

**IN THE MATTER TO THE TITLE IV PROCEEDINGS  
AGAINST THE RIGHT REVEREND J. JON BRUNO  
RESPONDENT’S HEARING BRIEF**

**INTRODUCTION**

At the hearing, the Respondent, Bishop Jon J Bruno (hereinafter “Respondent” or “Bishop”) will establish that the Church’s first charge, for violation of Title II Canon 6.3 based on his sale of property on Lido Island in Newport Beach California (hereinafter “NPB Property”) without Standing Committee approval, is unsupportable because the NPB Property was not sold. The second charge for alleged misrepresentations by the Bishop fails because the few “representations” which are provable or disprovable were not made or were believed by the Bishop to be true facts. The third charge alleges conduct unbecoming a member of the clergy based on the closure of the NPB Property after the last service, a date determined by Rev. Voorhees. The Bishop’s decision to secure the property was in accord with the canons and prudent business practices, not a canonical violation. Thus, as explained in greater detail below, the Hearing Panel should decide in favor the Bishop on all three charges.

**II. THE LAW**

Title IV, Canon 19 General Provisions, Sections 16 and 17 provide:

**There shall be a presumption that the Respondent did not commit the Offense. The standard of proof required for a Hearing Panel to find an Offense by a Respondent shall be that of clear and convincing evidence.<sup>1</sup>**

**In all matters under this Title, it shall be the burden of the Church through the Church Attorney to establish an Offense by any Respondent.**

**III. THE CHARGES**

The Church alleges that Respondent violated portions of Title IV. Canon 4: Of Standards of Conduct, Sec. 1, which provide in pertinent part:

In exercising his or her ministry, a Member of the Clergy shall:

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<sup>1</sup> See *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.*, 78 Cal.App.4<sup>th</sup> 847, 891 (2000). Clear and convincing evidence requires a finding of high probability, of proof so clear as to leave no substantial doubt, of proof sufficient to command the unhesitating assent of every reasonable mind.

(g) exercise his or her ministry in accordance with applicable provisions of the Constitution and Canons of the Church and of the Diocese, ecclesiastical licensure or commission and Community rule or bylaws;

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(h) refrain from:

(6) conduct involving dishonesty, fraud, deceit or misrepresentation;

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(8) any Conduct Unbecoming a Member of the Clergy.

#### **IV. THE ALLEGATIONS THE CHURCH MUST PROVE BY CLEAR AND CONVINCING EVIDENCE**

The Church has set forth six factual allegations, as to each they must demonstrate by clear and convincing evidence that: (1) the allegation is true and (2) is a violation of the Canons.

These six factual allegations exactly as set forth in the complaint are:

1. The Respondent failed to obtain a valid consent of the Standing Committee of the Diocese of Los Angeles to the sale of the St. James the Great real estate for worldly or common use as required by Canon II.6.3.
2. The Respondent made misrepresentations to the clergy and congregation of St. James the Great and the local community in various communications prior to May 17, 2015.
3. The Respondent misrepresented in various communications in May and June of 2015 that St. James the Great was not a sustainable congregation.
4. The Respondent misrepresented on or about June 29, 2015 that the “vicar” of St. James the Great, the Rev. Cindy Voorhees, had resigned her position as “vicar” of St. James the Great.<sup>2</sup>

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<sup>2</sup> Rev. Voorhees was not the “vicar,” as the congregation was not a mission admitted to Diocesan Convention of EDLA pursuant to EDLA Canon 2.01, but rather, was a forming congregation or preaching or mission station. As such, the title “vicar” was not formally applicable. Rev. Voorhees’s status was “priest-in-charge.” Deposition of Bishop Bruno. Her use of the term was a mere convenience to distinguish her from the status of rector of a parish. See Exhibit 3, A Theology of Mission, pp. 2-3 and 4-5.

5. On or about May 17, 2015 the Respondent misrepresented to several members of St. James the Great that the congregation could have the use of the NPB property until October 2015 under a lease back from the purchaser, and that the Diocese would provide financial assistance for the congregation during that lease-back period.
6. The Respondent acted in a manner unbecoming a member of the clergy by: (a) misleading and deceiving the clergy and people of St. James the Great and the local community as to his plans for St. James the Great; and (b) summarily taking possession of the real and personal property of St. James the Great on or about June 29, 2015.

**V. THERE IS NO EVIDENCE THAT THE BISHOP INTENDED TO VIOLATE OR IN FACT VIOLATED TITLE II CANON 6.3.**

The Church's first charge against the Bishop is he failed to "exercise his ... ministry in accordance with applicable provisions of the ... Canons of the Church and of the Diocese," specifically, Title II.6. 3, which provides: "No dedicated and consecrated Church or Chapel shall be **removed, taken down, or otherwise disposed of for any worldly or common use**, without the previous consent of the Standing Committee of the Diocese." [Emphasis added].

First, there is no factual disagreement that the church buildings on the NPB Property occupied by St. James the Great (hereinafter "SJG" or "congregation") and previously by the St. James disaffiliating parish from 1945 until 2013, have not been "**removed, taken down, or otherwise disposed of**". Because violation of Title II Canon 6.3 requires that a Church cannot be "disposed of" without the prior consent of the Standing Committee, and because in fact, the Church was not and has not been "disposed of," the Bishop cannot have violated the Canon; and for this reason, this Charge of failing to exercise his ministry in accord with the Canons must fail.

Second, it is undisputed that the Bishop entered into a contract to sell the NPB Property on April 10, 2015, and did not have approval of the Standing Committee before he signed the agreement. It is also undisputed that the Standing Committee voted unanimously to concur in the Bishop's decision to sell the property on June 8, 2015, prior to the then-expected closing date. The Church Attorney will offer testimony from 3 of 8 members of the 2009 Standing Committee perceived a "consensus" at the March 25, 2009, that none of the four properties

recovered in litigation should be sold if there were viable congregations at the sites. The minutes of that meeting, more than seven years ago, reflect no vote or discussion regarding viable congregations. Exhibit 35.

The Church Attorney argues that by signing the contract before consent of the Standing Committee, the Bishop became legally obligated to dispose of the property, and therefore should be found liable for a breach of Title II.6.3 even though no disposal ever in fact occurred, and, even though the Standing Committee concurred with the Bishop's decision before then-expected closing, after being provided with the details of the transaction as it then existed. While the 2015 Standing Committee, Chancellor, and Bishop did not believe the Bishop needed Standing Committee consent to sell a piece of property held by the Bishop in his capacity as Corp Sole, that belief is not tested by the facts of this case because the property was not sold.<sup>3</sup> As a matter of law, the Hearing Panel must find for the Bishop on this Charge the undisputed evidence shows that the Bishop did not violate Title II Canon 6.3.

## **VI. THE BISHOP WAS FORTHRIGHT REGARDING THE NPB PROPERTY AND SJG**

The Church's second charge against the Bishop is that he did not "refrain from ...conduct involving dishonesty, fraud, deceit or misrepresentation." As to this charge, the Church has made four allegations. First, The Church alleges that the Bishop made misrepresentations (1) regarding his plans for "St. James the Great" before May 17, 2015; (2) that SJG was not a "sustainable" congregation; (3) that Rev. Voorhees resigned as "vicar" of SJG; and (4) that SJG

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<sup>3</sup> The EDLA Canons, Article XXX, Canon 30.00 provides: The Bishop of this Diocese shall be the incumbent of a Corporation Sole under the laws of the State of California by the title of "The Bishop of the Protestant Episcopal Church in Los Angeles (a corporation sole)"; for the administration of such temporalities and the management of such estate and property as may be granted or in any manner committed to the Bishop for the uses, purposes, **or on behalf of this Church, that is to say, the Church known as "The National Church,"** or any Diocese, Dioceses, or other subdivisions or institutions of the said Church; or any religious, benevolent, or educational objects connected therewith. [Emphasis added]. The Articles of Incorporation of the Bishop as Corp Sole are consistent. Exhibit 203. As TEC has no "standing committee" from which to seek consent, calling the Presiding Bishop in advance of the return of the properties from the breakaway churches, was prudent. Bishop Bruno kept the Presiding Bishop informed and followed the limitations given him on sale of the properties. See Exhibit. 35, his report to the Standing Committee of his discussion with the Presiding Bishop and David Beers about disposition of the properties.

could lease back the NPB Property until October 2015 with financial assistance from the Diocese.

**A. The Bishop’s support of the SJG Congregation did not imply a promise that the NPB Property would never be sold.**

This first factual allegation to support the second charge is unconscionably broad: “the Bishop made misrepresentations to the clergy, congregation, and community before May 17, 2015” (the date he told the congregation of the pending sale). The Church Attorney’s witness statements suggest two areas of attack: the Bishop’s alleged failure to tell the congregation and the community about his willingness to sell the NPB Property; and, the Bishop’s alleged misrepresentations to Rev. Voorhees about his intent to sell the property.

On October 6, 2013, the 40-member SJG congregation was given its start at the NPB Property that formerly housed a congregation of 1,511. See Exhibit 11, SJG 2013 Parochial Report. The Church’s witnesses will testify that by starting SJG on the NPB Property after the recovery of that property from the disaffiliating parish in the prior property recovery litigation, and stating, “We look ahead to engage God’s mission locally for the days and years to come,” the Bishop implied that the property would not be sold. These witnesses also believe that it was a misrepresentation, a fraud, a lie, a deception for the Bishop to start SJG at the NPB Property and not tell them he would consider reasonable offers to buy the property.<sup>4</sup> The portion of the Bishop’s address that they quote from (published by the Diocese) was a forward-looking opinion

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<sup>4</sup> See California Civil Jury Instructions 1904. Opinions as Statements of Fact. “Ordinarily, an opinion is not considered a representation of fact. An opinion is a person’s belief that a fact exists, a statement regarding a future event, or a judgment about quality, value, authenticity, or similar matters. However, *[name of defendant]*’s opinion is considered a representation of fact if *[name of plaintiff]* proves that: (1)*[Name of defendant]* claimed to have special knowledge about the subject matter that *[name of plaintiff]* did not have;] [or]*[Name of defendant]* made a representation, not as a casual expression of belief, but in a way that declared the matter to be true;] [or]*[Name of defendant]* had a relationship of trust and confidence with *[name of plaintiff]*;] [or]*[Name of defendant]* had some other special reason to expect that *[name of plaintiff]* would rely on his or her opinion.]”

of the Bishop. It would not be actionable under any application of tort law and should not be actionable here.<sup>5</sup> It does not state any facts; it was a message of hope for the future.

The second part of the argument is that this message implied that the NPB Property would not be sold and the Bishop's failure to tell the congregation that he would consider all offers by buyers for the property, he was deceiving them by omitting facts. In order to find against the Bishop on this portion of the charges, the Hearing Panel must conclude by clear and convincing evidence that: (1) it is a misrepresentation for a bishop (as rector) not to tell a forming mission congregation of his willingness to consider offers to buy property the congregation is using with the Bishop's permission rent-free; (2) that the Bishop intended to deceive the congregation into believing it would always stay at the NPB Property by not telling them he was open to offers to buy the property; and (3) that the Bishop's failure to tell the congregation of his willingness to consider offers led them to donate money to SJG that they would never have donated.

In addition to the statements alleged by the congregation, Rev. Voorhees has alleged the Bishop failed to tell her he was intending to sell the NPB Property, and that he allegedly lied to her by telling her that he would not sell the property. Like the allegation of the congregation and community, Rev. Voorhees alleges that the Bishop's agreement to let her start the SJG congregation on the NPB Property implied to her he would not consider selling the property. After a year and a half of work as a non-stipendiary priest-in-charge at a forming congregation, she appears to have believed she had some inchoate vested right in the property as Rev. Voorhees's October 14, 2014, email to Ted Forbath and David Tumilty, the CFO and CEO of the Diocese, states:

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<sup>5</sup> See California Civil Jury Instructions 1900. Intentional Misrepresentation: “[*Name of plaintiff*] claims that [*name of defendant*] made a false representation that harmed [*him/her/it*]. To establish this claim, [*name of plaintiff*] must prove all of the following: 1. That [*name of defendant*] represented to [*name of plaintiff*] that an important fact was true; 2. That [*name of defendant*]’s representation was false; 3. That [*name of defendant*] knew that the representation was false when [*he/she*] made it, or that [*he/she*] made the representation recklessly and without regard for its truth; 4. That [*name of defendant*] intended that [*name of plaintiff*] rely on the representation; 5. That [*name of plaintiff*] reasonably relied on [*name of defendant*]’s representation; 6. That [*name of plaintiff*] was harmed; and 7. That [*name of plaintiff*]’s reliance on [*name of defendant*]’s representation was a substantial factor in causing [*his/her/ its*] harm.

John McMonigle just called the church and asked for Ted's phone number. Said he talked to Ted about the sale of the church property and had the information for him but lost his number. I know John McMonigle. Is there something I need to know? Because I am devoting my life to this parish [sic: her word] and want to know if I am wasting my time. Exhibit 21.

The implicit suggestion of the foregoing is that the Bishop somehow had a duty to inform Rev. Voorhees of each unsolicited inquiry received regarding the NPB Property. No such duty exists under either the National or the EDLA Canons. The fact is that Rev. Voorhees knew of the consistent interest and offers regarding the NPB Property and Bishop's willingness to consider them.

Rev. Voorhees also alleges that the Bishop told her (around March 17, 2015) that she did not need to worry that he would not sell the property. He is alleged to have stated this a month after he asked her which church she would sell: St. Michael & All Angels or SJG. Exhibit 295.

The Bishop disputes that a conversation occurred where he asked Rev. Voorhees to choose between the sale of either of these two church properties (one of which could not be sold as St. Michael & All Angels is a 50-year-old established parish that holds title to the property on which it is situated) or any church properties. The Bishop disputes that he told Rev. Voorhees he would not sell the NPB Property. He and additional witnesses will testify that Rev. Voorhees knew that disposition of the NPB Property was an open question, and, that he and EDLA staff were regularly receiving inquiries about and offers for the NPB Property since its recovery by EDLA.

The Hearing Panel should find that Rev. Voorhees's allegations of misrepresentations to be neither clear nor convincing.<sup>6</sup> The Panel should find these allegations inconsistent, conflicting, and contradicted. For these reasons, the burden of proof standard compels a finding

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<sup>6</sup> See *Weiner v. Fleishman*, 54 Cal.3d 476, 490 (1991). In that decision, the California Supreme Court held that if the evidence is sharply conflicting, a party fails to carry its burden of proof by the clear and convincing evidence standard.

in favor of the Bishop on the second charge with regard to the factual allegation that he made misrepresentations to the congregation, the community, and the clergy prior to May 17, 2015.<sup>7</sup>

**B. The SJG congregation was not sustainable at the NPB Property.**

The Church's third factual allegation in support of its second charge is that the Bishop misrepresented in various communications in May and June of 2015 that SJG was not a sustainable congregation. The Bishop admits that he considered SJG's lack of sustainability as one factor in his decision to accept the unsolicited \$15,000,000 offer to buy the NPB Property.<sup>8</sup> The Bishop's statement that the SJG congregation was not sustainable was an accurate assessment based on the financial information he had on April 2, 2015, when he received that unsolicited offer. At that time the diocesan staff and the Bishop had only income and expense data from inception of SJG, October, 2013, through May 14, 2014. See Exhibit 27, p. 21. Rev. Voorhees failed to submit monthly reports and had not submitted the 2014 year-end report. She submitted the first part of 2014, through May 14, 2014, as part of a July 2014 application to the Corporation of the Diocese for \$48,000 in support during 2015. From the seven months of data, SJG's plate, pledge, and non-Diocesan gifts totaled \$127,169. SJG expenses for the first seven months totaled \$171,167-- \$43,998 more than SJG's non-Diocesan income. Diocesan and Corp Sole support of SJG during the same seven months totaled \$75,788.30, not including the rental use of the NPB Property kitchen and classrooms and a separate NPB rectory, which totaled \$30,668. Finally, Rev. Voorhees was non-stipendiary. Thus, the deficit did not even reflect SJG paying anything toward a full-time priest.<sup>9</sup>

The 2013 parochial report and 2014 parochial report (filed April 2, 2015) showed an increase in baptized members from 40 in 2013 to 57 at the end of 2014. Exhibits 11 and 12. Average Sunday attendance decreased from 92 to 85 in 2014. Based on these facts, the Hearing

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<sup>7</sup> Contrary to her past assertions, and those of complainants, the record is clear from both the Bishop's and Rev. Voorhees's depositions that he did not: (1) tell her to move her residence to Newport Beach; (2) did not tell her to close her liturgical design business; (3) did not ask her to move her residence to Newport Beach; and (4) did not ask her to close her business. Deposition of Bishop Bruno; Deposition of Rev. Voorhees.

<sup>8</sup> The Bishop also considered the amount of the offer-twice the appraised value, the finances of the EDLA, the number of Episcopal churches in the vicinity, the money spent in recouping the NPB Property, and the best use of the asset for the EDLA as its steward.

<sup>9</sup> EDLA policy, adopted by Diocesan Convention, sets minimum standards for clergy compensation plus benefits and pension contributions. See Exhibit 301. A congregation that does not or cannot meet these requirements is inherently unsustainable.

Panel should find that referring to the SJG congregation as unsustainable at the NPB Property was not an intentional misrepresentation but an actual fact.

The Bishop stated as another sustainability factor that the NPB Property did not have the required number of parking spaces for the Church. The Church Attorney will argue the issue of the City of Newport Beach conditional use permit's requirements had been "solved" by SJG and that the Bishop knew they had a solution and his statement was a misrepresentation. The conditional use permit required that the congregation own or have access to a certain minimum number of parking spaces based on the capacity of the sanctuary. The congregation learned as of its inception in October 2013 that the City had issued notice of termination of its agreement with the former disaffiliated parish for use of a certain number of parking spaces on a City-owned lot near the church because the City had sold that property to a developer, and that that agreement would expire in 2014.

The Church contends that it was a misrepresentation by the Bishop to say that the problem of satisfying the conditional use permit minimum parking spaces issue was a consideration in his decision to enter into the contract for the sale of the NPB Property because the record will show months of documentation between Rev. Voorhees, Ted Forbath, David Tumilty, regarding possible temporary solutions to the problem by leasing the NPB Property parking in exchange for cash and the use of a property neighbor's parking. No final lease had been drafted or submitted to the Corporation of the Diocese and then the Standing Committee for approval. Thus, a temporary lease solution to the parking shortage may have been viable, but it was a couple months away from review and possible implementation. A permanent solution was not possible given the cost of property on Lido Island.

There is no evidence that the Bishop did not actually consider the parking issue and the lack of sustainability of the SJG congregation at the NPB Property in making his decision to accept the unsolicited \$15,000,000 offer for the property. The Church's argument is really that the Bishop should not have weighed these facts in the manner he did and come to the decision he made. Whether the Hearing Panel agrees or disagrees that the sale was a good or bad decision by the Bishop in his capacity as such, a bishop's management decisions, absent affirmative defalcations or other such mis- or malfeasance, are not the intended subject of Title IV discipline. Based on this evidence, the Hearing Panel cannot find by clear and convincing

evidence that the Bishop intended to mislead anyone about considering the sustainability of the SJG congregation on the NPB Property and parking in making his decision to sell the property.

**C. The Bishop’s Understanding of Voorhees’s “last pastoral letter” as a resignation was reasonable.**

The third factual allegation of the Church Attorney supporting the second charge of misrepresentation is that the Bishop misrepresented that Rev. Cindy Voorhees resigned her position as “vicar” of St. James the Great. On June 25, 2015, Rev. Voorhees published her “last pastoral letter” to the SJG congregation. She served as “vicar” at the pleasure of the rector, the Bishop. That letter stated in pertinent part: *“It is with great sadness that I write this last pastoral letter. \*\*\*\*It is now time for us to scatter into the Holy Spirit’s wind and plant our fertile seeds elsewhere. I have decided that I cannot lead you into a diaspora situation, not only for personal reasons but for professional reasons as well. \*\*\*\*This Sunday will be our last service...”* Exhibit 14.

Rev. Voorhees sent her “final letter” without a copy to or the knowledge of the Bishop, her rector. Further, on June 26, 2015, Rev. Voorhees republished her letter in an Anglican Ink article she authored titled “St. James Newport Beach vicar says farewell.” Exhibit 200. The Bishop first became aware of and received a copy of Rev. Voorhees’s June 25, 2015 letter on that same date at General Convention in Salt Lake City by way of third parties. Even though Rev. Voorhees had chosen the date of the last service and told the Bishop her service at SJG would terminate on that date, and had already taken another position;<sup>10</sup> and, even though she had filled out payroll paperwork for that new position and received her first paycheck,<sup>11</sup> Voorhees claims the Bishop misrepresented to others that she resigned. The Bishop directed his staff to send Rev. Voorhees a letter accepting her resignation as vicar. He instructed her to call at his office. Exhibit 32.

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<sup>10</sup> During a June 9, 2015 meeting with the Bishop and David Tumilty, Rev. Voorhees confirmed the June 28, 2015 date she previously had selected for last service and said it would be her last day as priest for SJG.

<sup>11</sup> In May 2015, she accepted a position offered to her by Bishop Bruno to be his liaison to the Compass Rose Society and in connection therewith, informed the Bishop she would not continue as vicar. Rev. Voorhees’s EDLA employment forms evidence these facts. See Exhibit 201, June 1, 2015 EDLA Employment Application, and in particular, pp. 2-3 and 4-5 thereof, which include the statements that she had left her position as “vicar” of the SJG congregation effective “5/31/13” [sic]. She gave her “Reason For Leaving” as: “BISHOP RE-ASSIGNED”.]

Rev. Voorhees did not call on or meet with the Bishop as instructed. Instead she emailed the Bishop, “I have not resigned, I have not tendered my resignation to you, nor have I ever communicated to you that I was resigning from St. James the Great.” Exhibits 32 and 34.

The Bishop as rector has the authority to replace the clergy of a forming or mission congregation at any time. See Exhibit 202, EDLA Canons, Canon 2.09. The Bishop as rector has the authority to demand a priest meet with him at his office. The Bishop was reasonable in treating Rev. Voorhees’s June 25, 2015, letter and statements regarding June 28 as the “last service” as a resignation. The Bishop had no obligation to reinstate Rev. Voorhees as pastor of the congregation because she claimed she had not resigned to the congregation. Rev. Voorhees had an obligation to meet with the Bishop and she refused. Rev. Voorhees was terminated. Her post-resignation rejection of her resignation did not change that fact. The Bishop’s reference to it as “resignation” was not a misrepresentation in light of the facts which he knew and the power he had. The only misrepresentation regarding Voorhees’ resignation was her own in stating that she never told the Bishop she resigned. She told him she would, she did, and then she tried to undo it. The Hearing Panel must find for the Bishop on the alleged fact that he misrepresented Rev. Voorhees’ resignation.

**D. The Bishop was forthright in his statements about a NPB property leaseback and financial support for the SJG congregation from sale proceeds.**

The fourth factual allegation supporting the Church’s second charge of misrepresentation is that the Bishop misrepresented what he would do for SJG after the NPB Property sale. This fourth factual allegation suffers the same defect as the first charge: the sale of the NPB Property did not close. The Bishop is alleged by some of the church witnesses (not others<sup>12</sup>) to have promised SJG it could lease the property back after the sale until October 2015 and promised SJG he would provide financial assistance for the leaseback.<sup>13</sup> Because the sale did not close, it is not possible for the representations to be untrue. The sale did not close because of litigation instigated by many of the complainants in this proceeding. Having prevented the sale, it is disingenuous to argue that the Bishop misrepresented what he would do post closure.

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<sup>12</sup> Compare witness summary of Bruce Bennett with that of Michael Strong. The latter stated that the Bishop said he was asking the purchaser about the possibility of leasing back the property through October. Exhibits 1-2 and 299.

<sup>13</sup> The Purchase and Sale Agreement included a leaseback provision up to 90 days following the close of escrow. Exhibit 25.

Based on the undisputed fact that the NPB Property sale did not close, the Hearing Panel cannot find by clear and convincing evidence that the Bishop intended to mislead anyone regarding a post-closure leaseback and funding.

## **VII. THE BISHOP WAS FORTHRIGHT AND THOUGHTFUL IN HIS STEWARDSHIP OF THE DIOCESE**

Title IV.2 provides: “‘Conduct Unbecoming a Member of the Clergy’ shall mean any disorder or neglect that prejudices the reputation, good order and discipline of the Church, or any conduct of a nature to bring material discredit upon the Church or the Holy Orders conferred by the Church.”

The Church Attorney alleges that the Bishop acted in a manner unbecoming by: (a) “misleading the St. James the Great and the community about his plans for St. James the Great”; and, (b) “summarily taking possession of the real and personal property of St. James the Great on or about June 29, 2015.”

First, the misrepresentation allegation (a) is not different than the first misrepresentation alleged as violation of Title IV.4.1(h)(6) and Bishop Bruno incorporates the evidentiary analysis in Section VI above here by reference.

Second, St. James the Great had no real property; the NPB Property belonged to the Bishop as Corporation Sole. Members of the congregation were permitted access to the premises to retrieve their items of “personal property” from the Church, and took Church property in the process.<sup>14</sup>

Third, the securing of the NPB Property on June 29, 2015, was an appropriate and prudent decision made to protect the church building and facilities in light of Rev. Voorhees’s “last service” on June 28, 2015 and the rector’s accepting her resignation. In order to preserve the property, the Bishop directed David Tumilty to secure the property. David Tumilty, like the Bishop, was at General Convention. He called from Salt Lake City and arranged for Ted Forbath

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<sup>14</sup> On June 29, 2015, Mr. Forbath and Ms. Zabala-Bangao closed the Church, changed the locks and took church records. On a later date, Ms. Zabala-Bangao opened the church to congregants who had personal belongings to remove. At some point on that day, the processional cross and other items that were not personal belongings of congregants were taken from the church and have been and are prominently used by Save St. James the Great.

and Clare Zabala-Bangao to arrange for the locks to be changed and certain records to be removed.

Further, the evidence is clear that Rev. Voorhees and the congregation knew that June 28, 2015, was the scheduled date for the final service. As of the June 9, 2015 meeting between the Bishop and the SJG evaluation team, they knew that it was unlikely that the congregation would have access to the premises after the June 28, 2015, final service, with the possible exception of a small number of special events (a wedding and a memorial service). See Exhibit 17.

Moreover, the allegation that the Bishop locked the congregation out of the premises on June 29, 2015 must be viewed not only in light of the above, but also in light of the fact that on June 22, 2015, Save St. James the Great commenced its civil suit in Orange County Superior Court against the Bishop, claiming rights to continue to use and occupy the premises. See Exhibit 13. This suit was based in part on a cloud on title to the NPB Property asserted by the Griffith Company at the direct instigation of Save St. James the Great, led by Rev. Voorhees's husband. See Exhibits 220 and 288, email exchanges between Mr. Voorhees and the Griffith Company commencing on June 8, 2015.

Under the totality of the circumstances, the congregation could not have had any expectation of continued unfettered access to and use of the NPB Property after June 28, 2015, let alone any reasonable expectation.

The Hearing Panel must find for the Bishop on the third charge because Church Attorney cannot establish by clear and convincing evidence that the Bishop's action in ordering the securing of the NPB Property after the last service was unbecoming a member of the clergy.

## **VII. CONCLUSION**

Of the six factual allegations in support of the three charges, only one, alleged misrepresentations to Rev. Voorhees, presents conflicting evidence for this panel to weigh. The other five must be decided in favor of the Bishop because undisputed evidence establishes no canonical violation. Voorhees' allegations can be characterized as a she said (he told me he wouldn't sell the property), he said (I never said I wouldn't sell the property) dichotomy.

Therefore, as to the only factual allegation in dispute, the Church has not met its burden of clear and convincing evidence on this claim of misrepresentation.<sup>15</sup>

Because the Bishop had the authority to sell one of the most valuable pieces of property in the Diocese once it was returned to the Diocese at the conclusion of the litigation with the disaffiliating parish, because funding the property litigation cost the Diocese \$10 million from Corp Sole, the Bishop intended to sell returned property if it made fiscal sense. He prepared for the sale of returned properties by discussing the subject with the Presiding Bishop. It was not unreasonable for him to allow Rev. Voorhees to start a congregation at the NPB Property when there was no viable buyer for it. It was not unreasonable for the Bishop to quickly accept an unsolicited offer of twice the appraised value a year and a half later when the fledgling congregation could be supported at a more economic facility or a neighboring congregation.

The Hearing Panel should consider what the present complaint is really about. It is about the NPB Property itself, and complainants' belief that they are entitled to that property. It also is about, no more or less, complainants' disagreement with Bishop Bruno's management decisions in his capacity as the Bishop of EDLA and as the incumbent of Corp Sole. Neither of these subjects is properly the subject of discipline under Title IV.

Moreover, in weighing this matter, the Hearing Panel needs to carefully consider the precedent the outcome of this matter may set, not merely for Bishop Bruno, but also his successors as Bishop of EDLA, as well as for every sitting Diocesan Bishop, and every future Diocesan Bishop, of this Church.

The Hearing Panel should find in favor of the Bishop. There is no clear and convincing evidence that the Bishop intended to make any misrepresentation, violate Title II.6.3 on disposition of property, or act in a manner unbecoming a member of the clergy.

Dated: March 17, 2017

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Richard Wm. Zevnik, Chancellor

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<sup>15</sup> See *Colorado v. New Mexico*, 467 U.S. at 316 (1984). [“Last Term, the Court made clear that Colorado's proof would be judged by a clear and convincing evidence standard. *Colorado v. New Mexico*, 459 U.S. at 459 U. S. 187-188, and n. 13. In contrast to the ordinary civil case, which typically is judged by a "preponderance of the evidence" standard, we thought a diversion of interstate water should be allowed only if Colorado could place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are" highly probable.”] See C. McCormick, *Law of Evidence* § 320, p. 679 (1954).

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