

## **Sale of Saint Mary Star of the Sea Parish, East Boston**

### **Findings, Conclusions and Recommendations**

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September 2007

On November 16, 2006 the Roman Catholic Archdiocese of Boston, hereinafter referred to as RCAB, conveyed said parish, including church, rectory and hall, to Michael Indresano's designee, MEE Development, LLC, for \$850,000.

Twenty days later, MEE Development conveyed the property to Universal Church, Inc., for \$2,650,000.

The result was a windfall for Mr. Indresano, or as he might say, "for MEE." A financial loss, as well as embarrassment and even ridicule for the RCAB and a furor for local parishioners, marked by pain, disappointment and anger. How did this happen?

In August of 2004, Codman Company was hired to market the parish properties, minus the school, which was not included in the offerings. Mr. Thomas Walsh, Counselor of Real Estate, was assigned to oversee the process. Marcotta Valuation Services of Wellesley appraised the properties and valued same, minus the school, at \$3,250,000. In November, under the direction of Walsh, the marketing campaign began.

As of February 18, 2005, three offers were received. The Bethel Brazil Church, hereinafter referred to as the BBC, submitted the highest bid at \$2,000,000, followed by Indresano at \$1,500,000. Ten days later, Indresano upped his bid to \$1,650,000. As of March 2005, Walsh indicated that the offers were too far below the appraised value and Codman was advised to continue to market the property.

It was also made clear to Codman, and presumably others as well, that RCAB was "unlikely" to sell the property to Bethel Brazil Church based on "the policy that sales were not encouraged to denominations that might cause confusion among the local Catholic population." A word or two is in order here. What policy, exactly, and how was it arrived at? Such a policy seems overly paternalistic to the parishioners at best and condescending at worst.

This author had the opportunity to hear from more than one parishioner and got the distinct impression that there is little or no confusion about who is in there and certainly none that would have survived one very brief visit to the place in its present status. There is certainly no confusion as to the difference between \$850,000 and \$2,650,000.

This is not to suggest that valid reasons didn't exist for the RCAB to be reluctant, or even unwilling to convey the property to the BBC. No doubt there were. This of course, leads to the ultimate question in this entire matter. Why weren't there steps taken in the deed to Indresano a/k/a, MEE, to prevent and preclude it from happening.

There is no reason to assume that Indresano's initial intent in said property was anything other than what he represented it to be. The man is no fool and is quite obviously a shrewd businessman. It was no secret that others, including the BBC were interested in acquiring the property. Whether or not Indresano became aware of Universal Church Inc.'s interest when he said he did, or in the manner described by his attorney is open to conjecture.

The fact is he did become aware.

Massachusetts case law, going back 100 years, (Thompson v. Barry et al 184 Mass. 429, 68 N.E. 674) deals with the issue of fraud and rescission of a real estate conveyance. The court confronted head on the right of one who owns a lot, to have a sale set aside for fraudulent representations of the purchaser.

In Thompson, the court found that false representations were made by Barry, the agent of the defendant corporation. Ironically, the defendant corporation was none other than the Roman Catholic Archbishop of Boston. The Plaintiff inquired of the agent whether his prospective buyer, then unknown to Thompson, was by any chance a Catholic, since he did not want a Catholic living nearby. Barry informed the Plaintiff that the buyer was a nice Protestant gentleman with a wife and two fine children. The deed was then made to Barry (the agent or one might say "the straw") and two days later, Barry made a conveyance to the RCAB.

The Supreme Judicial Court found in the Thompson case that the Plaintiff might be glad to sell to one party because of the probability that said party would put the land to a use, which would increase the value and enjoyment of the property being retained by the Plaintiff, and be entirely unwilling to sell to another because of the probability that it would put

the land to a use that would diminish the value of said property. The court went on to say, “A statement as to the position or character of the purchaser was a statement of an existing material fact, in reference to which an intentional falsehood, if relied upon, would be an actionable fraud.”

Clearly, Indresano set out to buy what he believed was a valuable piece of property with which he could establish a photography studio. He presented as a successful, accomplished businessman with an impressive history. At some point he, in turn, was presented with, what for many would be, a once in a lifetime opportunity. It can be argued that by the time he acquired the property through MEE, from the RCAB, he had long before become a de facto agent, middleman, or even, “straw” for Universal Church, Inc. Without his or someone else’s role, the Universal Church Inc. was not going to acquire the property and both he and Universal undoubtedly knew it.

This situation is distinguishable, however, from the century old Thompson case in that Indresano, while a necessary go-between for Universal, at no time acted as an agent for the RCAB.

Indresano was a prospective buyer who had no fiduciary obligation or legal obligation to be forthright in his dealings with the seller, (RCAB) as to what he fully intended to do with the property, as soon as he could after purchasing it, due to the fact that there was nothing in the deed compelling him to do otherwise.

Codman Co., of course, did have a fiduciary relationship with RCAB. There does not appear to be evidence that Codman, Tom Walsh or Joe Williams had any direct knowledge of Indresano’s ultimate intentions.

Walsh has stated several RCAB properties had been conveyed without controversy and it was time for him to conclude his full time position for the RCAB. He then did so and Williams assumed his role. Whatever Walsh or Williams knew, if anything, about the behind the scenes discussions between Indresano and Universal, and regardless of when Indresano and Universal came to a meeting of the minds, this “perfect storm,” as it were, could not have come about with the inclusion of a no-flip clause (i.e. restriction in the deed to Indresano.)

While restrictions in deeds do not apply in all cases and certain prohibitions do exist on the basis of such things as race, color, religion, national origin or gender, the law does provide that a restriction based on religion is permissible in property owned by a religious corporation. Massachusetts General Laws Chapter 184 Section 23B, while prohibiting and voiding any restriction in a conveyance based on the above mentioned, it does allow for a limitation on the basis of religion on the use of real property held by a religious or denominational institution or organization. The fact that RCAB, through the Parish was retaining the school provides further justification for the use of a restriction in this case. While it is fair to say that restrictions should be utilized somewhat “selectively,” it is hard to imagine a more appropriate situation than the matter at hand.

The RCAB had made it abundantly clear that it was willing to give up a substantial sum of money rather than convey the property to the BBC. It was retaining land adjacent to the Church (i.e. the school), expressed concerns about the impact of such a sale on the local parishioners and, in effect, refused to entertain any further bids from the BBC and never received one from Universal who apparently knew that their only chance to acquire the property rested with Indresano.

Notwithstanding same, as late as January 19, 2006, a correspondence from the RCAB Chancellor entitled “Recommendation to the College of Consultors: Sale of Property Owned by RCAB,” specifically addressing the property in question, stated that the matter of a deed restriction in any sale to Indresano was N/A (i.e. not applicable). It is not clear as to who, and how many, were made aware of this recommendation prior to the conveyance to Indresano.

The failure to include a restriction is all the more noteworthy and unfathomable given the inclusion of such a restriction in a deed eight months earlier, conveying other church property, St. John the Baptist, which was also located in the East Boston district of the city.

The absence of a restriction in this case, one must conclude, results from a lack of communication between the appropriate authority at the RCAB and/or the real estate agent (Codman), Williams, and the law office, which drew the deed. Another simple thing to do with catastrophic consequences for failing to do so. An examination of both East Boston parish deeds indicates a notarization by the same notary and presumably the same law firm. It is not enough to

suggest that there was no such communication because, as suggested by Archdiocesan personnel, someone looked into Indresano's eyes and he seemed to be a "trustworthy fellow."

It is equally naive to assume that a no flip provision was unnecessary because Indresano continued during the due diligence period to visit the site and have his consultants (engineers, architects, etc.) stay on the job as was also suggested by Archdiocesan personnel. Had he done otherwise, someone might have figured out what he was up to.

A discussion with former RCAB Chancellor, David W. Smith, lends credence to the notion that the RCAB was reluctant to let the word get out that it was unwilling to convey the property to another religious institution, no matter what the nature of the denomination. Hence, the reluctance to include said restriction. Mr. Smith also left no doubt that the Vicar General, Bishop Richard G. Lennon, D.D., saw, read and presented the memo dated January 19, 2006 to the RCAB College of Consulters recommending no restriction in the deed to Indresano.

Although the memo purports to be sent from Smith to the Vicar General, Smith could not rule out with certainty the possibility that Bishop Lennon actually prepared the recommendation.

Obviously, the inclusion of such a restriction would have given the buyer (Indresano) pause as to whether to proceed. While restrictions are not always enforced by the court, whether by injunction or a suit for damages, there is no reason to assume lack of court enforcement in this case. In any event, Indresano would have bought himself a lawsuit as well as a church had he gone forward.

In reviewing the policies and procedures for sales of RCAB property, which were provided, the first question is whether they were in place at the time of this conveyance. In any event, eight critical steps are outlined. The final step refers to an outside appraisal with follow up appraisals over the sale period due to changing market conditions. This step does not refer to so-called "mass appraisals" or "drive by appraisals" which can result in confusion or uncertainty and might best be avoided.

As pointed out in the Internal Financial Controls in the U.S. Catholic Church study prepared by Robert West, Ph.D. and Charles Zech, Ph.D., both of Villanova University, there are often internal control issues associated with any non-profit organization. They point out that lack of stock ownership as well as a measure of performance or accountability such as profits along with management by professionals who may be knowledgeable in the services provided by non-profit organizations but lack accounting, business management or finance training.

For example, the policies and procedures memo issued subsequent to the sale to Indresano refers to a gain in excess of \$63,000,000 resulting from the sale of RCAB properties. How was the gain determined? Does the \$63,000,000 figure represent the sum of money “exchanged” for the property? If the property was worth more than \$63,000,000, where is the gain?

There was a significant breakdown in RCAB’s internal controls that led to not informing the Archdiocesan Real Estate Advisory Board about any offers other than the offer from Indresano. The opportunity to recommend a deed restriction was lost.

In keeping with the critical steps suggested by professors West and Zech, it seems essential there be a point person or liaison to work with the real estate team, including the parent company, broker, marketing specialists and ultimately the RCAB attorney. This person should preferably possess an M.B.A., have business experience, including accounting, finance and marketing, and be able to communicate with all parties as to what the RCAB goals and intentions are as to any and all such transactions.

This person, or someone else possessing communication skills, should also seek the advice, as well as keep informed, any appropriate Diocesan financial or advisory boards. Of equal importance, is keeping in constant communication with the parish in question. Not just the Clergy, but the local parish council and other involved parishioners should be aware of developments as they occur. The loss of a parish is painful, to say the least. Parishioners should be sounded out about what comes next and “assumptions” should not be made about their sentiments and the parish with which they are about to merge should be apprised of the financial consequences to them as well as to the RCAB, from a sale to buyer A (in this case the BBC) and one to buyer B (Indresano).

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The operative word, the word that comes to mind is transparency. In recent history, the ecclesiastical world, not to mention the public sector and major for profit corporations, have been plagued as much by a lack of transparency relative to various misdeeds as they have been by the misdeeds themselves. The result can be and often is, the embarrassment, pain and anger referred to above

Lastly, a word not used in this report is criminality. That is because there was none. What there was arguably constituted malfeasance, a dereliction of duty - to the good parishioners of Saint Mary Star of the Sea Parish, if no one else - and a failure to put in place solid, basic business practices and then adhere to them resulting in financial loss and, perhaps more importantly, the public relations disaster that followed. A disaster that the RCAB could ill-afford.

Respectfully submitted,

Hon. Kevin M. Herlihy (Ret.)