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November 17, 2005

Gary Park
James "Bran" Langley
Maeven Eller

Arbitration Decision

The Dispute

1. A dispute has been submitted to me in my capacity as Arbitrator of the dispute submitted relating to the election of CMA's Fall 2005 election for the position of Executive Director. The complainants, Maeven Eller (hereinafter "Eller") and James "Bran" Langley (hereinafter "Langley") each claim to have won said election. Eller and Langley have each agreed to submit the subject dispute to me to act as the final arbitrator of the dispute to determine either the winner of the subject election or the procedure for determination of the winner of said election.

Arbitration and Procedure

2. As agreed by Eller and Langley, the arbitration was conducted under the authority of CPRC §171.001 et seq., shall be binding on all parties and shall be enforceable in a Travis County court with proper jurisdiction. Eller and Langley agreed to waive their right to notice of the arbitration proceedings and further agree that the arbitration shall be conducted by submission of written statements supporting the respective parties' requests for relief. Eller and Langley agreed to be bound by my written decision regarding all matters in dispute.

Findings and Conclusions

3. I have received written statements from Eller and Langley which have been reviewed and considered, together with the Articles of Incorporation, Bylaws and applicable statutes. Based on the foregoing, my findings are as follows:

- a. Section 2.04 of the Bylaws requires that all elections and ratifications of Members of the Board of Directors be conducted by paper ballot mailed to each member.
- b. None of the varied results of the 5 counters of the paper ballots successfully elected the Executive Director by the majority, as that term is defined in Art. 1396-2.12 (A)

which states, in pertinent part, as follows:

“The vote of the majority of the votes entitled to be cast by the members present, or represented by proxy at a meeting at which a quorum is present, shall be the act of the members of the meeting, unless the vote of a greater number is required by law, the articles of incorporation or in the by-laws.”

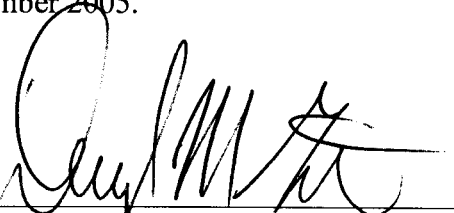
The definition of “majority votes” contained in Section 2.07 of the Bylaws, is consistent with the statutory definition. The case law in this regard accurately states that if some members abstain from a vote, the statutory definition may require more than a majority of votes actually cast to adopt a resolution. *Governing Board, v. Pannill*, 659 S.W.2d 670 (Tex. App. – Beaumont 1983, writ ref’d n.r.e.).

- c. Based on the foregoing definition of majority, and the total ballots reported, a minimum of 105 votes, and a maximum of 107 votes was required to elect the Executive Director and no candidate received more than 94 votes by any count. Therefore, none of the counts resulted in the valid election of a new Executive Director.
- d. The live run-off vote was improperly held. At the conclusion of the report of the paper ballots, absent an amendment to the Bylaws, a run-off should have been held by paper ballots allowing all members entitled to vote the opportunity to choose between the two candidates in the run-off. Notwithstanding the error, the run-off was inconclusive because, based on the definition of “majority” in the statute and the Bylaws, neither candidate in the run-off received a majority. Furthermore, it is the finding of the Arbitrator that the live run-off may have deprived those voting by proxy to vote, if their proxy vote was for Jason.
- e. The Bylaws state that Business and Special Meetings of the Membership shall be conducted by Roberts Rules of Order. It is the finding of the Arbitrator that under the Bylaws, voting is required to be performed by paper ballots and Roberts Rules of Order regarding voting are not controlling because they only govern the conduct of the meetings only, and not the voting procedure itself.
- f. Langley argues in his position paper that Eller’s withdrawal from the election is controlling on this issue. Eller acknowledges in her position paper that she conceded the election directly to Langley based on the announced count. The draft of the Minutes of the Great Works Meeting at Samhain 2005, dated October 23, 2005, with the addendum based on the October 30, 2005 recount (the “Meeting Minutes”) show no less than 7 different tallies of votes, none of which are conclusive based on the applicable definition of “majority.” The Meeting Minutes also contain the following statement: “Maeven declared that she was withdrawing her candidacy for Executive Director, 2006. Maeven was given a standing ovation. Bran spoke briefly, stating that he honored Maeven for her service and the he would endeavor to serve CMA to

the best of his ability as Executive Director in 2005.” A copy of the Meeting Minutes is attached hereto as Exhibit A. Neither of the complainants object to the approval of the Meeting Minutes in the form attached hereto as Exhibit A.

- g. Eller’s withdrawal from the election and concession of the election to Langley, whether based on mistake of fact or law regarding the validity of the election, is controlling as to her candidacy at that election. Although Eller’s withdrawal was based on misinformation she received regarding proper procedures to handle the discrepancy in the tallies, it is clear from the statements contained in the Meeting Minutes and her position paper that her withdrawal from the election was motivated by her desire to put the long term benefits and needs of CMA above her personal candidacy for Executive Director. Eller’s withdrawal from the election was a signal to her supporters that, as a leader of CMA and former Executive Director, she wanted CMA to move forward with Langley as its Executive Director. Eller’s withdrawal was effective to remove her from that race when she announced it.
4. In conclusion, the effect of Eller’s withdrawal from the election left Langley with somewhere between 87 and 94 votes (according to the 5 counters of paper ballots) out of a total of somewhere between 201 and 213 votes (also according to the 5 counters of paper ballots). By any count, the votes in favor of Langley were insufficient to elect him as Executive Director based on the requirement that the newly elected Executive Director must receive a “majority” as that term is defined. If the withdrawal of Eller had left Langley unopposed, the efficacy of the election of an unopposed candidate who does not receive a majority vote would be at issue, however, that issue is not before me because the withdrawal of Eller did not leave Langley unopposed because Jason was still in the race. Therefore, Eller’s withdrawal does not render Langley victorious in the race because Langley did not receive a “majority” as defined in the Bylaws and by statute in a contested race. Therefore, election for the 2006 Executive Director did not result in a winner, and a new election must be held.

DECISION RENDERED this 17th day of November 2005.



David M. Gottfried
Arbitrator