

DON'T JUDGE THE BOOKKEEPER BY HIS "COVER"

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Small non-profit organizations frequently have Boards of Directors who lack sufficient appreciation of the importance of good governance and/or appropriate financial expertise. As well, the personal charisma and influence of key players can successfully deter efforts to properly govern. In the case of "Sunrise Film Festival" such leadership created the necessary conditions for fraud and concealment that can easily happen when sufficient internal controls over resources are lacking. A bookkeeper with a slick cover almost took down the success of the substantial efforts of numerous volunteers to build a legacy for the arts over a period of four years.

NOT THE PHONE CALL YOU WANTED

Stan looked annoyed as the cell phone in his pocket rang the unique ringtone belonging to his wife Candy. She knew he was in the middle of a round of "corporate golf" with three of his big accounts, and he had repeatedly told her not to interrupt his golf. He allowed the call to go to voicemail, but the familiar ring began again immediately and he answered with a curt "What is it honey. You know I'm on the course". Candy's voice was shaking a bit as she stammered out the words, "Stan, I might have made a mistake. I was so thrilled to see the \$750,000 deposit in our joint account this morning, but when I called the bank to verify, they put me on hold, and then told me that the matter would be investigated and they would be back in touch."

Stan felt his heart race as sweat began to pour down his suntanned brow. For a moment he couldn't think where he was. Then the panic hit him full force. This was it. He was done for. With Candy still on the line he made a quick excuse about a family emergency at home and raced across the course to the parking lot. Then he sat, full of dread, thoughts racing around in his head, as another caller ID. appeared. This was not a call he ever expected to receive. He had been too careful for this. He was too smart for this. He felt that, in this moment, his life might as well be over.

YOU CAN GET HERE FROM THERE

Being front-and-center at la-ti-da social events was standard modus operandi for Stan Sweeney. If there was a coat-and-tie happening with cocktails, he could be counted on to be present, with his charming and beautiful wife in tow. His smile was electric, effortlessly drawing people into his sway. Always impeccably turned out in bespoke clothing, and garnished with a jaunty scarf or not-so-subtle expensive set of cufflinks, he exuded success and confidence in his ability to win at whatever he endeavored.

Stan grew up in the inner-city of a major US metropolis. A seventh child in a family of twelve children, he early-on demonstrated a highly competitive spirit. His mother had been slightly concerned when Stan appeared to promote his own status at the expense of others, including his siblings. At 16 he “stole” his 18-yr-old brother’s girlfriend to simply make the point that he could. The brother’s broken heart didn’t seem to cause him remorse, and he soon tossed the girlfriend aside for a newer model with more social capital, the captain of the cheerleaders and homecoming queen. Stan’s mother could never remain cross with Stan for very long. He was, in fact, her secret favorite, and she could justify most of his shenanigans as just “a boy being a boy”.

In spite of Stan’s humble beginnings, he earned excellent grades throughout high school and obtained a full scholarship to a good university. He discovered his aptitude for business subjects right away, and chose to major in accounting primarily because he believed that the financial opportunities for accountants were more attractive than other business majors, especially immediately after graduation. Although he didn’t particularly enjoy the study of accounting, he focused on the goal he had set for himself -- being a wealthy man, and he successfully earned his degree, and subsequently his CPA license.

WHEN ENOUGH IS NOT ENOUGH

A few years into a career in public accounting with a “Big-Eight” firm, Stan began to notice how financially successful some of his clients were and to compare his own progress unfavorably with theirs. He began to experience a vague sense of disillusionment with public accounting – he wasn’t getting far enough fast enough and it really perturbed him to see clients that he judged to be less savvy than he making profits he envied. It was particularly troublesome for him if he believed their successes were in some way attributable to his own excellent financial advice.

Eventually Stan found a colleague with a like-mind and they agreed to pool their resources and invest in a new technology that seemed to hold promise – solar power production. They began approaching major providers of solar power in the

Midwest as subcontractors, and made a quick fortune constructing industrial solar panels over a three-state area.

At the ripe old age of 35, Stan could now retire and live a life of luxury. He was already bored of the life he had in the city. His wife of 15 years looked much less attractive after the three children they had in the early years. Her appeal as a high school beauty had faded. His money and ability to live the good life meant he could attract any woman he wanted, and he didn't want the shackles of married life and kids. He was finally ready to live the life he had always imagined, traveling, being admired and sought out, and choosing who was worthy of his company.

After an ugly divorce, Stan relocated himself to the southeastern coast in a high-end golfing resort community. He had retained the best divorce attorney money could buy, and had been successful in disclosing a very modest amount of his net worth in the divorce proceedings. He was home free.

Within months, Stan had set up a storefront financial services office in order to establish himself in the resort community. The area was full of well-heeled retirees who had lots of resources to invest and needed lots of expert financial advice. He hung his CPA shingle, despite the fact that, during his whirlwind tenure in the solar panel business, his license was expired in the state of origin, and that he had not attained a reciprocal license in any other US state. Apparently no one in the small resort thought twice about the authenticity of those credentials, and Mr. Sweeney began scanning the horizon for opportunities to make more money from his fellow retirees in need of a good "money manager".

Knowing how important appearances are, Stan always drove the latest sporty BMW model, was invited and attended every social function, and soon was the toast of the town and its most eligible bachelor. One spring evening as Stan relaxed after a working round of golf at the club's nineteenth hole he spotted a gorgeous female golfer putting in the final hole with her partner. She was spectacular, petite and shapely, tanned and toned, and obviously a lady of leisure sporting a very competitive golf swing. He took the first opportunity to offer her some liquid refreshment as the club caddy retrieved her cart and her partner retired to the men's locker room. He noticed her wedding band, but was not in the least discouraged as she dazzled him with her equally winning smile and agreed to a tennis date the next morning.

For the next few weeks Stan and Candy were a constant duo on the tennis court, in the lap pool, and over cocktails before she returned home to an increasingly suspicious husband. Their fling was hardly a secret, but the local wags viciously

defended Candy's behavior on the grounds that her husband was a boring old drunk who never took her anywhere and that she was way too full of life to waste it on him. Candy had lived in the resort for 15 years, having moved there with Hank, her second husband and his three children from a previous marriage. She had been exactly what she promised to be – gorgeous and a good companion for his many business dinners and endless evenings of client entertainment. He provided her an unlimited clothing and personal grooming budget, but very little else. Anyone could see why Stan's unrelenting and romantic attention would move her to divorce Hank and quickly/quietly elope to St. Lucia with the resident dreamboat. Her friends, while quite jealous of the attention lavished on Candy, were happy for her newfound love and the storybook ending of happily ever after with Mr. Right.

Candy and Stan had an elegant life. With the generous funds he made in his first career, they custom built their dream house in the most expensive part of the resort, overlooking the beach. After a couple of years of travel and exploration they decided to purchase a vacation home in the mountains of Vermont, on the recommendation of numerous friends who "summered" there. In both communities Stan and Candy were popular as guests and frequently and lavishly entertained their friends in turn. They had weekend house parties in Vermont, inviting friends from the beach up in the summer months, and did the reverse in winter to their home on the coast. Their social calendar was filled before a new year ever began, and they were frequently invited to join local charitable causes and fund-raising events for worthy organizations. Stan often sought the Treasurer position of organizations he was a member of, being generous in his desire to "give back to his community" with his gifts of financial expertise. He seemingly was a tireless volunteer.

Thus, over a period of barely three years Stan became the Treasurer of their country club in Vermont, manager of the club's extensive multi-million dollar renovation, the executive financial officer of their resort community social club, a founding member of the Board of Directors of a new state savings and loan, and the Chair of the S&L audit committee. Whenever anyone had need for financial expertise the first thought was of good ol' Stan. He never said, "no," and his generosity of time on behalf of his communities of residence seemed to have no bounds.

A NEW SCENT IN THE WIND

With the recent relocation of a famous actor to the small coastal community, the citizenry would soon be gifted with a rare opportunity to partner in a most prestigious annual film festival along the gorgeous beachfront of their resort community. The famous new citizen, Barrett Hamilton, had numerous golden

globes on his shelf, and had connections worldwide in the film industry. The handsome, albeit aging, actor wanted to leave a legacy to the arts by creating an annual film festival along the model of the “Sundance Film Festival”, in order to encourage young talent by enhancing opportunities for young people on the east coast who might lack the resources required to move to New York or the west coast to try to break into film. The community was at once star struck with their newest citizen, and jostling for a chance to “get to know him” and give him a warm southern welcome.

ON THE HUNT

As one might predict, Stan was invited to participate in creating this unique initiative and he of course generously volunteered to become Treasurer/CFO of the nonprofit organization. A quite prestigious slate of nominees for the founding Board of Directors was presented for the benefactor’s consideration. Knowing nothing of business, and very little of human interactions, Mr. Hamilton gratefully deferred those decisions to the Executive Director he had appointed, and to the only other existing officer, Stan Sweeny himself.

The Executive Director, Marianne Lake, had been successful in an early outreach of attention to the aging actor. She had done a bit of daytime television a decade earlier, before she gave up her “career” in acting to marry an older man and travel the world. Recently the Lakes had moved into the retirement area, and she really missed the attention her earlier acting had provided. She was determined to make the film festival a huge success, and simultaneously reap the accolades and attention she so desperately wanted.

PUTTING A PLAN IN ACTION

Together, Marianne, and Stan, put their heads together and appointed a Board they believed had both sufficient resources to make substantial contributions to the enterprise, and sufficient cache in the community to be an impressive group of initial supporters whose involvement would attract the attention of the entire community.

Stan and Candy were wonderful ambassadors of the festival idea, spending lots of personal time talking it up among their wealthy friends, and making personally financed trips to the various film production companies that were volunteering their support to the project as a favor to the benefactor, to negotiate details and draw up contracts on behalf of the Festival Board. Stan used his financial background to charter a non-profit corporation, Sunrise Film Festival, Inc. (SFF). As directors of a qualified 501(c) (3) corporation the SFF Board accepted responsibilities including fiduciary (ensuring the safeguarding of assets intended for charitable purposes), governance (policies relating to conflicts of interest,

fundraising, documentation of governance decisions, etc.), and ethical standards that promote the public good (Governance and Related Topics – 50(c)(3) Organizations, 2012, Malamut, 2008).

IF IT AINT BROKE, DON'T FIX IT

After a brief nine-month start-up the first SFF film festival was held to great acclaim. Contributions to the non-profit poured in, as local citizens jostled for favored invitations to private fund-raising events held in the mysterious private home of the illusive actor. Stan and Marianne spent countless hours and many late nights hammering out the details of what would be a spectacularly successful first festival week. Marianne, considering herself an actor, had very little knowledge of budgets, contracts, negotiations, and the like. It was a natural fit for her to depend heavily upon Stan for advice and support in decisions of a financial nature. It was as if where the talents of one ended, those of the other picked up. Actually, they felt very little need of the other 15 board members, except for their expected and quite significant annual contributions, and the appearance of meeting minimal adequate governance required of a qualified 501(c)(3) non-profit corporation. And for the most part, this arrangement worked seamlessly. Mr. Hamilton had full faith in the abilities of Marianne and Stan, and agreed almost automatically with any and all decisions they made. Although he attended Board meetings, to the great delight of all board members, he rarely weighed in on decisions unless any resistance to the ideas put forth by Stan and Marianne was encountered, in which case Mr. Hamilton made it a point to support their position firmly, putting an end to the matter.

After three successful years, and countless hours of volunteer work on the part of every member of the board, the other directors began to feel some frustration at monthly meetings when it seemed that they simply were being “informed” of all decisions had been made prior to their meeting by Stan and Marianne, and that they were in effect window dressing. They were called upon to do the all-important busy work of using their considerable social contacts and influence to find volunteer hosts in the community to house actors and producers during the week-long festival, actors and producers who came with highly unusual and often outlandish dietary requirements, demanding personal expectations, and awkward schedules. They were expected to make arrangements to fete film dignitaries to endless social events with seamless transportation throughout the festival week.

The Board was expected to buy the high-dollar tickets to all events throughout the week, and to populate those seats whether or not they themselves were available to attend. Board members were expected to call on local businesses and pitch opportunities to sponsor various festival events in exchange for promotional attribution. They were expected to put out whatever fires blazed up throughout

the week with equanimity, including those crises that arose through the misguided decisions made by Marianne and Stan, who were rarely, if ever, involved in the resolutions. Marianne, after all, was too busy being on the stage to welcome the patrons to each event and act as the “face” of the festival. She insisted that all things be brought to her attention, and that ultimately all decisions related to the Festival were hers to make. She was intractable about disallowing any Board member direct access to their counterpart in the various film production industry. She also insisted upon filtering all contact with Mr. Hamilton regarding festival matters, insisting that intrusions upon his privacy must be tightly controlled. She and the Treasurer garnered all power between them and held it tightly.

ALL THAT’S NOT WELL DOES NOT END WELL

As is all too frequently the case, this grass-roots effort, quickly created by a small but energetic group of volunteers who shared a passion for the arts and a desire for access to a celebrity, was fraught with a lack of governance. One board member with considerable financial expertise became increasingly uncomfortable with lack of internal controls over the financial resources of the organization. As the festival grew in popularity and began to attract substantial financial support through contributions of individuals and local business, Mr. Kevin Snide, CPA, began to consider the problem through the lens of an appropriate financial structure for a growing organization. After mulling over the issues for a time, he initially suggested to the Board the desirability of independent oversight for the Treasurer function (Overton, W. and Frey, J. (2002). The Treasurer, Stan, appearing insulted and shocked, reacted with strong opposition, finding the idea an entirely unnecessary waste of the organizational assets.

At a subsequent meeting of the Board, Snide brought up the desirability of an audit of the financial function, especially in light of the lack of adequate segregation of duties over resources. He tried to point out to the entire Board that the Treasurer, as it stood, held the incompatible duties of the custody, recording, and reconciliation of the organization’s only resource – cash. Again, the idea was met with indignant condescension by the Treasurer as a complete waste of contribution dollars. The other Board members stared dully on during the heated exchange between Snide and Sweeney. No one knew what “incompatible duties” meant, and everyone was too intimidated by their lack of knowledge to ask any questions. Stan was well-liked among the directors and they had no reason to mistrust him. They hesitated to speak up because they had no idea what Snide was talking about and that perhaps he was trying to make himself important.

Having stated his concerns on more than one occasion, Snide began to consider withdrawing from the Board. As a CPA, he had a professional reputation to uphold, and was worried that because the Board was not, in his opinion, meeting

their fiduciary duty by ensuring proper financial controls, something horrific might happen and he would be part of the problem if he wasn't able to facilitate a solution. Surely he had obligations to the public if any financial unpleasantness ever occurred and he had been aware of the inadequacy of the controls that made it possible.

Meanwhile Stan and Marianne continued to manage all affairs of the festival and all matters that would normally be considered board responsibilities themselves. They spent considerable time together working on the festival and with their respective spouses in the evenings for shared dinners and weekend respites. Stan and Candy entertained Marianne and husband Geoff for a week one summer at their home in Vermont. The two couples became inseparable. One rarely saw one couple without the other.

REAL ESTATE AT A REAL BAD TIME

Despite his comfortable retirement nest egg, Stan was never quite satisfied with what he had accomplished in the past. Always looking for the next big deal, when approached by an old friend from back home to invest in a sure thing, he eagerly agreed. His friend, Fred, who was recently retired as a corporate executive from a large financial consultancy in New Jersey, knew a former client whose lucrative group of condominium properties up and down the coast of North Carolina was available to purchase. Fred convinced Stan that they would make a killing by taking these properties, making a few cosmetic improvements, and selling ownership shares. Stan invested his entire nest egg in this venture, feeling confident that his net worth would triple at a minimum. His wealth would be unshakable. No more commercial flights. No more homes without full year-round staff in residence. Ultimate comfort and security was his dream about to become reality.

They were flying high, literally, from one property to another, in their new Cessna. The wives of each partner were happily shopping the upscale boutiques from NY to Miami as the men played every golf course and joined multiple golf clubs in the name of generating prospects. Life was good until it wasn't. And that day came when the combination of corporate frauds and bank failures created an enormous economic downturn, turning their glitzy little world upside down. Suddenly the value of real estate took a nosedive, especially in nonessential luxury resort properties. Even the wealthy who would be the primary buyers of luxury property ownership shares were nervous, and made decisions to hold onto the discretionary funds rather than spend them.

Having begun their improvements program, and failing to meet their sales targets from almost the very beginning of their joint venture, Stan and Fred began to have

serious cash flow problems and soon stopped meeting their loan payments. The lending institution made a visit to the two partners and explained that further loan default would lead to immediate repossession of the properties, which literally meant they would both go bankrupt.

Everything in Stan's world had been built upon appearances. Because the lending institution for the joint venture was not local, there was no indication of anything amiss in the everyday life of Stan and Candy. Despite the financial stresses he suffered, Stan continued his volunteer work with the Festival, and his responsibilities to the bank Board, but he had to let being Treasurer of the country clubs go in order to keep all irons in the fire. Shuffling his resources to make minimum necessary payments and stave off the creditors was taking more and more of Stan's time. Of course everyone understands the tendency to over commit, and Stan's decisions were considered a good move. He carefully maintained the appearances of continuing affluence: golf trips, summers in Vermont, and new clothes and cars. His financial challenges were simply not apparent to those closest to him. Luckily, his partner Fred, who declared bankruptcy and bailed out of the venture, lived two states away and none of Stan's friends knew anything about him or their joint venture.

By now the financial resources of the Festival were significant enough to secure its existence into the future. With \$1,250,000 in the checking account at an S&L where Stan was a director, the fund-raising efforts were effortless, and previous contributors, unaware of the resources of the organization, continued to eagerly and generously contribute each year. Snide once again appealed to the Board to place funds in excess of immediate operating expenses in a separate interest-bearing account at another financial institution to maximize returns rather than languishing in a non-interest bearing checking account. Stan refuted the wisdom of that suggestion by glibly suggesting that the measly interest rate on offer at the time, less than 1%, would not make a material difference, and it wouldn't be worth the loss of liquidity to meet sudden cash flow requirements to make that move.

At this point Snide was so uncomfortable with the status quo he couldn't understand how his peers on the board did not question the situation. He resolved to contact Hamilton directly to discuss his concerns and attempt one last effort to instigate some reasonable controls before the next Board meeting, but before he had that opportunity the unthinkable happened.

THE UNRAVELING

One morning in late spring, about a month after the close of yet another successful festival week, Candy received her checking account statement online

and was astonished at the size of the balance according to the bank. At her estimate she should have about \$2,500 in the account because she only used it for daily expense items – Stan paid for all of her large purchases on a Black American Express card. The bank statement on her iPad screen reported a balance of \$752,500. Thinking sweet Stan had put a bonus in her monthly household draw to surprise her for their upcoming anniversary; she quickly picked up the phone and called the bank to confirm the details of the deposit, made 30 hours earlier to their joint checking account. As the bank clerk cheerfully agreed to look into the deposit, Candy was placed temporarily on hold and was surprised to hear the branch manager return to the call. The bank would have to get back in touch with her about the transaction. “Sorry for the inconvenience. There appears to have been an error in processing. We will correct it and be back in touch as soon as possible.”

“Oh well,” thought Candy, “it was a sweet thought, but I could not have seriously thought Stan would be that overly generous at this time.” After all, he had been extremely tense over the past few weeks, and had spent much more time than usual on the phone with his partner up north, and in various other stressful and muted conversations. She has asked him several times lately if everything was okay, but he always assured her that there was nothing to worry her pretty little head about and she was always relieved to know her infallible Stan was in charge.

Meanwhile, the bank manager hastily fumbled through his Rolodex trying to locate the contact information for Marianne Lake. When she answered her phone, his question to her was short and sweet: does Mr. Sweeney have authorization to transfer funds in the amount of \$750,000 from the Festival account to his personal checking account? Hearing a commotion Marianne’s husband found her on the floor beside her desk at home, phone still in her hand. She was passed-out cold.

Fallout from the course of events follows. Sweeney admitted to the defalcation upon being confronted by the benefactor actor and Marianne Lake. He promised to replace the stolen funds within 24 hours, which he did. The source of the replacement funds remains unknown. Lake suffered a nervous breakdown, manifesting in multiple physical ailments unexplained by physical causes. She retired from society after being removed from the festival Board of directors and relieved of all duties and responsibilities related to the festival. The President of the S&L notified its Board of the fraud. Sweeney was removed from the bank board, and he resigned his position from the Festival board in a letter to the benefactor.

In an unscheduled emergency called meeting the Board was informed of the situation by Hamilton, who, despite all attempts to appear in control of the

situation, was nervous and vague about details. Barrett Hamilton informed the Board that his personal attorney has provided guidance on the matter, and that no charges would be filed against Sweeney in order to protect the reputation of the organization. He insisted that the festival Board members would swear to silence about the entire matter, and required them to agree not to disclose any information about the misappropriation of funds perpetrated by the Treasurer in the interest of keeping the public trust in the organization. Certainly, Barrett explained, any gossip implying that there had been a misappropriation of funds could unfavorably impact the Board's ability to raise funds in the future.

Assuming that Hamilton would appreciate some expert advice during this difficult time Snide drafted a financial framework for responsible governance and submitted it directly to him for consideration. After a brief period the benefactor replied that the measures seemed unwieldy and unnecessary for an organization of their size. A successor Treasurer was appointed by Hamilton, his personal banker, who was appointed the same duties previously held by Sweeney. The new Treasurer was intentionally not informed about the prior theft.

Snide, disappointed and despondent about his ineffectiveness as an advocate for financial responsibility, resigned from the Board, writing the details of his concerns and the financial framework design proposal to all remaining Board members. Neither the Festival Board, nor the Bank filed any charges against Sweeney. After a brief time he defaulted on the loan on the condominium properties (having all assets repossessed, including the Cessna), sold his vacation home in Vermont., resigned from 8 of 10 out-of-state golf club memberships, and rehung his shingle advertising "*Expert Financial Advising Services*", by Stan Sweeney, CPA.

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