

## Report of the Commission on Judicial Business

The Office of the General Synod received one appeal during the past year. It was referred to the General Synod's Commission on Judicial Business (CJB) for review, recommendation, and report to the 2009 General Synod. The appeal was from an action by the Regional Synod of New York. It was filed by the consistory of New Lots Community Church in Brooklyn, New York, and may be referred to herein as the New Lots Appeal.

### A. The Parties to the New Lots Appeal

The appellant in this appeal is the consistory of New Lots Community Church (New Lots Consistory). The respondent is the Regional Synod of New York (Regional Synod). The Classis of Brooklyn (Brooklyn Classis) was also considered a party respondent in light of *Book of Church Order (BCO)* Chapter 2, Part III, Article 2, Sections 4 and 5, which provide generally for all parties to be involved.

### B. Pre-Hearing Procedural Matters

All filing and notice requirements for the appeal were met. Each of the three parties (acting through their respective counsel) submitted a written brief. New Lots Consistory was represented by the Rev. Paul Janssen. The Regional Synod was represented by Elder Richard Lavorata, Jr. (who also serves as chair of the Regional Synod's Judicial Business Committee). The Brooklyn Classis was represented by Mr. Mark Wingerson and the Rev. Dr. Daniel Meeter.

The CJB initially conferred by conference call on September 4, 2008. None of the parties waived their respective rights to a hearing (which right is provided pursuant to *BCO* Chapter 2, Part III, Article 2, Section 5). Accordingly, a hearing was held in Newark, New Jersey, on Tuesday, November 11, 2008, and the CJB met in conference after the hearing that same day. John Busey Wood, who serves on the CJB as the representative from the Regional Synod of New York, recused himself and did not participate in this appeal. The Rev. Stephen Eckert, who serves on the CJB as the representative from the Regional Synod of the Mid-Atlantic, was unable to participate in the September 4, 2008, conference call or attend the hearing, and therefore did not participate in the hearing or the decision.

### C. The Nature of the New Lots Appeal; Procedural Matters

The New Lots Appeal arises out of the decision of the Regional Synod at its meeting on April 12, 2008.

As ground of appeal, the New Lots Consistory claims manifest injustice in the decision of the Regional Synod to affirm the decision of the Brooklyn Classis despite procedural irregularities in that lower judicatory.

### D. Procedural and Factual Background

The facts and history surrounding the dispute between the parties are found in the record provided to the CJB, pages 300000-300130.

This appeal is the result of a complaint dated April 6, 2007, filed with the Brooklyn Classis by members of the New Lots Community Church against the New Lots Consistory. The complaint was referred to the Judicial Business Committee of the Brooklyn Classis (Brooklyn Classis JBC). The Brooklyn Classis JBC determined that, among other things,

the Brooklyn Classis should supersede the New Lots Consistory, and so recommended to the Brooklyn Classis. After a hearing on October 16, 2007, the Brooklyn Classis approved and adopted all the recommendations of the Brooklyn Classis JBC, including supersession. The New Lots Consistory appealed to the Regional Synod. The appeal was referred to the Judicial Business Committee of the Regional Synod (Regional Synod JBC). After a hearing on April 12, 2008, the Regional Synod JBC recommended that the entire decision of the Brooklyn Classis be upheld and the appeal be dismissed. The Regional Synod adopted the recommendations of the Regional Synod JBC. The New Lots Consistory appealed to the General Synod.

### **E. Discussion**

The *BCO* provides that the New Lots Consistory, as appellant, has the responsibility to establish that the lower judicatory (the Regional Synod) erred in its decision (*BCO* Chapter 2, Part III, Article 2, Section 9). The General Synod, according to the *BCO*, shall give deference to the decision of the lower judicatory, and shall uphold the decision of the lower judicatory if it is supported by substantial evidence in the record when the record is viewed as a whole (*BCO* Chapter 2, Part III, Article 2, Section 10).

The *BCO* (Chapter 1, Part II, Article 7, Section 13) sets out the procedure for superseding a consistory. Supersession is an action taken by the classis as an assembly. The classis is required first, by a two-thirds majority, to state its intention to supersede the consistory and to summon the consistory to show cause why it should not be dissolved. If the classis, after having heard the consistory, continues in its intention, it may supersede the consistory by a two-thirds majority vote.

Herein, the Brooklyn Classis never voted by a two-thirds majority to state its intention to supersede the consistory and it never summoned the New Lots Consistory to show cause why it should not be dissolved.

The New Lots Consistory knew before it attended the meeting of October 16, 2007, that the Brooklyn Classis' Judicial Business Committee had recommended, among other "remedies" for the complaint of members of the congregation, that the consistory be superseded, and that supersession would be discussed at the meeting. A formal notice of intent to supersede, however, must be given by the classis, and can only be given following a two-thirds vote of the classis (*BCO* Chapter 1, Part II, Article 7, Section 13), and there is no record of such a vote having occurred. While the classis' meeting agenda indicated that the possibility of supersession could be discussed, this does not satisfy the two-thirds vote requirement specifically imposed by the *BCO*. Consequently, no notice of intent to supersede was ever given. Simply put, while the Brooklyn Classis may have clearly indicated its intent, it missed an important step that is specifically required under the *BCO*, and consequently the New Lots Consistory was never afforded an opportunity to prepare or present a response to the Brooklyn Classis' intention to supersede.

Counsel for the Brooklyn Classis admitted in oral argument that the Brooklyn Classis had not formed an intention to supersede the New Lots Consistory before the meeting of October 16, 2007, and that the decision to supersede was arrived at in the process of dealing with the complaint. This was a curious way of proceeding. Generally, on a complaint a classis acting as a judicatory has the power to confirm or reverse the actions complained of, or to remit the matters in controversy to the consistory with instructions. It can only supersede a consistory in the exercise of its supervisory function. In the case herein, the classis erred by grafting its supervisory function onto the complaint.

An assembly that moves into judicial session does not lose its power to act as an assembly. But it must exercise its powers in accordance with the provisions of the *BCO*. The commission finds that the failure to observe the basic prerequisite to superseding a consistory is a procedural irregularity that cannot be ignored. With or without notice, Brooklyn Classis acted without authority because a two-thirds majority had not stated the intention to supersede the consistory and had not summoned the consistory to show cause why it should not be dissolved.

The New Lots Consistory, in its appeal to the Regional Synod, expressly raised the failure to issue the notice required by *BCO* Chapter 1, Part II, Article 7, Section 13. (See record at pp. 300079-80.) The Regional Synod was in error, in the commission's view, to affirm the decision of the Brooklyn Classis, and manifest injustice resulted.

Superseding a consistory is an action that a classis takes as an assembly. Normally, the appropriate route of challenge to such a decision would be a complaint under *BCO* Chapter 2, Part II, Article 1. In the present case, however, the action was part of a judicial decision, namely a complaint that was heard in judicial session. It was the proper course for the New Lots Consistory to appeal to the Regional Synod, as it did. Pending that appeal, the action was stayed by operation of *BCO* Chapter 2, Part III, Article 1, Section 3. Pending the appeal to the General Synod, the Regional Synod's affirmation of the action of the Brooklyn Classis is stayed by the same provision. Ideally, superseding a consistory is not an action that should be held in suspension for a long time. If the Brooklyn Classis had not chosen to fulfill this important supervisory function (supersession) in the context of a judicial action, the delay would not have happened. New Lots Consistory could have made a complaint from being superseded and this would not have had the effect of staying the action. (See *BCO* Chapter 2, Part II, Article 1, Section 5.) This, and the unfortunate dispute over this point that has resulted, illustrate that the procedure chosen by the Brooklyn Classis was ill-advised.

The Brooklyn Classis has the right, without waiting for the present appeal to be decided, to initiate the procedure set out in *BCO* Chapter 1, Part II, Article 7, Section 13 if it considers it advisable to supersede the New Lots Consistory. It was urged upon us that it would be inconsistent with judicial economy to re-initiate the supersession process. In the commission's view, the potential duplication of effort is the result of failure to comply with the clear requirements of the *BCO*.

#### **F. Recommendation**

The Commission on Judicial Business makes the following recommendation to the General Synod:

##### **R-67**

**To reverse the decision of the Regional Synod of New York, and thereby reverse the action of the Brooklyn Classis to supersede the New Lots Consistory. (ADOPTED)**