

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

ROBBINS HOSE COMPANY )  
NO. 1, INC., )  
 )  
Plaintiff, )  
 )  
v. ) Civil Action No. 2247-VCP  
 )  
EDWIN BAKER, JR., individually, )  
and KENNETH E. CLENDANIEL, )  
WILLIAM R. CARROW II, and )  
BRIAN S. BULLOCK, individually )  
and d/b/a THE BOARD OF APPEALS )  
IN THE MATTER OF )  
EDWIN BAKER, JR., )  
 )  
Defendants. )

**MEMORANDUM OPINION**

Submitted: July 12, 2007  
Decided: October 31, 2007

Barry M. Willoughby, Esquire, Mary F. Dugan, Esquire, YOUNG CONAWAY STARGATT & TAYLOR, LLP, Wilmington, Delaware, *Attorneys for Plaintiff*

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William R. Carrow II, *Pro Se Defendant*

Brian S. Bullock, *Pro Se Defendant*

**PARSONS, Vice Chancellor.**

Robbins Hose Company No. 1 seeks judgment on the pleadings on its complaint to void the decision of the Appeal Board and reinstate the Trial Board's decision in Robbins Hose's disciplinary action against Defendant Edwin Baker, Jr. Baker cross moves for judgment on the pleadings to uphold the decision of the Appeal Board.

After reviewing the record, I conclude the Appeal Board acted beyond the scope of its authority under the Robbins Hose By-Laws when it made credibility determinations, weighed evidence, and reached its own interpretation of the facts. I therefore conclude that the Appeal Board's decision is void. Defendant Baker shall have the option to appeal the Trial Board's decision again in accordance with the By-Laws.

## **I. BACKGROUND**

### **A. The Parties**

Plaintiff, Robbins Hose Company, No. 1, Inc. ("Robbins Hose"), is a volunteer fire company providing fire suppression services to the City of Dover and vicinity.<sup>1</sup> It is incorporated in, and has its principal place of business in, Delaware. Robbins Hose adopted its Constitution and By-Laws on December 11, 1882 and last amended them on May 3, 2004.

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<sup>1</sup> The facts recited in this memorandum opinion are undisputed. They are drawn from the pleadings and documents effectively incorporated by reference in them – namely, the complaint, answer and counterclaim, reply, and the documents relied upon in those pleadings. Those documents include the Robbins Hose Constitution and By-Laws, the findings of the Trial Board and the findings of the Appeal Board.

Defendant Edwin Baker, Jr., a resident of Dover, Delaware, is a Life member of Robbins Hose.<sup>2</sup> During his 46 years of service to Robbins Hose, Baker served as Fire Chief three times. Defendants Brian S. Bullock (Fire Chief of the Carlisle Fire Company in Milford, Delaware), William R. Carrow II (President of the Clayton Fire Company in Clayton, Delaware), and Kenneth S. Clendaniel (President of the Cheswold Volunteer Fire Company in Cheswold, Delaware) served on the Appeal Board convened in the matter of Baker.<sup>3</sup> They were appointed and served in this capacity pursuant to Article XX, § 8 of the Robbins Hose By-Laws.

### **B. The Company's By-Laws**

Robbins Hose charged Baker under Article XVIII, § 8-8 of the By-Laws, among other things. Article XVIII, § 8-8 of the By-Laws provides:

All members shall at all times conduct themselves in such a manner so as to not bring disrespect or ill will upon the Company or its membership. Members whose conduct, at any time or place, is unbecoming to the Company, or who otherwise violates the By-Laws or other rules or regulations of the Company or the Fire Department; shall be subject to the provision of these By-Laws, pertaining to disciplinary action, up to and including expulsion from membership.

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<sup>2</sup> The By-Laws provide in Art. XVIII, § 5 that members shall be nominated for Life membership following five years of Active membership and completion of courses in basic, structural, hazmat and vehicle rescue from the Delaware State Fire School, or equivalent courses. A copy of the By-Laws of the Robbins Hose Company No. 1, Inc. ("By-Laws") is attached as Ex. A to Pl.'s Opening Br. in Supp. of its Mot. for J. on the Pleadings ("POB").

<sup>3</sup> This board is referred to in various ways in the record. The Court uses "Appeal Board" throughout this opinion to be consistent with Art. XX, § 8 of the Robbins Hose By-Laws. Defendants Bullock, Carrow and Clendaniel filed no briefs or motions in this matter.

Article XX of the By-Laws addresses disciplinary procedures. Following the investigation of an allegation, the Fire Chief or President, as appropriate, may convene a five-member Trial Board in accordance with Article XX, § 6. The By-Laws require that the accused member be given adequate written notice of the Trial Board, and provide that the accused member may be represented by counsel and may testify and cross-examine witnesses. “Upon a showing that substantial evidence exists to believe violation has occurred and the accused member committed the violation, the Trial Board shall recommend a penalty to the Fire Chief or the President, as appropriate.”<sup>4</sup> The Fire Chief shall either accept or reduce the Trial Board’s recommendation and impose any penalty on the member.<sup>5</sup> Under Article XX, § 8, the accused member may appeal the Trial Board’s decision.<sup>6</sup>

## II. FACTS

Robbins Hose accused Baker of violations under Article VII, § 1 of the Company Constitution and Article XVIII, § 8-8 of its By-Laws in connection with his involvement with Robin Christiansen in transporting and storing a 1937 Seagraves ladder truck (the “Ladder Truck”) obtained from the Chesapeake Fire Museum.<sup>7</sup> The Ladder Truck is a

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<sup>4</sup> By-Laws, Art. XX, § 6.

<sup>5</sup> *Id.* § 7.

<sup>6</sup> *Id.* § 8.

<sup>7</sup> Christiansen is not a party to this action. Baker, however, is accused of working with Christiansen to acquire the Ladder Truck. At the time the Ladder Truck was acquired from the museum, Christiansen was suspended from membership in Robbins Hose. By the time of the Trial Board hearing, Christiansen had been expelled from Robbins Hose.

significant piece of Robbins Hose service history that had been on display at the museum for over nine years.<sup>8</sup> The Trial Board ruled that substantial evidence existed to find that Baker had violated the provisions under which he was charged and recommended that he be expelled from Robbins Hose. The Robbins Hose President notified Baker that he had reviewed the Trial Board's findings and concurred in its recommendation. After Baker appealed, Robbins Hose convened an Appeal Board in accordance with Article XX, § 8 of the By-Laws. The Appeal Board reversed the Trial Board and recommended Baker's reinstatement.<sup>9</sup> Robbins Hose later commenced this action claiming the Appeal Board acted outside the scope of its authority under Article XX, § 8 of the By-Laws.

#### **A. The Trial Board's Findings**

On December 17, 2005, the Trial Board conducted a hearing at which Baker's counsel cross-examined Robbins Hose's witnesses and called Baker and Christiansen to testify. On December 22, 2005, in a unanimous decision, the Trial Board found that "substantial evidence" existed that Baker violated the "breach of trust" and "improper conduct" provisions of Article VII, § 1 of the Robbins Hose Constitution.<sup>10</sup> The Trial Board found that Baker breached the Fire Company's trust by failing to notify Robbins Hose that the Ladder Truck was in the possession of an expelled member. Although Baker denied any responsibility for the Ladder Truck and claimed he acted only as a

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<sup>8</sup> Trial Board Findings and Recommendations in the Matter of Edwin Baker, Jr., Dec. 22, 2005 ("Tr. Bd.") at 2.

<sup>9</sup> Findings of the Board of Appeals in the Matter of Edwin Baker, Jr. ("App. Bd.") at 4.

<sup>10</sup> Tr. Bd. at 1-3.

friend of Christiansen, the Trial Board did not find this part of his testimony credible.<sup>11</sup> In addition, relying on the testimony of three witnesses associated with the museum who said they thought Baker was representing Robbins Hose, the Trial Board found “the manner in which [Baker] represented himself to the Fire Museum was improper.”<sup>12</sup>

The Trial Board also found that Baker brought “ill will upon the Company and it’s [sic] membership” in violation of Article XVIII, § 8-8 of the By-Laws.<sup>13</sup> Noting the importance of properly storing the Ladder Truck, the Trial Board found Baker’s storage of the Ladder Truck on his property for months to be inappropriate. The Trial Board rejected Baker’s explanation that he viewed the Ladder Truck as a nuisance, because he acknowledged the importance of storing it properly, but never contacted Robbins Hose regarding the Ladder Truck or its storage.<sup>14</sup> Testimony from those associated with the Fire Museum indicated they were upset about the storage conditions of the Ladder Truck, and “felt taken advantage of and . . . disappointed in how the transaction with the Ladder Truck was handled.”<sup>15</sup> The Trial Board thus found that “[t]his whole incident and the manner in which the Accused handled the Ladder Truck brought ill will upon not only the Fire Company but also its membership.”<sup>16</sup>

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<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> Tr. Bd. at 1-2.

<sup>14</sup> *Id.* at 2-3.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* at 4.

In its conclusion, the Trial Board stated that while the By-Laws required a “substantial evidence” standard of proof, “the evidence presented could also support a finding of guilt upon the standard ‘preponderance of the evidence.’”<sup>17</sup> The President of Robbins Hose concurred in the Trial Board’s decision and so notified Baker on December 28, 2005.

### **B. The Appeal Board’s Decision**

In accordance with Article XX, § 8 of the By-Laws, Baker appealed the Trial Board’s decision. Robbins Hose appointed an Appeal Board consisting of one Chief and two Presidents (Defendants Clendaniel, Bullock, and Carrow) from other fire companies in Kent County. The Appeal Board met on April 18 and 19, 2006, and spent over eleven hours reviewing the record of the Trial Board.

On May 8, 2006, the Appeal Board unanimously reversed the Trial Board’s decision, finding that Baker should be reinstated to the membership. The Appeal Board determined that Baker brought no ill will or disrespect toward Robbins Hose and that Christiansen “was the subject of focus in obtaining the Ladder Truck rather than [Baker].”<sup>18</sup> In reaching its conclusion, the Appeal Board determined that Robbins Hose

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<sup>17</sup> *Id.* The United States Supreme Court’s definition of “substantial evidence” is “more than a mere scintilla” or “such relevant evidence as a reasonable person might accept as adequate to support a conclusion.” POB at 9, quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971). A preponderance of the evidence is the side on which “the greater weight of the evidence” is found. *Taylor v. State*, 2000 WL 313501, at \*2 (Del. Feb. 23, 2000), quoting *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del. 1967).

<sup>18</sup> App. Bd. at 2.

failed to prove Baker contacted the museum on numerous occasions and discounted the testimony of a witness from the Fire Museum based on discrepancies between her deposition and hearing testimony regarding phone calls from Baker and Christiansen. The Appeal Board also stated that it was “plausible that the [Museum] assumed that the accused was representing [Robbins Hose], but there is a lack of evidence to support the theory that Mr. Baker ever identified himself as representative of [Robbins Hose].”<sup>19</sup>

Regarding the Trial Board’s finding that Baker improperly stored the Ladder Truck outside on his property, the Appeal Board favorably characterized Baker’s conduct as demonstrating only that he made no attempt to conceal the truck. Citing Baker’s testimony about his efforts to shelter the truck, the Appeal Board suggested that Baker did the best he could to protect the Ladder Truck. The Appeal Board further found that Christiansen, not Baker, was responsible for finding suitable storage for the Ladder Truck. In addition, the Appeal Board determined that Baker had no obligation to inform Robbins Hose about the Ladder Truck because Robbins Hose had “no lawful control over [it]” and noted Baker never interfered with Robbins Hose’s efforts to obtain the Ladder Truck.<sup>20</sup> Based on these determinations, the Appeal Board concluded that Robbins Hose had not proven a breach of trust by Baker.

Besides finding this and other errors in the Trial Board’s verdict, the Appeal Board determined that the Trial Board committed “gross error” in the disciplinary action it

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<sup>19</sup> *Id.*

<sup>20</sup> App. Bd. at 3-4.

recommended. In light of Baker's dedication and years of service to Robbins Hose, the Appeal Board described the disciplinary action taken against Baker as "appalling" and recommended that Baker be returned to full membership.

### **III. CONTENTIONS OF THE PARTIES**

Robbins Hose asks this Court to declare that: the Appeal Board did not act within its mandate under Article XX, § 8 of the By-Laws; the Appeal Board's decision is void; and the Trial Board's decision stands. According to Robbins Hose, the Appeal Board conducted a plenary review in contravention of § 8 and based its decision on its own findings of fact.

Baker responds that the Appeal Board's decision is valid and claims he is entitled to all rights and privileges of a Life member of Robbins Hose. He contends that the Appeal Board acted within the scope of its authority when it found the elements of the charges not proven and the discipline imposed "appalling." Baker argues that, based on the instruction from the Fire Company's attorney as to its obligations, the Appeal Board conducted a review of the "secured evidence provided to the Board with no outside influencing factors."<sup>21</sup> Furthermore, according to Baker, the mention of facts within the Appeal Board's decision does not necessarily mean they conducted a plenary review. Finally, Baker contends that under the By-Laws the decision of the Appeal Board is binding.

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<sup>21</sup> Def. Baker's Answering Br. in Opp'n to Pl.'s Mot. for J. on the Pleadings and Br. in Supp. of His Mot. for J. on the Pleadings ("DAB") at 2.

## **IV. ANALYSIS**

### **A. Jurisdiction**

Robbins Hose, a Delaware corporation, seeks injunctive relief and alleges that the Appeal Board acted beyond its authority under the Robbins Hose By-Laws when it reversed the Trial Board's decision. Thus, Robbins Hose claims that the Appeal Board breached its duty to comply with Article XX, § 8 of the By-Laws in reaching its decision. Because the complaint asks this Court to decide whether the Appeal Board's actions were *ultra vires*, it raises a question of corporate governance within the Court's jurisdiction.<sup>22</sup>

Robbins Hose has moved for judgment on the pleadings under Court of Chancery Rule 12(c). Rule 12(c) states, "after the pleadings are closed but within such time as to not delay the trial, any party may move for judgment on the pleadings." A motion on the pleadings may be granted only when the court finds no dispute as to any material fact and that the moving party would be entitled to judgment as a matter of law, after taking all inferences in the light most favorable to the nonmoving party.<sup>23</sup>

### **B. Conduct of the Hearings**

There is no dispute that Robbins Hose properly convened the Appeal Board or that its members were fairly selected and impartial. The Appeal Board stated that it based its

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<sup>22</sup> *Haas v. Indian River Vol. Fire Co.*, 2000 WL 1336730, at \*10-11 (Del. Ch. Aug. 14, 2000), *aff'd*, 758 A.2d 469 (Del. 2001) (stating that jurisdiction over questions of corporate governance involving an incorporated fire company exists when the complaint concerns a breach of duty to comply with the company's rules).

<sup>23</sup> *See Desert Equities, Inc. v. Morgan Stanley Leveraged Equity Fund*, 624 A.2d 1199, 1205 (Del. Ch. 1993).

decision on the secured evidence and that there were no outside influencing factors. Before the Appeal Board began its deliberations, Timothy P. Mullaney, Sr., Esquire, instructed it on its charge.<sup>24</sup> The Appeal Board described its decision as the product of “thorough debate and deliberation.”<sup>25</sup> Article XX, § 8 of the By-Laws provides little guidance regarding the conduct of the Appeal Board’s review other than to state that “[t]he Appeal Board may not reverse the findings of the Trial Board or the discipline imposed except upon a showing of *gross error of Law* or *inconsistent application of discipline.*”<sup>26</sup> Other than the question of whether the Appeal Board adhered to that mandate, there is no dispute that Robbins Hose and the Appeal Board both made good faith efforts to ensure that Baker was afforded a full and fair opportunity to appeal as provided for in the By-Laws. No issues have been raised regarding the process afforded to Baker by either the Trial Board or the Appeal Board, other than as to the standard applied by the Appeal Board.

### **C. The Appeal Board’s Mandate**

The question is whether the Appeal Board acted outside its authority under Article XX, § 8 in reaching its decision. That is, did the Appeal Board limit the scope of its review to gross error of law and inconsistent application of discipline, as the By-Laws require?

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<sup>24</sup> *Id.* at 1. During argument, Defendants’ counsel referred to Mullaney as an attorney for Robbins Hose. Tr. at 17.

<sup>25</sup> App. Bd. at 4.

<sup>26</sup> By-Laws, Art. XX, § 8 (emphasis added).

In the absence of a definition of “gross error of law” in the By-Laws, Robbins Hose urges adoption of the legal dictionary definition of “mistake of law,” which is “a mistake about the legal effect of a known fact or situation.”<sup>27</sup> In this situation, such an error might arise from a misunderstanding by the Trial Board of the legal requirements to demonstrate the existence of a violation of the Robbins Hose Constitution or By-Laws, a failure of the Trial Board to act in conformity with its charge under the By-Laws or a situation in which, based on the record before the Trial Board, no reasonable fact finder could have concluded a violation of the Constitution or By-Laws had been proven. The fact that the standard in the By-Laws is “*gross error of law*” further suggests any such mistake would have to be at least material and, perhaps even as Baker argues, “obvious and significant.”<sup>28</sup>

Read as a whole, the By-Laws show a clear intent that the factual findings of the Trial Board be accorded deference. Article XX, § 7 permits the Fire Chief or President to reduce the discipline recommended by the Trial Board, *but not* to reverse the Trial Board’s findings of fact or conclusions of law. The use of the term “gross error of law” in Article XX, § 8 relating to the Appeal Board, when juxtaposed with §7 of the same Article of the By-Laws indicates an intent to limit the Appeal Board’s authority to review findings of fact. The standard is analogous to that used by a court reviewing a lower court’s decision for an error of law. If substantial evidence supports a finding of fact and

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<sup>27</sup> POB at 10-11, quoting Black’s LAW DICTIONARY 1023 (8<sup>th</sup> ed. 2004).

<sup>28</sup> DAB at 7; Tr. at 19.

there is no abuse of discretion, the court must accept that ruling, “as it must not make its own factual conclusions, weigh evidence, or make credibility determinations.”<sup>29</sup>

Here, the Appeal Board’s role in reviewing the Trial Board’s decision under the “gross error of law” standard referred to in Article XX, § 8 is to determine if the Trial Board misapplied applicable law or based its decision on findings of fact that are not supported by the record.<sup>30</sup> The Appeal Board did not have the authority to reverse the Trial Board simply because it interpreted the facts differently or reached different conclusions based on those facts.<sup>31</sup> Had the Appeal Board concluded that no reasonable fact finder could have found a violation on the record presented to the Trial Board, however, that would have supported a holding that the Trial Board committed a gross error of law.

#### **D. The Appeal Board Gave Insufficient Deference to the Trial Board’s Findings**

Baker faced three charges: breach of trust, improper conduct, and ill will. The Appeal Board stated in its decision that it found “gross error related to the verdict,” and felt “the elements of the charges were not met in conjunction with the by-laws of the

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<sup>29</sup> *Trader v. Wilson*, 2002 WL 499888, at \*3 (Del. Super. Ct. Feb. 1, 2002) (citations omitted) (discussing the standard of review for a mixed question of fact and law and noting that the court reviews errors of law de novo, but is “bound by findings of fact made by the Court of Common Pleas which are supported by the record and which are the product of a logical and deductive process”).

<sup>30</sup> The By-Laws also authorize the Appeal Board to reverse the Trial Board upon a showing of “inconsistent application of discipline.” That standard of review is discussed in Part IV, § E *infra*.

<sup>31</sup> *See Trader*, 2002 WL 499888, at \*3 (citations omitted).

Dover Fire Department.”<sup>32</sup> The Appeal Board, however, did not identify the gross error of law as to any of these charges, nor did it review the elements of the violations charged based on the facts as found by the Trial Board. Instead, despite reciting the applicable standard of review, the Appeal Board substituted its own findings of fact and credibility.

Baker contends that the fact that the Appeal Board mentions facts in its decision does not show that it conducted a plenary review. In the abstract, that is correct. To resolve the parties’ dispute, however, this Court must compare the decision of the Appeal Board with that of the Trial Board to determine whether, as to each of the violations found and the discipline imposed, the Appeal Board exceeded its mandate, as Robbins Hose alleges.

#### **1. Breach of trust**

The Trial Board found a breach of trust and improper conduct based on Baker’s efforts along with a suspended member of Robbins Hose to acquire for themselves personally a Ladder Truck that Robbins Hose considered an important part of its history. According to the Trial Board, Baker clearly understood the importance both of the Ladder Truck to fire service history and of properly storing it. The Board determined that Baker, as a Life member, breached a relationship of trust by not advising Robbins Hose that the Ladder Truck was in private hands or improperly stored.<sup>33</sup> The Trial Board

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<sup>32</sup> App. Bd. at 4.

<sup>33</sup> Tr. Bd. at 2 (“For [Baker], a Past (three time) Fire Chief, to disregard that an important piece of Robbins Hose Fire Company history was in the hands [sic] of a person who had been expelled from the Fire Company was a breach of trust towards the Fire Company.”).

found that Baker was a responsible party and had significant involvement in the moving and storage of the Ladder Truck.<sup>34</sup> Noting that it found Baker and Christiansen’s testimony not credible, the Trial Board stated that:

[Baker’s] defense to not notifying the Fire Company was that he had no responsibility in regards to the Ladder Truck and his only involvement was as a friend to Christiansen. The Trial Board did not think this . . . credible. . . . From the testimony, it appears [Baker] had the largest financial stake in the Ladder Truck, despite his testimony of not being responsible.<sup>35</sup>

The Appeal Board reached the opposite conclusion, but gave no deference to the factual findings of the Trial Board. For example, the Appeal Board disregarded the Trial Board’s credibility finding when it said, “it is the determination of the Board of Appeals that Mr. Robin Christiansen . . . orchestrated the whole deal to obtain the Ladder Truck.”<sup>36</sup> Yet, the Appeal Board’s decision contains no suggestion that it concluded there was no substantial evidence to support the Trial Board’s findings that Baker shared responsibility for that transaction. Further, the Appeal Board stated that it “felt the accused had no obligation to inform the Dover Fire Department about the truck because the Dover Fire Department had no lawful control over [the Ladder Truck].”<sup>37</sup> The import of this observation in the context of the Appeal Board’s responsibility is unclear. The Trial Board did not base its finding of breach of trust on legal ownership of the Ladder

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<sup>34</sup> Tr. Bd. at 2.

<sup>35</sup> *Id.*

<sup>36</sup> App. Bd. at 1.

<sup>37</sup> App. Bd. at 1, 3.

Truck. Rather, the Trial Board recognized a trust relationship between Robbins Hose and a Life member in relation to the Ladder Truck, which Baker understood was important to the history of the Fire Company. The Appeal Board’s contrary assessment relied, at least in part, on its determination that Christiansen arranged the deal. In dismissing the breach of trust charge, the Appeal Board reached a different conclusion regarding Baker’s obligation to inform, but made no showing of an error of law, let alone a gross error.

## **2. Improper conduct**

The Trial Board found the manner in which Baker dealt with the Fire Museum was improper. Baker, as a Life member and three-time Chief in a small community, through his failure to tell museum personnel he was acting in his individual capacity, permitted them to draw a reasonable inference, in the opinion of the Trial Board, that he was acting on behalf of Robbins Hose. The Trial Board found “[t]he testimony of the three witnesses from the Fire Museum clearly indicated that they thought [Baker] was representing Robbins Hose Fire Company.”<sup>38</sup> In its report, the Appeal Board finds there was insufficient evidence to show that Baker affirmatively stated he was representing Robbins Hose. Yet, the Trial Board never found that Baker made such a representation. Moreover, the Appeal Board determined there was a lack of evidence that “Mr. Baker

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<sup>38</sup> Tr. Bd. at 3.

had contacted Chesapeake Fire Museum on numerous occasions.”<sup>39</sup> In that regard, the Appeal Board questioned the credibility of one of the Fire Museum witnesses.<sup>40</sup>

The Appeal Board did not articulate, however, its view of the necessary elements of the “improper conduct” offense. The Board did not assert for example, that absent an affirmative misrepresentation by Baker, he could not be guilty of improper conduct as a matter of law. Rather, based on its own interpretation of the testimony, including its own findings of credibility, the Appeal Board determined it was plausible that the museum witnesses merely assumed Baker was representing Robbins Hose.<sup>41</sup> The Appeal Board decision could be read to imply that Baker’s silence about his capacity in the circumstances could not constitute improper conduct. As a legal proposition, I consider such a position questionable. Even assuming that it might be correct, however, the Appeal Board failed to relate its presumptive conclusion to the required gross error of law standard of review. Thus, the Appeal Board exceeded its authority under the By-Laws.

### **3. Ill will**

The Trial Board found that the storage and treatment of the Ladder Truck, combined with the impression created in the minds of outsiders that Baker represented Robbins Hose, brought ill will upon the Fire Company.<sup>42</sup> The Appeal Board reached a

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<sup>39</sup> App. Bd. at 2.

<sup>40</sup> The Appeal Board specifically questioned the credibility of Mr. Black, observing that his mental state was questionable following a cerebro-vascular-accident. App. Bd. at 2.

<sup>41</sup> *Id.* at 1-2.

<sup>42</sup> Tr. Bd. at 2-3.

different conclusion stating: “The Board of Appeals suggests Mr. Baker exercised the best means possible at his current disposal to help protect the Ladder Truck . . . . The Board of Appeals ultimately determined it was Mr. Christiansen’s responsibility to acquire a more suitable location to store the Ladder Truck.”<sup>43</sup> Responsibility in this instance is a determination of fact or a mixed question of fact and law. The Trial Board found Baker to be responsible for acquiring and storing the truck based on its assessment of the facts and the credibility of Baker and Christiansen. Rather than accepting this finding of fact by the Trial Board, the Appeal Board made its own findings of credibility and fact, and on that basis concluded Christiansen was responsible. On that premise, the Appeal Board “determine[d] that Mr. Baker brought no ill will or disrespect toward the Dover Fire Department.”<sup>44</sup> The Appeal Board, however, failed to articulate any ground for concluding that the Trial Board made a gross error of law in regard to the charge of ill will.

#### **E. Inconsistent Application of Discipline**

In two conclusory paragraphs, the Appeal Board also determined that Robbins Hose displayed gross error in the disciplinary action they imposed on Baker. Article XX, § 8 authorizes the Appeal Board to reverse the Trial Board if it finds “inconsistent application of discipline,” but does not define that phrase.<sup>45</sup> Robbins Hose assumes the

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<sup>43</sup> App. Bd. at 3.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> By-Laws, Article XX, § 8.

provision means discipline inconsistent with what others received.<sup>46</sup> The phrase also plausibly could mean discipline that is inconsistent with the nature of the charges or the years of service rendered by the accused member.<sup>47</sup>

Based upon improper determinations of fact and credibility, the Appeal Board assessed the propriety of Baker's conduct much differently from the Trial Board. While the Appeal Board found the discipline imposed to be "appalling" given Baker's years of service, it is reasonable to infer that the Appeal Board based that conclusion, at least in part, on its determination that Christiansen, not Baker, was ultimately responsible for any misconduct that occurred. Thus, I hold that the Appeal Board's determination to reverse the Trial Board for inconsistent application of discipline more likely than not is the product of the Appeal Board's unauthorized determination upon a plenary review that Baker had not committed any violation of Robbins Hose's Constitution and By-Laws. Accordingly, the Appeal Board's conclusion of inconsistent discipline is tainted, at best, by their conclusions on the merits of the charges against Baker, and provides no basis to sustain the Board's reversal of the Trial Board's decision.

#### **F. Appeal Board's Actions Are Void**

Under the By-Laws, the Appeal Board could reverse the Trial Board only on a showing of "gross error of law" or "inconsistent application of discipline." For the

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<sup>46</sup> Tr. at 11.

<sup>47</sup> The Appeal Board's decision suggests they interpreted "inconsistent" in this manner when it states: "The disciplinary action taken against the accused is appalling, taking into consideration his dedication to the Dover Fire Department and in respect to the years of service this member provided." App. Bd. at 4.

reasons stated, this Court concludes that the Appeal Board failed to adhere to those limitations on its authority. Instead, the Board made its own findings of the facts and of credibility and substituted its own judgment on the merits of Robbins Hose’s charges for that of the Trial Board. Because the Appeal Board acted beyond the scope of the By-Laws in reversing the Trial Board, its May 8, 2006 decision is void.

This Court does not concur, however, with Robbins Hose’s request that the Appeal Board be ordered to affirm the Trial Board’s findings. “[I]ssues of whether rules have been violated and whether a member of a volunteer fire company is guilty of conduct warranting investigation and punishment are ‘decisions eminently fit’ for the organization to determine.”<sup>48</sup> Having found the Appeal Board acted beyond the authority granted in the By-Laws, this Court will not substitute its judgment as to the Trial Board’s findings for that of a properly functioning Appeal Board. Because the Appeal Board’s acts were *ultra vires*, and therefore void, it is as though those acts never happened.<sup>49</sup> Therefore, Baker remains entitled to an appeal under the By-Laws.

## V. CONCLUSION

For the foregoing reasons, Plaintiff’s motion for judgment on the pleadings on its claim that the May 8, 2006 Appeal Board decision is void is GRANTED, but its request

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<sup>48</sup> *Haas*, 2000 WL 1336730, at \*12 (citations omitted).

<sup>49</sup> *Ultra vires* acts include “acts specifically prohibited by the corporation’s charter, for which no implicit authority may be rationally surmised, or those acts contrary to basic principles of fiduciary law.” *Solomon v. Armstrong*, 747 A.2d 1098, 1114 (Del. Ch. 1999) (emphasis added). Void acts, including those that are *ultra vires*, “are legal nullities incapable of cure.” *Apple Computer, Inc. v. Exponential Tech., Inc.*, 1999 WL 39547, at \*15 (Del. Ch. Jan. 21, 1999).

that the Court order the Appeal Board to affirm the Trial Board's decision is DENIED. Defendant Baker's motion for judgment on the pleadings that the Appeal Board's decision is valid is DENIED. Plaintiff's request for costs and expenses, to the extent it seeks attorney's fees, is DENIED.

**IT IS SO ORDERED.**