Circuit Court for Prince George's County
Case No. CAL 15-25910

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1706

September Term, 2016

MOHAMED KOROMA, ET AL.

v.

EBILLEH CULTURAL ORGANIZATION, ET AL.

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*Woodward,
Reed,
Sharer, J., Frederick
(Senior Judge, Specially Assigned)

JJ.

Opinion by Woodward, J.

Filed: August 12, 2019

*Woodward, Patrick L., J., now retired, participated in the hearing of this case while an active member of this Court, and as its Chief Judge; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

This case concerns an internal dispute within the Ebilleh Cultural Organization, Inc. ("ECO"), a voluntary membership organization incorporated in Maryland. In the Circuit Court for Prince George's County, three former members of ECO – Mohamed Koroma, Mohamed Davies,[1] and Columbus Williams, appellants – filed suit against ECO; and three of its current leaders – Hulie Hamid, the President and a member of the Board of Trustees; Alimamy Bangura, the former President; and Abdul Rahim, the Chairman the Board of Trustees (collectively "the Individual Defendants") – appellees, seeking equitable relief and damages. Appellees moved to dismiss or in the alternative for summary judgment, arguing, *inter alia*, that the circuit court should not intervene in the internal affairs of a private organization. After a hearing, the court entered judgment in favor of appellees.

Appellants filed this timely appeal,[2] presenting six issues for our review,[3] which we have condensed and rephrased as one question: Did the trial court err by granting

[1] The Complaint at issue in the instant appeal refers to Davies as "Mohamed D. Davis[.]" Elsewhere in the record, including in appellants' brief to this Court and on his signed affidavit, his name is spelled "Davies." We therefore use that spelling.

[2] Appellants noted this appeal on October 14, 2016. The judgment was not entered on the docket until October 18, 2016. Pursuant to Maryland Rule 8-602(f), this Court will treat the appeal as having been filed on the same day as the entry of the circuit court's order, but after its entry on the docket.

[3] The issues, as written by appellants, are:

> I. Whether the Court erred in granting Appellees' motion to dismiss or in the alternative for summary judgment based on the incorrect

summary judgment in favor of appellees? For the following reasons, we answer this question in the negative and affirm the judgment of the circuit court.

BACKGROUND

ECO is a tax-exempt, non-profit, voluntary membership organization incorporated under the laws of Maryland as a non-stock corporation. ECO was founded in 1985 by a

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interpretation of Article 6(b) of Ebilleh Cultural Association, Inc.'s Constitution.

II. Whether the Court erred in granting Appelles['] motion to dismiss or in the alternative for summary judgment on an issue not raised in Appellees['] answer and motion to [d]ismiss or in the alternative for summary judgment.

III. Whether the Court erred [in] granting Appellees' motion to dismiss or in the alternative for summary judgment on the issue [of] exhaustion of administrative remedy where Appellee Ebilleh Cultural Organization, Inc. did not assert the issue as an affirmative defense.

IV. Whether the Court erred in granting the motion to dismiss or in the alternative for summary judgment on issues and claims against the individual defendants [against whom] exhaustion of administrative remedies was inapplicable.

V. Whether the Court erred in granting the motion to dismiss or in the alternative for summary judgment on the issue of the dissolution of the Board of Trustee[s] that there is no administrative or contractual remedy in Ebilleh Cultural Organization[']s Constitution.

VI. Whether Judge Leo Green, Jr. incorrectly applied the Court's holding in [*Tackney v. U.S. Naval Academy Alumni Ass'n, Inc.*, 408 Md. 700 (2009)] and misinterpreted the meaning of arbitrary, irregularity, and fraud.

group of immigrants from Sierra Leone, including appellants, as "a loose organization dedicated to preserving their West African cultural heritage." *Rahim v. Davies*, No. 2222, Sept. Term 2003, at 2 (Md. Ct. App. Apr. 25, 2005).[4] ECO's governing document is "The Constitution of the Ebilleh Cultural Organization," hereinafter referred to as "the Bylaws." We set out the pertinent provisions below.

a. Bylaws

ECO's administrative structure comprises a Board of Trustees, an Executive Committee, a General Body,[5] and a Jamaat Committee. Art. 7(a). There are seven directors on the Board of Trustees ("the Board"), which is "the highest decision making administrative authority" responsible for managing the organization. Art. 7(a)1.a. The "[i]nitial Board . . ." was appointed by the General Body and "all future and succeeding Board . . . members shall be appointed by the presiding current Board members." Art. 7(a)1.a. The Chairman of the Board is elected by the Board. Art. 7(a)1.a. The Board is required to hold four quarterly meetings each year and "emergency meetings as necessary[.]" Art. 7(a)1.b(4). The Board and/or the General Body is authorized "to vote to suspend and/or expel a Board member for violating [the Bylaws] and/or not performing his/her duties." Art. 7(a)1.b(9).

[4] This prior appeal concerned another internal dispute between members of ECO pertaining to its bank account.

[5] The Bylaws use the terms "General Body" and "General Assembly" interchangeably to refer to the group comprising ECO's general membership. For clarity in our discussion we use the term "General Body."

The Executive Committee carries out "the day to day affairs and operations" of the organization, as directed by the Board. Art. 7(a)2. It comprises ten members, including a President, Vice President, Treasurer, and Secretary General. Art. 7(a)2. The President is elected by the General Body for a two-year term and appoints his or her "executive officers." Art. 7(a)2.

The General Body is made up of all members of ECO. Art. 7(a)3. Membership is open to "any Muslim at least 18 [years] of age." Art. 6(a)1. Members must pay dues and meet other requirements to remain in good standing. Art.6(b). At a general meeting, ten members "constitute a quorum." Art. 7(a)3.

The Jamaat Committee is the religious arm of the organization. Art. 7(a)4. Its role is to "promote and propagate Islamic education by setting up 'Elekawyu[,' and] perform[ing] congregational and regular prayers[,]" as well as holding funeral services and promoting community development. Art. 7(a)4.a.

Article 6 governs "Membership[.]" Article 6(d) authorizes the Board or the President to "suspend and/or expel a member . . . on the recommendation of the [G]eneral [B]ody" for seven reasons, including "[n]ot adhering to ECO['s Bylaws]"; "[c]onsistent violations of the ECO rules and regulations"; and disruptive or otherwise improper behavior. Article 6(e), entitled "Grievance and right to appeal[,]" provides:

> Every member has the right to appeal his/her suspension and/or expulsion within thirty (30) calendar days of the date of the notice of the letter. In case of disputes among ECO members, the board/executive committee shall appoint a grievance, and/or disciplinary committee comprise of [sic] three regular members and two board members who shall mediate the dispute, seek an

> opinion in the interest of the organization and submit its findings to the board/executive committee and general assembly for action. If the appeal is denied, the member has the right to appeal through the board to the [G]eneral [B]ody only once and the decision shall be final.

Article 10(a) sets out ECO's "Code of Conduct[,]" which, as pertinent, requires members to "make necessary arrangements to attend ECO . . . general membership meetings" and prohibits any member from "disrespecting the Imam . . . and other members of the ECO[.]" Art. 10(a)2-3. Article 10(b), entitled "Disciplinary Actions[,]" states that a member "shall be suspended, fined and/or expel[led]" for various conduct, including "disruption of ECO meetings and other activities in any way[,]" "vulgar expressions, derogatory remarks and repulsive comments[,]" and "disrespect of any member[.]" Art. 10(b)1.

Article 11 governs amendments to the Bylaws and states that amendments "shall be made every two (2) years[.]"Art. 11A1.

b. The Instant Dispute

As best we can glean from the record, this case arose from a leadership struggle within ECO in 2014-2015.[6] In 2014, appellee Hamid was ECO's Vice-President, appellant Williams was Board Secretary, and appellant Davies was a Board member. The Bylaws did not impose term limits for Board members and some members, including Williams and Davies, had been on the Board since its inception.

[6] Although there are disputes of fact pertaining to the genesis of this controversy, such disputed facts are not material.

According to appellees, at a general meeting in the summer of 2014, a biennial constitutional review was to begin consistent with Article 11 of the Bylaws. Appellants Williams and Davies took the position that a review was not needed, arguing that it was not in ECO's "best interest." Despite their opposition, the General Body went forward with the review and, based upon their recommendations, in the fall of 2014, a constitutional review committee was formed. The review committee considered and approved two amendments recommended by the General Body: to impose term limits for Board Members and to require General Body approval of Board actions. At the following monthly meeting, the recommendations of the constitutional committee were considered. Appellees claim that the General Body voted to ratify both recommended amendments, which caused the meeting to erupt in disorder. They allege that Williams and Davies used profanity and personally attacked other members. After the meeting was adjourned, appellees assert that Williams and Davies used social media platforms to continue to personally attack their fellow Board members. Williams, by affidavit,[7] denied that he and Davies were present at this meeting.

At the February 8, 2015 ECO general meeting, the General Body voted to indefinitely suspend Koroma from ECO based upon a recommendation of the Jamaat Committee. Thereafter, the Secretary General of ECO sent an undated letter to Koroma informing him of his indefinite suspension and advising him that at that meeting, the

[7] As we shall discuss, the affidavit was defective under Maryland Rule 2-501(c).

General Body read and discussed the Jamaat Committee's complaint, which alleged that Koroma "disrespected the Imam in a [W]hatsapp[8] forum[.]" The General Body then voted to suspend Koroma effective February 8, 2015, "in accordance with [A]rticle 10(b) {Disciplinary Actions} of the [ECO] Constitution." The letter informed Koroma that he had "the right to appeal [his suspension] within thirty (30) calendar days of the date of this notice." Koroma did not file an internal appeal.

Also at the February 8, 2015 meeting,[9] which was not attended by appellants, the five other directors on the Board, including its Chairman, informed the General Body that they were resigning from their positions because "the [B]oard was not functioning." A member of the General Body moved to dismiss the Board, including Williams and Davies, and install an interim Board in its place. The motion was approved by a majority vote of the General Body and an interim Board was appointed.

At the next quarterly meeting, on May 10, 2015, the General Body voted to expel Koroma, Davies, and Williams from ECO. Appellants were not present at that meeting. In separate letters dated May 12, 2015,[10] ECO's "Acting Secretary General" informed appellants that, at that meeting, the General Body was presented with and discussed

[8] "Whatsapp" is an instant messaging application.

[9] Appellee Hamid, in his affidavit, averred that the Board was dissolved at a meeting "[i]n or about April 2015." Because we view the facts in the light most favorable to appellants, we use the date supplied in Williams's affidavit.

[10] The letter to Koroma includes his name in the heading, but states "Dear Mr. Williams" as the greeting. There is no dispute that all three appellants were expelled from ECO, however.

appellants' "numerous and continuous vulgar expressions, derogatory remarks, repulsive comments, defamation of character and disrespect to the President, officers and members of [ECO] on [W]hatsapp social medium [sic] and [e]mails including multiple illegal lawsuits filed against [ECO] and members over the past four months[.]" The letters explained that the General Body "voted unanimously to expel [each appellant from ECO]…in accordance with [A]rticle 10(b)1 {Disciplinary Actions} of [the Bylaws]." The letters further advised each appellant that they had "the right to appeal within thirty (30) calendar days of the date of this notice." No appellant filed an internal appeal.

c. The Lawsuit

Three months later, on October 13, 2015, Koroma, then *pro se*, filed a handwritten complaint in the circuit court against ECO and Hamid asserting that he had been wrongfully expelled from ECO. Attached to the original complaint were the letters informing Koroma of his suspension and expulsion from ECO, as well as the Bylaws.

The amended complaint, filed on December 1, 2015, through counsel, is the operative complaint. It added Williams and Davies as co-plaintiffs, added Bangura and Rahim as Individual Defendants, and asserted six counts. Count I, captioned "Permanent Injunction[,]" alleges that appellees dissolved the Board and expelled appellants from ECO "with knowledge that their action will be wrongful [sic] and with malicious intent to impair [appellants'] membership in [ECO]"; that they did so "flagrantly and willfully[,]" in bad faith, and arbitrarily in violation of the Bylaws. Count II, captioned "Breach of Contract – Specific Performance[,]" alleges that appellants were in good standing, in

compliance with the Code of Conduct, and did not engage in any misconduct justifying their expulsion; and that appellees "breached the agreement" by dissolving the Board and expelling them. Count III, captioned "Declaratory Judgment[,]" alleges that appellants were expelled from ECO without cause and without due process; and that their removal was part of a conspiracy between appellees and other ECO members "calculated . . . to conceal their fraudulent and unconstitutional actions" and to conceal that other members were not in good standing when they were appointed to office or voted in ECO elections. Count IV, captioned "Breach of Fiduciary Duty[,]" alleges that Hamid and Rahim, as President and Interim Chairman of the Board, respectively, owed appellants a fiduciary duty to carry out their duties consistent with the Bylaws and that they breached those duties when they "conspired and covertly planned to dissolve the Board . . . and remove [appellants]" to conceal "financial irregularities in the finances of [ECO]." Count V, captioned "Civil Conspiracy[,]" alleges that the Individual Defendants and four other members of ECO who are not named as defendants "entered into an agreement and/or understanding to dissolve the Board . . . and expel [appellants] from [ECO]," without following the "grievance resolution process" and without providing "notice and an opportunity to defend[.]" Count VI, captioned "Accounting[,]" alleges that appellees are "under a legal and contractual duty to account for monies received from 2013 through May 2015." In their prayers for relief, appellants asked the circuit court to enter orders declaring as void the February 2015 dissolution of the Board and to declare that Rahim is not a duly appointed member of the Board; to enjoin appellees from dissolving the Board

in the future; to order appellants reinstated as members of ECO; to order appellees to comply with the Bylaws; to order appellees to provide an accounting "of all monies received since 2013"; and to award $25,000 in compensatory damages and $50,000 in punitive damages.

Appellees moved to dismiss the amended complaint or, in the alternative, for summary judgment,[11] arguing, as pertinent, that courts should not intervene in the internal affairs of private organizations. In support of their motion, appellees attached the Bylaws and an affidavit made by Hamid.

Appellants opposed the motion, arguing that judicial intervention was warranted because appellees' actions in dissolving the Board and expelling them "were arbitrary and fraudulent[.]" They attached to their opposition affidavits made by each of them[12]; the Bylaws; Koroma's letter of indefinite suspension; appellants' letters of expulsion; ECO's Articles of Incorporation; an amendment to ECO's Articles of Incorporation; a

[11] This was the second motion to dismiss or for summary judgment filed by appellees. In the first motion, filed on January 20, 2016, appellees argued that this action should be dismissed because ECO is a religious organization and the court lacked jurisdiction to adjudicate ecclesiastical matters. Following a motions hearing, the circuit court denied appellees' motion by line order.

[12] Although not raised below, the affidavits are defective under Rule 2-501(c), because appellants did not aver that they were made upon personal knowledge. Rather, the "Affirmation" in each affidavit was made "to the best of my knowledge, information, and belief." This Court has stated that, "[w]here an affiant states that the information contained in the affidavit is true and correct to the best of his knowledge, information and belief, Rule 2-501(c) has not been satisfied and the affidavit must be disregarded." *Webb v. Joyce Real Estate, Inc.*, 108 Md. App. 512, 520 (internal quotation marks omitted), *cert. denied*, 342 Md. 584 (1996).

copy of this Court's unreported decision in *Rahim v. Davies*, *supra*; and an affidavit made by Hamid and submitted in support of appellees' first motion to dismiss and/or for summary judgment.

On October 12, 2016, the circuit court held a hearing on the motion. Appellees' counsel argued, in relevant part, that ECO acted in good faith and in compliance with the Bylaws by dissolving the Board after it "ceased to function." Counsel maintained that appellants were not denied an opportunity to be heard prior to their expulsion because they chose not the attend the May 10, 2015 general meeting despite their "obligation" to attend. The court raised *sua sponte* the issue of appellants' failure to exhaust internal remedies, and the parties were given an opportunity to respond. As we shall discuss, the parties disagree as to the construction of the appeal provision of the Bylaws.

At the conclusion of the hearing, the circuit court ruled from the bench as follows:

> All right. The Court has had an opportunity to listen to counsel, also had the opportunity to review the pleadings, had an opportunity to discern the motion for summary judgment. It's actually two things, it's a motion to dismiss the complaint and a motion for summary judgment. There's two things.
>
> The Court finds that relative to the motion in this matter, the Court has to look very carefully at this matter. That the plaintiffs in this matter were trustees of the ECO Organization and alleged they were unlawfully suspended and expelled from the ECO. Plaintiffs further allege that the Board of Trustees for ECO was unlawfully dissolved and replaced with a new Board of Trustees. That's all right and that's fine, but really the first thing you have to look at is that they were expelled before that occurred.
>
> Now plaintiffs were allegedly expelled because they disrupted religious services. Plaintiffs disturbed members and did certain things in this regard.
>
> You have to look at this in a light, I'm looking at all the pleadings. In the first pleading it's definitely given and there is no

dispute that this was a letter sent by ECO to the plaintiffs, informing them that they were suspended, that they are informed that at the monthly meeting held on February 8th a letter of complaint was presented. The general body voted to suspend you indefinitely from the organization effective February 8, 2015 in accordance with Article 10-B of the ECO's constitution.

This is the key words. You have the right to appeal within 30 calendar days of this date of notice. By all disputes in this matter, there is nothing there that says that they ever appealed it. And when I look at it, it's 6-E, every member has the right to appeal his/her suspension or expulsion within 30 days of the date of the notice of the letter. The letter is what I just referenced. In cases of disputes among ECO members, the Board Executive Committee shall appoint a grievance and/or disciplinary committee comprised of three regular members and two Board members who shall mediate the dispute and seek an opinion in the interest of the organization and submit its findings to the Board/Executive Committee and general assembly for action. If the appeal is denied, the member has the right to appeal through the Board to the general body only once and the decision shall be final.

It's not the greatest written provision and I pointed it out several times during the colloquy that this provision was written by the plaintiffs, because they're the original members of this, or the original people in this. That I'm not holding against them, I'm looking directly at the body.

There was no appeal. You have to do those things in order to prevail. This is the most important and most persuasive reason for the Court to grant these motions. However, the Court wants to look a little further. There is no showing of fraud, irregularity or arbitrary. In fact, it's not even alleged, it just said that they were not acting in members, they were not good members, at least four of them were not members. There's no showing of that

Three. Under [*Tackney v. United States Naval Academy Alumni Ass'n, Inc.*, 408 Md. 700 (2009)], the Courts do not get into the management of private corporations whether this is a religious organization or whether this is a private corporation, I don't find either way. I'm just saying a benevolent corporation we do not get into. We do not do that easily.

But the key here is this, it's the first thing that I said and for these reasons the Court will grant the motion to dismiss and/or the motion for summary judgment. So Madam Clerk, show the documentary motion to dismiss complaint and motion for summary

> judgment are granted. Show judgment in favor of the defendants against that of the plaintiffs is ordered.

This timely appeal followed. We shall include additional facts as necessary to our discussion of the issues on appeal.

STANDARD OF REVIEW

Our standard of review differs depending upon whether the circuit court dismissed the amended complaint for failure to state a claim upon which relief may be granted or granted summary judgment in favor of appellees. Although the circuit court did not expressly state which aspect of the motion it was granting, we glean from the references in the court's oral ruling to the Bylaws and the wording of the letters of expulsion, which were attached as exhibits to appellees' motion and appellants' opposition thereto, that the court considered matters outside of the pleadings. Consequently, we treat the judgment as one granting summary judgment. *See* Md. Rule 2-322(c) ("If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment[.]").

As the Court of Appeals has explained, our review of the grant of summary judgment

> begins with the determination whether a genuine dispute of material fact exists; only in the absence of such a dispute will we review questions of law. A trial court may grant summary judgment when there is no genuine dispute of material fact and a party is entitled to judgment as a matter of law. We review for legal correctness a trial court's application of this standard.

> When reviewing the record to determine whether a genuine dispute of material fact exists, [w]e construe the facts properly before the court, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party. To avoid summary judgment, however, the non-moving party must present more than general allegations; the non-moving party must provide detailed and precise facts that are admissible in evidence. Merely proving the existence of a factual dispute is not necessarily fatal to a summary judgment motion. [A] dispute as to facts relating to grounds upon which the decision is not rested is not a dispute with respect to a material fact and such dispute does not prevent the entry of summary judgment. So long as the record reveals no genuine dispute of any material fact necessary to resolve the controversy as a matter of law, and it is shown that the movant is entitled to judgment, the entry of summary judgment is proper.

Appiah v. Hall, 416 Md. 533, 546-47 (2010) (alterations in original) (internal quotation marks and citations omitted).

DISCUSSION

a.

Two decisions of the Court of Appeals govern our analysis: *N.A.A.C.P. v. Golding*, 342 Md. 663 (1996), and *Tackney v. U.S. Naval Academy Alumni Ass'n*, 408 Md. 700 (2009). In *Golding*, adult and youth members of the Baltimore City branch of the NAACP filed suit against the Baltimore Branch, an unincorporated voluntary membership association, and the NAACP, a non-profit voluntary membership corporation incorporated under the laws of New York. 342 Md. at 666-68. The members sought an injunction to prevent an election from going forward because they disputed the position taken by the NAACP and enforced by the Baltimore Branch regarding the eligibility of youth members to vote. *Id*. at 666. The circuit court granted the injunction

and the NAACP and the Baltimore Branch appealed. *Id.* at 671. The Court of Appeals granted *certiorari* before any proceedings in this Court. *Id.*

The Court explained that, "as a general rule, courts will not interfere in the internal affairs of a voluntary membership organization." *Id.* at 672. The Court clarified that "the rationale for non-intervention differs depending on whether the organization is a Maryland corporation, a foreign corporation. *Id.* at 672-73. Nevertheless, the overarching principle of non-intervention applied to all such organizations. Maryland corporations are subject to the business judgment rule, which "insulates business decisions from judicial review absent a showing that the officers acted fraudulently or in bad faith." *Id.* at 673. The rationale for that rule is that directors are not "expected to be incapable of error," but were required only to "act reasonably and in good faith in carrying out their duties." *Id.* Non-intervention in foreign corporations, on the other hand, is governed by the "internal affairs doctrine," which holds that only one state should regulate a corporation. *Id.* at 673-74. Finally, the rule governing judicial intervention in unincorporated organizations is analogous to the business judgment rule, permitting intervention only upon a showing of "fraud, irregularity, or arbitrary action." *Id.* at 678.

The Court emphasized, however, that if a voluntary membership organization "acts inconsistently with its own rules, its action may be sufficiently arbitrary to invite judicial review." *Id.* Likewise, "members in a private organization are entitled to at least rudimentary procedural protections, such as notice and an opportunity to be heard, before

they may be expelled or deprived of other important membership rights." *Id.* at 678-79. Judicial intervention may be appropriate if the private organization's adjudicatory procedure does not afford members "these minimal protections, or if the organization provides no avenue for internal review or appeal[.]" *Id.* at 679.

The Court reasoned, however, that, even in cases where judicial intervention might be appropriate, a "prerequisite to judicial involvement" is that the members have exhausted any internal remedies available to them. *Id*. "Thus, if a member fails to exhaust internal remedies prior to bringing suit, even if the dispute would otherwise warrant judicial review, [a court] shall not intervene unless the internal remedies are clearly inadequate or if internal appeal would prove futile." *Id.* at 680.

Applying those principles to the facts before it, the Court held that the circuit court erred by intervening in the affairs of the NAACP and the Baltimore Branch. *Id.* at 666. First, because the NAACP was a foreign corporation, the Court declined to "interfere with its internal management decisions." *Id.* at 681. It reasoned that, even if the NAACP had been a Maryland corporation, intervention would not have been warranted by application of the business judgment rule because there was no evidence that the organization engaged in fraud, arbitrariness, or bad faith in interpreting the election rules applicable to youth members. *Id.* The Court likewise determined that intervention in the unincorporated Baltimore Branch's internal affairs was not appropriate because it was simply following the dictates of the national umbrella organization and because it provided its members adequate procedural protections. Finally, even if judicial

intervention were appropriate, which it was not, the Court reasoned that the members had failed to exhaust their internal remedies because the Baltimore Branch constitution included a "number of mechanisms for challenging elections." *Id*. at 682-83. Although none could be exercised until after the election was over, there was nothing to prevent the members from "casting challenged ballots" and then challenging the results if their votes were not counted. *Id*. at 683. Under those circumstances, exhaustion was not satisfied.

More than a decade later, the Court again took up the issue of judicial intervention in a dispute within a voluntary membership organization in *Tackney*, 408 Md. 700. There, individual members of the United States Naval Academy Alumni Association ("the Association"), a non-profit, voluntary membership organization incorporated under the laws of Maryland as a non-stock company, filed suit against the Association and certain members seeking injunctive and declaratory relief relative to a recent contested election. *Id.* at 704. The individual member plaintiffs argued that judicial intervention was appropriate because the Association's board had "acted in derogation of [its] [b]ylaws and Operating Manual" and therefore acted arbitrarily. *Id.* at 705. The circuit court granted the Association's motion to dismiss, holding that, under *Golding*, judicial intervention was not warranted because there had been no fraud, irregularity, or arbitrary action. *Id.* at 709.

On appeal, the Court of Appeals granted a *writ of certiorari* prior to any proceedings in this Court and affirmed. *Id.* at 710. Because the Association was a Maryland corporation, the Court, in reliance upon *Golding*, applied the business

judgment rule and determined that judicial intervention only would be appropriate if there were supportable allegations of fraud or arbitrariness. *Id.* Fraud "include[s] action[s] unsupported by facts or otherwise arbitrary." *Id.* at 713 (citations and internal quotation marks omitted). "[A]ctions pursued in good faith, in purported compliance with the [organization's b]ylaws [are not] fraudulent or arbitrary." *Id*. at 715.

In assessing the propriety of intervention in the dispute between the Association and its members, the Court focused upon the bylaws that were alleged to have been violated. *Id.* at 716. The member plaintiffs contended that three trustees sat in violation of the tenure provisions of the Association's bylaws. *Id.* at 710-11. The parties disagreed as to the meaning of the bylaw provisions at issue, however. *Id.* at 716. By application of the "principles governing contract interpretation[,]" the Court concluded that the bylaw provisions were ambiguous. *Id.* It reasoned that, although the plaintiffs' "interpretation of the tenure provisions [was] plausible, it [did] not preclude the existence of other reasonable interpretations." *Id.* It followed that there was no arbitrary action warranting judicial intervention because the Association was acting in good faith based upon its interpretation of the ambiguous provisions. *Id.* at 718. Further, the Court emphasized that the construction of ambiguous provisions that had been applied before the dispute giving rise to the controversy was evidence of intent. *Id.* at 717-18. Evidence that the Association's position as to the meaning of the bylaw provisions predated the dispute thus bolstered its position that it was acting in good faith. *Id.* For all those reasons, the Court held that there was no fraudulent or arbitrary action "susceptible to intervention by

a Maryland Court." *Id.* at 721. Therefore, the Court held that the Board's actions were "entitled to the deference afforded by the principle of non-intervention." *Id.* at 718.

b.

We return to the case at bar. We begin by considering appellants' contention that appellees acted arbitrarily in dissolving the Board and appointing a new Board because those actions were in derogation of the Bylaws. Because ECO is a non-profit, voluntary membership organization incorporated under the laws of Maryland, the business judgment rule governs our review of ECO's conduct in this regard. Consequently, we may intervene in the dispute only if ECO's actions were fraudulent or arbitrary. *See Id.* at 715; *Golding,* 342 Md. at 673.

Article 7 of the Bylaws states that the initial Board was to be appointed by the General Body and that subsequent Board members would be "appointed by the presiding current Board members." Art. 7(a)1.a. Although the Bylaws do not expressly contemplate dissolution of the Board, they do authorize the General Body and/or the Board to "*suspend and/or expel a Board member for* violating [the Bylaws] and/or *not performing his/her duties*." Art. 7(a)1.b(9) (emphasis added). In his affidavit attached to the motion for summary judgment, Hamid averred that, at the February 2015 general meeting at which the Board was dissolved, five of the seven Board members stated their intention to resign their positions because "the [B]oard was not functioning[.]" In their opposition to the motion for summary judgment, appellants did not identify this fact as a fact in dispute and, accordingly, we accept the truth of it for purposes of our review. *See*

Md. Rule 2-501(b) ("A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute …."). Thus a quorum of the Board[13] represented to the General Body that it could not function. Williams and Davies, the two remaining Board members, were absent from the general meeting, in violation of ECO's Code of Conduct. *See* Art. 10(a)2. Under these circumstances, we conclude that ECO acted in good faith and in "purported compliance" with the Bylaws by voting to remove all of the directors pursuant to Article 7(a)1.b(9) for violating the Bylaws and/or the inability to perform their duties. *Tackney*, 408 Md. at 715.

Having dissolved the Board, it also was not arbitrary for ECO to follow the same procedure outlined in the Bylaws for the appointment of the initial Board, *i.e.*, appointment by the General Body, to appoint an interim Board. Art. 7(a)1.a. For these reasons, ECO's actions in dissolving and replacing the Board were not "sufficiently arbitrary to invoke intervention by a Maryland court." *Tackney*, 408 Md. at 718.[14]

[13] Five members of the Board "shall form a quorum." Art. 7(a)1.a

[14] We decline to address appellants' allegations that the interim Board included members who were not in good standing or were selected by members who were ineligible to vote because appellants presented no admissible evidence on summary judgment to support those allegations. Williams's affidavit, which as noted was technically defective, includes a single averment that the ECO member who moved to dissolve the Board "had not paid his dues for more than five years."

c.

Turning to the issue of appellants' expulsion from ECO, we conclude that, because appellants failed to exhaust their internal remedies, they are precluded from seeking judicial review of ECO's actions. As was specified in the letters of expulsion, the Bylaws provide a mechanism for an internal appeal. Article 6(e), entitled "Grievance and right to appeal[,]" provides:

> Every member has the right to appeal his/her suspension and/or expulsion within thirty (30) calendar days of the date of the notice of the letter. **In case of disputes among ECO members, the board/executive committee shall appoint a grievance, and/or disciplinary committee comprise of [sic] three regular members and two board members who shall mediate the dispute, seek an opinion in the interest of the organization and submit its findings to the board/executive committee and general assembly for action**. If the appeal is denied, the member has the right to appeal through the board to the general body only once and the decision shall be final.

(Emphasis added.)

Appellants construe this provision to require ECO to "appoint a grievance, and/or disciplinary committee" prior to expelling a member. Thus they maintain that ECO was without authority to expel them and their right to appeal was not triggered. Appellees assert that appointment of a "grievance and/or disciplinary committee" is not a prerequisite to the suspension or expulsion of a member for misconduct, but rather is established upon the initiation of an internal appeal. According to appellees, the grievance committee takes up the appeal and, if its decision is adverse to the appealing party, then the member may appeal directly to the General Body.

Although Article 6(e) is not a model of clarity, we conclude that the plain language of the provision, read in conjunction with the Bylaws as a whole, does not support appellants' construction. In particular, appellants construction is inconsistent with the language in Article 6(d), which states that "[t]he Board and President may suspend and/or expel a member for the following on the recommendation of the [G]eneral [B]ody[,]" followed by a list of grounds. That provision does not anticipate a recommendation of a grievance committee prior to suspension or expulsion. Appellees' construction, on the other hand, is reasonable and consistent with the plain language of Article 6(e).

There is no dispute that appellants did not exercise their right to an internal appeal. They contend that, because their letters of expulsion stated that the General Body had voted "unanimously" to expel them, an appeal to a committee composed of members and then to the entire General Body would have been futile. This argument is speculative. Aside from asserting that an appeal would go to the General Body, appellants presented no evidence of futility. For instance, there was no evidence that all of the members of ECO were present at the May 10, 2015 meeting at which the General Body voted to expel appellants.[15] Moreover, there was no evidence to suggest that members who voted for their expulsion would not have reconsidered their votes if appellants had taken the opportunity to present their case and challenge the allegations against them. By notifying appellants of their expulsion and their right to appeal, and according them the right to be

[15] The record is silent as to the size of ECO's membership.

heard by a grievance committee and, if necessary, by the General Body before the expulsions became final, the organization "provided members sufficient procedural protections to ensure fairness[.]" *Golding*, 342 Md. at 683. Having failed to avail themselves of the internal appeal rights provided under ECO's Bylaws, appellants may not seek judicial intervention in this dispute. *See id*. at 680 (failure to exhaust internal remedies bars judicial intervention regardless of whether "the dispute would otherwise warrant judicial review").

For the foregoing reasons, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.