"Refusal To Acquiesce" To Director's Removal Results In Multimillion Dollar Damage Award

Friday, June 25, 2021

A recent holding by the Second District Court of Appeal is a cautionary tale for directors who fail to acquiesce to a director's removal from the board. Association for Los Angeles Deputy Sheriffs v. Macias, 63 Cal. App. 5th 1007 (2021). The case arose when the board of directors of the Association for Los Angeles Deputy Sheriffs (ALADS) removed Amando Macias as its president and a director. The basis for Mr. Macias' removal was that he was no longer qualified to serve as a director. ALADS is a nonprofit mutual benefit corporation and Corporations Code Section 7221(b) authorizes the board to declare vacant the office of any director who fails to meet any required qualification that was in effect at the beginning of that director's term.

Mr. Macias and another director, however, did not "go gentle into that good night". According to the Court of Appeal, they engaged in "egregious conduct that was not in the best interests of ALADS". This conduct included creating a "shadow board" and illegally withdrawing $100,000 of ALADS' funds to retain attorneys to assist them in advancing Mr. Macias' claims. The Court of Appeal found that these and other acts by the two defendants violated their fiduciary duties to ALADS. Because the Court of Appeal found that Mr. Macias' removal was valid, the Court's holding implicitly assumes that Mr. Macias continued to owe fiduciary duties after his removal. The Court of Appeal found that the defendants' breach of fiduciary duty
caused ALADS millions of dollars in damages.

Must a director simply acquiesce to his or her removal? No, the Court of Appeal suggests that a proper response to Mr. Macias' removal would have been to file an action in court. Pursuant to Corporations Code Section 7527, such an action must be filed within nine months of the removal.

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National Law Review, Volume XI, Number 176

Source URL: https://www.natlawreview.com/article/refusal-to-acquiesce-to-director-s-removal-results-multimillion-dollar-damage-0