

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE APPLICATION BY)
LAWRENCE B. SEIDMAN FOR A HEARING)
PURSUANT TO N.J.S.A. 17:12B-122 TO GAIN) FINAL DECISION AND ORDER
PERMISSION TO COMMUNICATE WITH)
THE MEMBERS OF SPENCER SAVINGS)
BANK, SLA)

This matter comes before the Commissioner of the New Jersey Department of Banking and Insurance ("Commissioner") upon the application of Lawrence B. Seidman ("Seidman"), pursuant to the New Jersey Savings and Loan Act, N.J.S.A. 17:12B-1 to -319 for a hearing to permit Seidman and Arthur Wein ("Wein") to communicate with members of Spencer Savings Bank, SLA ("Spencer Bank") and directing Spencer to prepare and mail Seidman's proposed communication to its members.

FACTS AND PROCEDURAL HISTORY

Seidman has been a member of Spencer Bank since 1990.¹ Spencer Bank will hold its annual meeting by January 31, 2021, at which there will be an election to Spencer Bank's Board

¹ Seidman and Spencer have been involved in past litigations, which are relevant to the extent of providing additional background and history of the parties leading to the current matter. See Seidman v. Spencer Savings Bank, et. al. 2006 N.J. Super. Unpub. LEXIS 97 (App. Div. Mar. 23, 2006); Spencer Bank v. Seidman, 528 F. Supp. 2d 494, 496 (D.N.J. 2008), aff'd Spencer Bank, S.L.A. v. Seidman, 309 F. Appx 546, 547 (3d Cir. February 9, 2009); Seidman v. Spencer Sav. Bank, 2009 N.J. Super. Unpub. LEXIS 2802 (App. Div. Nov. 9, 2009); Seidman v. Spencer Sav. Bank, S.L.A., 2010 N.J. Super. Unpub. LEXIS 1783 (App. Div. July 27, 2010); Seidman v. Spencer Sav. Bank, 2015 N.J. Super. Unpub. LEXIS 999 (App. Div. Apr. 30, 2015); Seidman v. Spencer Sav. Bank, 2019 N.J. Super. Unpub. LEXIS 2038 (App. Div. Oct. 3, 2019), certif. denied, 241 N.J. 144 (2020), cert. denied, ___ U.S. ____ (2020).

of Directors (“Board”). Seidman and Wein both want to run for the Board director positions. However, they first must be nominated as candidates pursuant to Spencer Bank’s By-Law 36. Specifically, they must be endorsed by the lesser of 1% or 500 members. Pursuant to By-Law 34, the record date for purposes of determining the number of Spencer Bank’s eligible members to vote is 60 days before the election.

On August 13, 2020, Seidman and Wein sent a letter to Spencer Bank requesting that Spencer Bank mail out the following documents to Spencer Bank’s members: (1) a letter of solicitation from Seidman and Wein seeking nomination votes from members and actual votes by proxy; and (2) the Endorsement Form, which serves as both a nomination endorsement for Seidman and Wein and an actual proxy vote card naming Seidman and Wein as proxies. (August 13, 2020 letter to Spencer Bank; draft letter of solicitation to members; Endorsement Form and Vote Proxy).

On August 21, 2020, Spencer Bank sent a response letter to Seidman raising several issues with his request, including sending out proxy voting cards and having Seidman receive the member responses. (August 21, 2020 response letter).

On August 27, 2020, Seidman sent a letter to the Commissioner requesting a hearing, as authorized by N.J.S.A. 17:12B-121(1).² (August 27, 2020 letter to the Commissioner).

On September 30, 2020, the Commissioner sent a letter to Seidman rejecting his request for the hearing as premature and encouraging both parties to resolve their disagreements. (Commissioner’s September 30, 2020 letter).

On October 1, 2020, Seidman sent a letter to Spencer Bank modifying his prior request to address certain concerns expressed by Spencer Bank, such as withdrawing the request that the

² This letter was not received by the Commissioner’s office until September 9, 2020.

communication be sent as an insert to the monthly statements that Spencer Bank sends to members. Seidman, however, continued to insist on using Spencer's Core Processor to send the communication, including the proxy vote cards, and on Seidman receiving the member responses himself. (October 1, 2020 letter to Spencer Bank).

On October 8, 2020, Spencer Bank sent a response letter to Seidman making partial concessions. Spencer Bank proposed having an independent printing and mailing firm disseminate Seidman's communication, and having an independent tabulator receive and analyze the responses. Spencer reiterated that it would be inappropriate to include proxy cards with Seidman's initial communication seeking nomination to the Board. (October 8, 2020 letter to Seidman).

On October 9, 2020, Seidman again requested that the Commissioner schedule a hearing pursuant to N.J.S.A. 17:12B-121(1). Seidman posited that a hearing was necessary because Spencer Bank failed to grant his request to communicate with members.

On November 5, 2020, the Commissioner granted the request for a hearing and scheduled a Zoom Videoconference hearing on November 17, 2020.

The Commissioner held the hearing on November 17, 2020. Participating at the hearing were: Douglas P. Faucette, appearing pro hac vice, who represented Spencer Bank, and Peter R. Bray, who represented Seidman.

In advance of the hearing, both parties submitted to the Commissioner pre-marked documents to be considered by the Commissioner in rendering the decision. Seidman's counsel submitted documents pre-marked "P-1" through "P-11." Spencer Bank's counsel submitted documents pre-marked "SPENCER – 000001" through "SPENCER – 000013." These pre-marked documents constitute the entire record of this matter.

DISCUSSION

Seidman requested a hearing pursuant to N.J.S.A. 17:12B- 121 for an order requiring Spencer Bank to disseminate Seidman’s communication to its members. Pursuant to N.J.S.A. 17:12B-122, the Commissioner had 30 days to designate a time and place for a hearing and give the parties a 10 days’ written notice. Under N.J.S.A. 17:12B-123, at the hearing, the Commissioner “shall examine into the merits of the application and if she determines that the application is made in good faith and to grant the application would not be detrimental to the best interests of the State association and its members; then the Commissioner shall . . . order the State association to prepare and mail the communication or communications, in whole or in part, on the condition that the applicant shall first pay to the State association all of the costs and expenses of such preparation and mailing.”

Under N.J.S.A. 17:12B-117, there is a confidential relationship between a savings and loan association and each of its members. Because of that relationship, “no association or any of its directors, officers or employees shall disclose or be required to disclose a list of the members of the association, in whole or in part to any person[.]” N.J.S.A. 17:12B-117.

N.J.S.A. 17:12B-118 sets forth the procedure for a member to communicate with other members. The member may file with the association an application in writing, which states: his full name and address; the amount of the participation value of his accounts in the State association at the time such application is made; a statement specifying in detail the information he wants to communicate with the other members of the State association. If the application is to enable the member to communicate with other members, it must be accompanied by a complete copy of the proposed communication or communications, and the reasons for and the purposes of his requests. N.J.S.A. 17:12B-118(1)(a) to -(d).

At the time of the hearing, there were three main areas of disagreement between the parties. The first area of disagreement is whether Seidman can send the solicitation of proxy votes simultaneously with votes for nomination. Spencer Bank argues that it is inappropriate to send out proxies before Seidman and Wein are officially nominated. (October 8, 2020 letter from Spencer Bank to Seidman). Seidman argues that having two separate mailings is a delay tactic by Spencer Bank to prevent Seidman from timely collecting the nomination votes and proxy votes before the election. Seidman further argues that requiring two separate mailings will increase the cost of communicating with members. Finally, Seidman maintains Spencer Bank has already represented on the record at the previous trial that only one mailing would be sufficient. (October 9, 2020 letter from Seidman to Commissioner).

The next area of disagreement is the mode of distribution of the materials. In the parties' written correspondence, Seidman argues that Spencer Bank's Core Processor should send out the materials because it is cost efficient and secure (October 1, 2020 letter from Seidman to Spencer). Spencer Bank maintained that the Core Processor only mails communications it generates and an independent printing and mailing firm should be used (October 8, 2020 letter from Spencer Bank to Seidman). At the hearing, counsel for Seidman acquiesced to using a third-party mailing firm and suggested Toppan Merrill for these purposes. (Transcript of the November 17, 2020 hearing ("Transcript"), at 13:20 to 14:7).

The last area of disagreement was the mode of collection of member responses. In the parties' written correspondence, Seidman insisted on receiving the responses himself. (Seidman's proposed cover letter and proxy card; October 1, 2020 letter from Seidman to Spencer Bank). At first, Spencer Bank argued that they should receive the responses to protect members' confidentiality. (August 21, 2020 letter from Spencer Bank to Seidman). However, Spencer Bank

later revisited this position and proposed a compromise where an independent tabulator would receive and tally the members' responses. (October 8, 2020 letter from Spencer Bank to Seidman). During oral argument, Seidman accepted the use of an independent tabulator to receive the results, provided that Spencer Bank cover the expense of the independent tabulator, and provided that the tabulator not "disclose "voting results to each other's [sic] side until the last day for proxies.". (Transcript at 22:6-21).

Each of these areas are discussed below.

The Solicitation of Proxy Votes Simultaneously With Votes for Nomination

Upon review of the documents filed and the arguments presented at the hearing, I conclude that soliciting member votes by proxy is premature at this point because Seidman and Wein are not yet nominated to run for election to the Board of Directors. Soliciting member votes now may mislead consumers, which would be "detrimental to [their] best interest." N.J.S.A. 17:12B-123.

In addition, I recommend that changes be made to Seidman's proposed letter to members. N.J.S.A. 17:12B-123 provides that if Commissioner determines that the communication is made in good faith and is not detrimental to the best interests of the State association and its members, "then the Commissioner shall order the State association to prepare and mail the communication or communications, in whole or in part[.]" N.J.S.A. 17:12B-123(b).

The Commissioner has the authority to recommend changes to proposed communications to members. N.J.S.A. 17:12B-123(b) permits the Commissioner to order savings and loan associations to prepare and mail communications "in whole or in part," thus granting the Commissioner authority to strike certain wording within communications. The Appellate Division of the New Jersey Superior Court has endorsed the Commissioner's power to suggest changes to

proposed communications in In re Veloso, 93 N.J. Super. 186, 195 (App. Div. 1966). In Veloso, the then-Commissioner “noted a few changes that should be made in the wording” of the proposed letter at issue in that case. Id. at 192. The Appellate Division remanded the case back to the Commissioner directing that he “grant the application subject to the changes in wording heretofore suggested by him.” Id. at 195.

I recommend that several changes be made to Seidman’s proposed cover letter to make it clearer to the members, and to ensure that it is not detrimental to the members’ interests. First, the heading of the letter should state that the letter is not sponsored or endorsed by Spencer Bank, but that it is a letter from two members. This message would alleviate potential member confusion regarding the source of the letter. Second, references to vote proxies in the cover letter should be converted to references to “Nomination Endorsement” form. As noted above, soliciting member votes by proxy is premature at this point because Seidman and Wein are not yet nominated to run for election to the Board of Directors. Third, references to the website www.spencerbankvote.com should be stricken. The website contains a link leading to the original non-revised Vote Proxy form created by Seidman, which differs from the revised form recommended in this decision, as discussed below. Members visiting the website may get confused if Seidman's solicitation involves a request for member nomination or for votes. Lastly, the language in the cover letter that responses should be returned to Seidman should be stricken. The statute does not specifically authorize members to receive such responses from other members.

As I have found that sending out voting proxies is premature and detrimental to the best interests of the members, several changes also must be made to Seidman’s voting proxy card. First, the “Vote Proxy” should be converted to a “Nomination Endorsement.” Second, any

reference to a voting proxy therein should be stricken. Finally, the language in the form directing that it should be returned to Seidman should be stricken. The statute does not specifically provide that members are entitled to receive such responses from other members.

Mode of Dissemination and Receipt of Replies

As to the mode of dissemination and receipt of communications, the statute is silent on the technicalities of this preparation and mailing, including how it is to be mailed out and how responses are to be collected. There is no authority granted to the Commissioner in N.J.S.A. 17:12B-123 to order how the preparation of the communications and mailing occurs. These issues are to be decided without the involvement of the Commissioner. The only power vested in the Commissioner is to order a savings association to prepare and mail a communication, in whole or in part.

Timing of Communications

The Department recognizes that time is of the essence in ensuring that Seidman is able to communicate with members prior to the election. Accordingly, Spencer Bank must provide Seidman with an estimate of the cost of the preparation and mailing of the revised communications within three days of receipt of this Order. Seidman must pay the costs within three days of receipt of the estimate. Spencer Bank is ordered to mail out the revised communications within five days of receipt of payment. Lastly, because of the approaching election date, Spencer Bank is further ordered to notify Seidman and Wein immediately after Seidman and/or Wein reach the necessary number of member endorsements for the director nomination. This is necessary to allow Seidman

and Wein enough time to then request Spencer Bank to distribute and collect their vote proxies before the applicable deadlines set forth in Spencer Bank's by-laws.

It is so ORDERED on this 15 day of December 2020.



Marlene Caride
Commissioner

Jd Seidman FO/ Final Orders/ Banking