non-profit corporation owes a fiduciary duty to the corporation to act in good faith, with honesty in fact, with loyalty, in the

best interests of the corporation, and with the care an ordinary, prudent person under similar circumstances. To establish a breach of fiduciary duty, the Court held a plaintiff must show the action attacked is “so far opposed to the true interests of the corporation as to lead to the clear inference that no officer thus acting could have been influenced by an honest desire to secure such interests.” Collins’ fiduciary duty, the Court held, imposed the highest standard of integrity in his dealing with other SOTV officers and the *entire* SOTV organization, not just to those members of his faction. Collins’ fiduciary duty prevented him from taking actions and assuming positions in conflict with the interests of SOTV and the congregation *as a whole*. The Court held that holding secret meetings and advance preparation of legal documents contrary to the organization’s interest is a breach of fiduciary duty. Withholding of material information from other officers and members of the corporation constituted “willful or reckless conduct” which eliminated Collins’ statutory immunity as a director from civil liability under Minn. Stat. §317A.257.

A critical point of governance to be learned from this case is that officers and directors of a non-profit organization owe a duty to the organization as a whole, and not just to members of a certain faction within the organization, even if that faction may have the ability to control the organization’s decisions. Non-profit officers and directors should foster a culture of transparency and candor when dealing with internal conflict, and not one built on secrecy and factionalizing.