

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

LEN NAIR,
JAMES O'SHAUNESSY,

Plaintiffs,

-vs-

Case No. 82C 1982

INSTITUTE IN BASIC YOUTH CONFLICTS,
A Corporation; GUS HEMWALL,
HAMILTON SINCLAIR, WILLIAM W.
GOTHARD, SR., WILLIAM. W.
GOTHARD, JR., STEVE GOTHARD,
JOHN McLARIO, FRED WARDLE, ROY
BLACKWOOD, and JAMES SAMMONS,
Directors; JOHN DeBOER, LEO J.
~~BRABENEC~~ ~~BRABENEE~~, ROBERT BULMER, JOE
~~CONEY~~ ~~CANEY~~, and other unknown
Defendants.

Defendants.

C O M P L A I N T

I. PREFACE

Plaintiffs bring this action in the form of a derivative action for and on behalf of a class of members of the corporate defendant, Institute in Basic Youth Conflicts, against the corporation and its Directors and Officers and principal operations personnel for breach of their fiduciary duties to said members for misrepresentations to said members and for other

conduct hereinafter alleged. Plaintiffs seek relief in the form of an accounting, appointment of a trustee, full disclosure of the corporation's financial affairs, preservation of corporate assets, repayment of misappropriated funds, removal of said officers and directors from the Board of Directors, appointment of replacement directors, and for other remedial relief.

II. JURISDICTION AND VENUE

1. Jurisdiction of the Court in this action is based upon Section 1332, Title 28, United States Code.

2. Plaintiff, Len Nair, is a citizen of the State of ~~California~~ ^{California} ~~Arizona~~; Plaintiff, James O'Shaunessy, is a citizen of the State of Arizona; Defendant, Institute in Basic Youth Conflicts, is a non-profit corporation incorporated under the laws of the State of Illinois, having its principal place of business in the State of Illinois; Defendants, Gus Hemwall, Hamilton Sinclair, William W. Gothard, Sr., William W. Gothard, Jr., Steve Gothard, Fred Wardle, and Leo J. Brabene^C, are citizens of the State of Illinois; Defendant, John McLario, is a citizen of the State of Wisconsin; Defendant, Roy Blackwood, is a citizen of the State of Indiana; Defendant, James Sammons is a citizen of the State of Texas; Defendants, John DeBoer ^{Illinois} and Joe Caney ^{and Robert Bulmer} are citizens of the State of New Jersey.

3. Because defendant corporation's principal place of business is located within the jurisdiction of this Court and the

individual defendants, while serving as directors of the defendant corporation, did engage in conduct which is the subject of this litigation, within this jurisdiction, venue is properly placed in this Court.

III. PLAINTIFFS

1. Plaintiffs represent a class of individuals referred to by defendant, Institute in Basic Youth Conflicts, as "alumni", having attended one or more seminars conducted by defendant, Institute in Basic Youth Conflicts. Said alumni represented by plaintiffs did pay an enrollment or membership fee which entitled them not only to attend a seminar conducted by the defendant, Institute in Basic Youth Conflicts, but to attend as many seminars thereafter as they desired. Many alumni did, in fact, attend more than one seminar pursuant to said alumni entitlement.

2. In addition to payment of the initial enrollment fee, many alumni have made direct monetary contributions to defendant, Institute in Basic Youth Conflicts, based upon representations by various individual defendants that such funds would be devoted to the corporate purposes and programs conducted by the defendant, Institute in Basic Youth Conflicts.

3. The alumni represented by the named plaintiffs constitute a class of individual numbering in excess of One Million persons, thereby constituting a class so numerous that a joinder of all members is impractical.

4. There are questions of law and fact common to all members of the class of alumni.

5. The claims of the representative parties named herein are typical of the claims of the entire class of alumni.

6. The named plaintiffs will fairly and adequately protect the interests of the class of alumni.

7. The prosecution of a separate cause of action by each individual member of the class of alumni would create a risk of inconsistent and varied adjudications with respect to individual members of the class, the adjudication with respect to the individual named class representatives would, as a practical matter, be dispositive of the interests of all members of the class or may substantially impair or impede the ability of individual members of the class to protect their interests and the defendants and each of them, have acted on grounds generally applicable to all members of the class, thereby making appropriate final injunctive relief or corresponding declaratory relief appropriate.

8. The questions of law and fact common to the members of the class of alumni would dominate over any questions affecting individual members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

9. The Court, as soon as practicable, after commencement of this action, should determine by order whether or not it should

be so maintained in accordance with the provisions of Rule 23(c) of the Federal Rules of Civil Procedure, Title 28, United States Code.

10. This is a derivative action by the class of plaintiffs based upon a continuing vested interest in the affairs of the Institute in Basic Youth Conflicts. Alumni have a continuing vested interest in the affairs of the corporation, which was described on the 1979 Tax Return of the corporation, as "ongoing service to alumni" and "provides for their attendance at any basic seminar without further registration or tuition fees. Many have attended 8 or more times at no additional cost." This continuing interest was valued at \$1,752,381.00 in ministry expenses for the corporation on its 1979 Tax Return.

11. Alumni are provided supplementary books, as reflected upon the 1979 Tax Return of the corporation, "without cost to recipients" in the amount of \$355,481.00.

12. Many alumni designated as "alumni pastors" are provided without charge, a "pastor's workshop" which, for the year ending December 31, 1979, represented an expense to the Institute of \$211,058.00.

13. Alumni are entitled to "follow-up material sent on birthdays" which for the year ending December 31, 1979, constituted a benefit in the amount of \$234,094.00.

IV. DEFENDANTS

1. The corporate defendant, Institute in Basic Youth Conflicts, is a non-profit corporation incorporated under the laws of the State of Illinois, with its principal place of business being 4 S. 055 North Adams, Oak Brook, Illinois 60521. Said defendant may be served with process by issuing summons upon its resident agent, James D. Olsen, 4 S. 055 North Adams, Oak Brook, Illinois.

2. Defendant, Gus Hemwall is a resident of the State of Illinois and may be served with summons at 227 North Grove Avenue, Oak Park, Illinois 60302.

3. Defendant, Hamilton Sinclair, is a resident of the State of Illinois, and may be served with summons at 4817 Middaugh, Downers Grove, Illinois 60515.

4. Defendant, William W. Gothard, Sr., is a resident of the State of Illinois and may be served with process at 1027 Arlington Avenue, Lagrange, Illinois 60525.

5. Defendant, William W. Gothard, Jr., is a resident of the State of Illinois and may be served with process at 1027 Arlington Avenue, Lagrange, Illinois 60525.

6. Defendant, Steve Gothard, is a resident of the State of Illinois and may be served with process at 1027 Arlington Avenue, Lagrange, Illinois 60525.

7. Defendant, John McLario, is a resident of the State of Wisconsin and may be served with process at N 88 W 16783 Main Street, Menomonee Falls, Wisconsin.

8. Defendant, Fred Wardle, is a resident of the State of Illinois and may be served with process at 24 W 050 Donwood Drive, Naperville, Illinois 60540.

9. Defendant, Roy Blackwood, is a resident of the State of Indiana, and may be served with process at 1200 Diable, Greenwood, Indiana.

10. Defendant, James A. Sammons, is a resident of the State of Texas and may be served at 3683 Encanto, Fort Worth, Texas 76109.

11. Defendant, Leo J. Brabene^c is a resident of the State of Illinois and may be served with process at 5561 Santa Cruz Drive, Hanover Park, Illinois 60103.

12. Defendant, Joe ^{CONEY} Ganey is a resident of the State of New Jersey and may be served with process at 36 Demerest, Oakland, New Jersey 07431.

13. Defendant, John DeBoer, is a resident of the State of Illinois and may be served with process at 134 East Adams Street, Elmhurst, Illinois 60126.

14. Defendant, Robert Bulmer, is a resident of the State of New Jersey and may be served with process at 123 Long Hill Road, Oakland, New Jersey 07436.

15. Plaintiffs on behalf of the proposed class, believe that there may be other persons who, together with the named

defendants may have, acting with or on behalf of named defendants, in that conduct which is set forth herein as Plaintiff's causes of action against the defendants and Plaintiffs hereby name and designate such persons as "Unknown Defendants".

V. PLAINTIFFS' CAUSES OF ACTION AGAINST DEFENDANTS

First Cause of Action

1. The individually named defendants, Gus Hemwall, Hamilton Sinclair, William W. Gothard, Sr., William W. Gothard, Jr., Steve Gothard, John McLario, Fred Wardle, Roy Blackwood and James Sammons, hereinafter referred to as Director/Defendants, served as members of the Board of Directors of the corporate defendant, Institute in Basic Youth Conflicts and certain of said defendants did, from time to time, serve as officers of said corporation.

2. Sufficient factual basis upon which to make the allegations contained herein relative to the conduct of the defendants, did not become known to the plaintiffs until July 5, 1980, during a meeting of the Defendant, Institute in Basic Youth Conflicts' Board of Directors.

3. The Director/Defendants did serve in a fiduciary capacity to the alumni members of the association, and the Defendants, Bulmer, DeBoer, ^{Brabenee}~~Brabenee~~ and ^{CONEY}~~Ganey~~, hereinafter referred to as Non-Director/Defendants, did act directly for, on behalf of or under the direction of said Director/Defendants or in their own capacity as those chiefly responsible for the day to day affairs of the corporate Defendant, Institute in Basic Youth Conflicts.

4. The defendants did, while serving in said fiduciary capacity, by their malfeasance and nonfeasance, violate the duty of care which they owed to the members and alumni of the corporation, Institute in Basic Youth Conflicts, by failing to monitor the financial affairs of the corporation, failing to disclose to members of the corporation the financial affairs of the corporation, by making or permitting to be made extravagant or improper expenditures of corporate funds in violation of the corporate purpose, by engaging in or approving other ultra vires acts and by failing to exercise normal business judgment in the affairs of the corporation as reasonable and prudent persons.

5. By reason of said conduct Director/Defendants should be held personally liable for said improper conduct.

Second Cause of Action

1. For their second cause of action, plaintiffs hereby incorporate by reference, all allegations set forth above herein.

2. The individual Director/Defendants did by their malfeasance and nonfeasance, violate the Duty of Loyalty which they owed to the alumni and members of the corporate defendant, Institute in Basic Youth Conflicts, by participating in decisions of the corporation in which they had a vested interest, by engaging in self-dealing by taking advantage of corporate opportunities for the gain and benefit of the said individual defendants to the substantial detriment of the members and alumni represented by the plaintiffs herein.

Third Cause of Action

1. Plaintiffs hereby incorporate by reference, all allegations set forth in the paragraphs above.

2. That the individual Director/Defendants and Non-Director/Defendants did fraudulently misrepresent the affairs of the corporation to the members and alumni of the corporation, failed to disclose information about the financial affairs of the corporation and misrepresented the corporation in representations to third parties, did utilize the U. S. Mail to solicit payment of monies for memberships and by said false and fraudulent misrepresentations did induce Plaintiffs to pay monies and become members of Defendant, Institute in Basic Youth Conflicts and did further, by said false and fraudulent representations, create potential liability for and in alumni and members of the corporation to said third parties, thereby exposing the corporate assets in which Plaintiffs have a vested interest to substantial claims by said third parties.

Fourth Cause of Action

1. Plaintiffs hereby incorporate by reference, all allegations set forth above.

2. The individual defendants, as members of the Board of Directors of the corporate defendant, Institute in Basic Youth Conflicts, did misappropriate funds of the corporation, or had

knowledge of said misappropriations, utilizing said funds for noncorporate purposes by other Directors and ratified and affirmed such misappropriations, using such funds by way of limited example, to purchase pornographic movies, to underwrite the cost of personal use of the corporate defendant's jet aircraft, to purchase antiques valued in excess of several hundred thousand dollars, building an expensive retreat setting, including purchases of real estate at values greatly in excess of the recognized market value.

Fifth Cause of Action

1. Plaintiffs hereby incorporate by reference, all of the allegations set forth above.

2. That certain of said individual defendants did engage in outrageous conduct toward employees of said corporation defendant, Institute in Basic Youth Conflicts, engaging in threat and coercion to obtain sexual favors resulting in physical and emotional damage to former employees, and that the individual defendants did knowingly acquiesce in and by their conduct did condone such conduct.

Sixth Cause of Action

1. Plaintiffs hereby incorporate by reference, all allegations set forth in paragraphs above.

2. That the individual defendants did willfully, wantonly and intentionally conspire and engage in a consistent pattern of making false and fraudulent allegations to discredit the claims of alumni and members of the corporation seeking relief from the conduct of the defendants herein.

VI. RELIEF REQUESTED

The plaintiffs, for and on behalf of the class of members and alumni of the corporate defendant, Institute in Basic Youth Conflicts request that the Court grant the following order of relief to said plaintiffs:

1. That the Court immediately and forthwith appoint a Trustee to operate under the direction and supervision of this Court with full power to administer the affairs of the defendant corporation and that all records of the corporations be preserved and maintained under the supervision and control of said trustee, that said Trustee assume sole control over the accounts and assets of the defendant Corporation and render an accounting of such to the Court.

2. That the Court find that the conduct of the individual Director/Defendants did violate their fiduciary obligation to the class of alumni and members of the corporate defendant, Institute in Basic Youth Conflicts and said malfeasance and nonfeasance in office constituted a breach of the duty of care and the duty of loyalty owed by said defendants to said class and that the

Director/Defendants be removed as members of the Board of Directors of the corporate defendant, Institute in Basic Youth Conflicts and that the Court direct the appointment and selection of a new Board of Directors including representatives from various religious groups, educational institutions, alumni and former employees who have demonstrated their support for the noble purposes of the corporation, which will fully and adequately represent the interests of the alumni and members of the corporate defendant, Institute in Basic Youth Conflicts.

3. That the Court direct a marshalling of corporate assets; order a full audit of the financial affairs of the Corporate Defendant and direct the development of a comprehensive financial report of the affairs of the corporation for and after January 1, 1970 up to and including the present time, and a rendering of the current financial condition of the corporation.

4. That the Court direct that the assets of the corporation shall not be available to Defendants to underwrite the costs of defending this litigation.

5. That the Court find that the individual defendants be ordered and directed to divest themselves of all interests held by said individual defendants with or as a part of the property and affairs of the corporation, Institute in Basic Youth Conflicts and that all benefits derived from said ownership be repaid to the corporation for the benefit of the alumni and members of the corporation.

6. That the individual defendants be found to have engaged in ultravires activity, beyond the scope and purposes of the corporation and that they be found individually liable for all misappropriation of funds, fraudulent misrepresentations of fact, failure to preserve and protect the assets of the corporation and all liabilities to third parties arising out of the conduct of the affairs of the corporation by the individual defendants which liabilities are believe to be in excess of \$40,000,000.00.

7. That the Court appoint a Trustee, who shall, upon entry of judgment, continue to serve as a Trustee and as an officer of the Court, to fully implement the orders of the Court and assist the new Directors of the defendant corporation, Institute in Basic Youth Conflicts, in marshalling the affairs of the corporation for the benefit of the alumni and members represented by the class herein.

8. That the Court order and direct the individual defendants to pay plaintiffs' counsel attorneys fees, accounting fees and all costs and expenses incurred in litigation of the Complaint herein.

9. That the Court grant such other and further relief as the Court believes to be necessary, just and equitable, and in the interest of justice, to fully compensate and protect the

members of the class because of the conduct of the individual defendants herein.

Colmery, McClure, Funk,
Letourneau and Entz

Stewart L. Entz
1000 First National Bank Bldg.
Topeka, Kansas 66603
913/232-0564

ATTORNEYS FOR PLAINTIFFS.