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

Sylvia Kuzmak	)	
	)	
Appellant,	)	**DECISION AND ORDER**
	)	
v.	)	Remedial Case 222-07
	)	
The Session of the First Presbyterian Church at Red Bank, New Jersey	)	
	)	
Appellee.	)	

Arrival Statement

This remedial case comes before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) on appeal filed by Sylvia Kuzmak (Appellant), from a May 19, 2015, Decision of the Permanent Judicial Commission of the Synod of the Northeast (SPJC). The Notice of Appeal was received by the Stated Clerk of the General Assembly on July 15, 2015.

Jurisdictional Statement

This Commission finds that it has jurisdiction, that Appellant has standing to file the Appeal, that the Appeal was properly and timely filed, and that the Appeal states one or more grounds for appeal under D-8.0105.

Appearances

Appellant was present and was not represented by counsel. The Committee of Counsel for Session of the First Presbyterian Church at Red Bank, New Jersey (Appellee or Session), was represented by Kimberly Tsimbinos.

History

Appellant filed a complaint with Monmouth Presbytery (Presbytery) on November 18, 2013, alleging that the Session, at its August 20, 2013, meeting and in a letter to Appellant dated August 21, 2013, "did fail to take adequate corrective action to problems identified by [Appellant] after the June 9 [2013] congregational meeting." The officers of the Presbytery Permanent Judicial Commission (PPJC) dismissed the Complaint on March 4, 2014, finding that the PPJC did not have jurisdiction over two of the delinquencies, Appellant had standing to file the Complaint, the Complaint was timely filed only as to some of the delinquencies, and the

Complaint failed to state a claim upon which relief could be granted. Appellant appealed this decision to the full body on March 20, 2014. After a hearing on the preliminary questions, the PPJC dismissed the Complaint on April 27, 2014, finding that the Complaint failed to state a claim upon which relief could be granted.

Appellant appealed the decision of the PPJC to the SPJC on June 27, 2014. The SPJC Moderator and Clerk answered all of the preliminary questions for appeal in the affirmative. After a hearing, the SPJC issued its Decision and Order on May 19, 2015, upholding the Decision of the PPJC that the Complaint failed to state a claim upon which relief could be granted.

Specifications of Error

There are five (5) specifications of error raised by Appellant in the Notice of Appeal to the GAPJC dated July 11, 2015, most with sub parts. This Commission has elected to repeat below the specifications of error in substantially the same language used in the Notice of Appeal.

Specification of Error No. 1: The SPJC erred in constitutional interpretation of the fourth criterion to accept a remedial case (D-6.0305), namely "the complaint states a claim upon which relief can be granted."

This specification is not sustained.

Specification of Error No. 2: Injustice in the process or decision, due to the SPJC failing to give the Appellant an opportunity to know and to respond to their grounds for dismissal of the case.

This specification is not sustained.

Specification of Error No. 3: Hastening to a decision before evidence or testimony is fully received.

This specification is not sustained.

Specification of Error No. 4: Irregularity in the proceedings concerning establishing and sharing the record.

This specification is not sustained.

Specification of Error No. 5: Injustice in the process or decision, due to the SPJC's misunderstanding and misrepresentation of the complaint and the record of the case.

This specification is not sustained.

Decision

This Commission determines that Appellant failed to state a claim upon which relief can be granted. In arriving at this conclusion, this Commission must assume the truth of all facts alleged in the complaint and then determine whether those assumed facts warrant any relief. (*See, McKittrick vs. The Session of West End Presbyterian Church of Albany, New York, Minutes*, 2003, pp. 272-274).

As this Commission previously ruled:

> Within our polity, certain responsibilities, and the power to implement those responsibilities, are assigned to councils. A council has the authority to act or not act in matters within its discretion. A delinquency may arise when a council fails to act when it is required to act under the Constitution. However, a council does not commit a delinquency when it refrains from exercising its power in discretionary matters, nor does a council commit a delinquency when it exercises its best judgment in a manner other than a member might wish.

Buck vs. The Session of Morrow Presbyterian Church, 222-02.

The disciplinary process is not suitable to resolve all issues (*See*, D-1.0103). Important operational matters often are most efficiently managed by the process of administrative review by contacting the appropriate presbytery officials (*See,* G-3.0108). Appellant conceded that Appellee responded to the issues she raised, but claimed they were not cured. Appellant does not cite any constitutional articles that the responses violated. Session's responses to Appellant's issues were within its constitutional discretion.

Appellant has failed to state a claim upon which relief can be granted. The case is dismissed and the other specifications of error are not sustained.

Order

IT IS THEREFORE ORDERED that the Decision of the Synod of the Northeast Permanent Judicial Commission is upheld and this case is dismissed for failure to state a claim upon which relief can be granted.

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

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Monmouth report this Decision and Order to the Presbytery at its first meeting after receipt, that the Presbytery enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Northeast report this Decision and Order to the Synod at its first meeting after receipt, that the Synod enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order 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 222-07, Sylvia Kuzmak, Appellant (Complainant), v. The Session of the First Presbyterian Church at Red Bank, New Jersey, Appellee (Respondent), made and announced at Louisville, KY, this 9th day of April, 2016.

Dated this 9th day of April, 2016.