

**PERMANENT JUDICIAL COMMISSION  
OF THE GENERAL ASSEMBLY  
PRESBYTERIAN CHURCH (U.S.A.)**

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The Session of the Rutgers	)	
Presbyterian Church, New York, NY,	)	
<b>Complainant,</b>	)	<b>DECISION ON CHALLENGE TO</b>
	)	<b>PRELIMINARY ORDER FOR</b>
v.	)	<b>DISMISSAL</b>
	)	
The Presbyterian Foundation, The	)	Remedial Case 222-08
Board of National Missions, and The	)	
Presbyterian Mission Agency,	)	
<b>Respondents.</b>	)	
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**Arrival Statement**

This is a remedial case of original jurisdiction filed with the General Assembly Permanent Judicial Commission (GAPJC or this Commission) by the Session of Rutgers Presbyterian Church, New York, NY (Complainant), against the Presbyterian Foundation, the Board of National Missions, and the Presbyterian Mission Agency (Respondents). The matter before this Commission is a Challenge to a November 13, 2015, Preliminary Order of the Executive Committee of the GAPJC (GAPJC EC) for Dismissal of the Complaint filed by the Complainant.

The GAPJC EC issued a Preliminary Order dismissing this Complaint on the grounds that the GAPJC does not have jurisdiction to hear the Complaint, the Complainant does not have standing to file the Complaint, and the Complaint does not state a claim upon which relief can be granted. With three of the four preliminary questions found in the negative, the GAPJC EC declined to reach the issue of timeliness.

Complainant's Notice of Challenge under D-6.0306 was received by the Stated Clerk of the General Assembly on December 10, 2015.

**Jurisdictional Statement**

This Commission finds that Complainant's Challenge to the Preliminary Order for Dismissal was properly and timely filed under the provisions of D-6.0306.

**Appearances**

Complainant was represented by John M. Griem, Jr.; the Presbyterian Foundation and the Board of National Missions were represented by Richard H.C. Clay; and the Presbyterian Mission Agency was represented by James A. Wilson.

## History

The Jarvie Trust Agreement (Trust) was established in 1934 between The Jarvie Commonweal Fund (Jarvie Fund), a not-for-profit corporation formed to provide relief to older Protestants residing within fifty miles of New York City, and the Board of National Missions of the Presbyterian Church in the United States of America (BNM). The Jarvie Commonweal Service (Jarvie Service) was an operation supported solely by the Jarvie Fund. The BNM entered into an agreement with the Presbyterian Foundation (Foundation) to provide asset management of the Jarvie Fund. In accordance with the Trust, the BNM assumed oversight of the Jarvie Commonweal Service Committee (Jarvie Committee) and the BNM retained fiduciary responsibility. In 2009, the BNM and the Presbyterian Church (U.S.A.) entered into a letter agreement in which their respective roles were defined, including the roles for staffing and administrative services for the Jarvie Service.

In November 2013, the Presbyterian Mission Agency (PMA), for the Presbyterian Church (U.S.A.), informed the BNM that it would not renew the letter agreement to provide staffing and administrative services for the Jarvie Service, as this program was no longer aligned with the mission and work of the PMA. The PMA granted the BNM additional transition time to make new arrangements for staffing.

On May 14, 2015, BNM and PMA officials met with the Jarvie Service Executive Director and Assistant Director, informed them of the transition plans to a new third-party provider for the Jarvie Service and that their employer, the PMA, would no longer provide Jarvie Service staff. In a letter dated May 27, 2015, the Jarvie Committee notified the Jarvie Service beneficiaries of the transition and that it would take place over the next month and be fully completed by July 1, 2015.

The Complaint dated September 14, 2015, alleged various irregularities on the part of the Respondents, including eliminating the Director and staff of the Jarvie Service, outsourcing the servicing of its beneficiaries, and not providing the administration of its grant-making program and other functions. Complainant particularly points to the language of paragraph 2 of the Trust as a basis for its allegations:

The Board of National Missions is, to the extent of the income of the Trust Endowment, to assume all obligations, both of money and service, under present commitments of the Jarvie Commonweal Fund to its beneficiaries and, to this end, it (the Board) is to organize a Committee to be known as the James N. Jarvie Commonweal Service, and shall charge said committee with the duty of administering the commitments above assumed and of adding thereto-and continuing as outlined-herein, in fact and in spirit, the Jarvie concept of Old-Age Relief and Service.

Complainant specifically alleges the actions of the Respondents were in violation of the Respondents' fiduciary duties as providers to and servicers of the Trust, in that the Respondents' actions usurped the authority granted to the full Jarvie Committee under the Trust. The Respondents disagree.

Complainant states it has standing, in part, because its congregation is located near the center of the outreach area of the Jarvie Service, and it believes parishioners of the Rutgers Church are among the past, present or future beneficiaries of the Jarvie Service, either directly or

indirectly, as individual recipients of its grant-making program or as volunteers in support of the Jarvie Service, its grant recipients and the Jarvie Committee.

On November 13, 2015, the GAPJC EC issued a Preliminary Order for Dismissal of the Complaint stating the GAPJC did not have jurisdiction, the Complainant did not have standing, and the Complaint failed to state a claim upon which relief may be granted. Because three of the four preliminary questions were answered in the negative, the GAPJC EC did not reach the issue of timeliness.

Complainant filed a Challenge, which was received on December 10, 2015. On December 18, 2015, the GAPJC EC issued an Order accepting the Complainant's Challenge to the Preliminary Order for Dismissal.

### **Decision**

Trust agreements, including an alleged breach of fiduciary duty under such agreements, are typically interpreted under state law. Whether Respondents breached their fiduciary duties in this case rests on an interpretation of the Trust under New York law. Therefore, the Complaint does not state a claim upon which this Commission can grant relief. Consequently, it is unnecessary to reach the other preliminary questions (*See*, D-6.0306c). While a case could conceivably arise where an ecclesiastical determination of a trust provision falls within this Commission's purview, this is not such a case.

### **Order**

IT IS THEREFORE ORDERED that this case is dismissed.

IT IS FURTHER ORDERED that the Clerk of Session of Rutgers Presbyterian Church of New York, NY, report this Decision to the Session at the first meeting after receipt, that the Session enter the full Decision upon its minutes and an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the General Assembly.

### **Absences and Non-Appearances**

The Synod of the Covenant commissioner position was vacant for this proceeding.

### **Certificate**

We certify that the foregoing is a true and correct copy of the Decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Remedial Case 222-08, The Session of Rutgers Presbyterian Church, New York, NY, (Complainants) v. The Presbyterian Foundation, The Board of National Missions, and The Presbyterian Mission Agency (Respondents) made and announced at Louisville, KY, this 9th day of April, 2016.

Dated this 9th day of April, 2016.