

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Application of The Japanese Educational Institute
of New York,

Petitioner.

For an order approving the sale of assets pursuant to
N-PCL §§ 510 and 511.

Index No. 06-103400

IAS Part 13
Hon. Sheila Abdus-Salaam

AFFIDAVIT

AFFIDAVIT OF YUKIO SASAKI

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

YUKIO SASAKI, being duly sworn, deposes and says:

1. I am a member of the PTA of the Japanese School of New York (the "PTA"). I submit this affidavit in support of the PTA's objections to the application of the Japanese Educational Institute of New York ("JEI") for approval of a contract to sell the educational campus in Greenwich, CT ("Greenwich Campus") that is the home of the Japanese School of New York.

2. The JEI Trustees' approval of a contract to sell the Greenwich Campus to Westchester Fairfield Hebrew Academy ("WFHA") for a sale price that is at least \$6.8 million below the properly appraised value is the product of standard Japanese business-corporate governance practices being improperly carried over into the nonprofit educational setting. The behavior of the Trustees contradicts American norms of accountability, disclosure, transparency, director independence, checks and balances, and representation of diverse interests and expertise on a board of directors.

3. The PTA says that the proposed contract of sale (“Contract”) does not merit court approval because a) the sale price of \$20 million is not fair consideration; b) the plan to sell the property was conceived with WFHA in mind as the buyer, and WFHA was treated as a favored bidder for at least two years; c) it is not in the educational interests of JEI to sell the Greenwich Campus; d) JEI failed to consider on the merits the PTA’s objections to the sale and alternative plan; e) a control group of JEI officials decided that political pressure brought to bear on JEI and the Japanese Government by a powerful United States Senator made it a necessity for JEI to sell the property to WFHA; and f) the approval vote of the JEI Board of Trustees on November 29, 2005 is not valid because the trustees were not informed of all of the material facts relevant to the proposed sale, including among others, that JEI had not diligently marketed the property for sale, that JEI had not pursued at least one offer substantially higher than the proposed contract, and that the Township of Greenwich recently determined that the fair market value of the Greenwich Campus exceeded the proposed contract price by over \$8 million.

4. In the face of these powerful objections, JEI says that its governance process deserves deference from New York State government officials. In this affidavit I will show that JEI’s governance process is fundamentally defective. This JEI decision is deserving of suspicion and careful scrutiny, not deference.

5. I will describe below how:

- Japanese business corporations control 35 of 38 voting positions on the JEI Board of Trustees;
- Each of the Japanese business corporations (the “JEI Companies”) regularly selects a male business executive from the upper ranks of its corporation to fill its assigned trustee position;

- The JEI Companies are interrelated on a number of material dimensions: direct affiliations; cross-ownership; debt and other financial relationships; cooperation in trading, manufacturing and other activities (even among companies that also are competitors in those arenas); vendor/vendee relationships;
- The JEI Companies are interrelated on a number of social, historical and cultural dimensions;
- The JEI Board of Trustees is completely lacking in diversity. There is not a single seat on the Board, not even a non-voting position, held by a PTA representative; a parent of a student attending JSNY or any other JEI program; a principal or teacher from a JEI program; an outside, independent professional educator; or a woman; and
- The JEI Board process mirrors that of standard Japanese business corporation process in that there is a lack of disclosure and transparency in the decision-making process and corporate decisions are made by a small control group that other board members follow unanimously.

My Background

6. I went to college at [REDACTED] I received a BA in economics in 1985.

7. I undertook graduate studies in business in the United States, and received an MBA from the [REDACTED] in 1992.

8. I have also earned a professional certification as a Chartered Financial Analyst (CFA), which is issued by the CFA Institute.¹

9. Since 2003, I have been employed by [REDACTED] The firm is a large investment management company and invests heavily in Japanese corporations. My job involves personal interaction with senior management of these corporations (many of which are JEI companies).

¹ The CFA Institute is a global membership organization. For more information on the CFA certification, see www.cfainstitute.org.

10. From 1998-2003 I worked for the [REDACTED]
Previously, for about 15 years, I worked for [REDACTED]

11. I have considerable knowledge of Japanese business governance practices in general and of the interrelationships among particular Japanese companies.

12. I am familiar with academic literature that analyzes Japanese business corporation governance practices and measures those practices against American corporate governance norms of disclosure, checks and balances, transparency, shareholder rights, diversity and independence.

13. My education and training, as well as two decades of on the job experience, give me the ability to conduct research in generally accepted reference materials and databases and to collect and summarize data about the JEI Companies, including the data set forth in the tables that I prepared for this affidavit. (The tables are in the annexed Addendum.)

14. My family's personal involvement with JEI began in April 2001, when my oldest son became a student at JSNY. Presently, I have two children attending school on the Greenwich Campus.

15. Unlike the large majority of PTA fathers, I am not employed by a JEI company.

Organization Defects at the Japanese Educational Institute of New York

16. JEI's organizational defects hamper its ability to fulfill its nonprofit educational purposes. In particular, JEI's governance structure, culture and practices require that if there is a conflict between the educational interests of JEI's beneficiaries and the business/corporate/political/diplomatic interests of the JEI Companies or the Japanese Government, then the educational interests will lose out.

Background on JEI

17. JEI was established in 1975 to manage both full-time and part-time Japanese educational programs in the New York City Metropolitan Area, where a large number of Japanese expatriates and their families reside.

18. JEI is primarily managed by senior corporate executives working for US subsidiaries of large Japanese corporations. There are similar arrangements in other major cities in the world.

19. The Japanese Government has supported the JEI financially and operationally. Such supports include initial funding to the operating entity (JEI) and dispatch of qualified teachers from Japan by the Ministry of Education.

20. JEI is a two tier organization: the Board of Trustees, and the operating group called "Kyoiku Kanri linkai" (hereinafter the "Operating Group"). In English the latter means "educational administration committee."

21. The current Chairman of the Board of Trustees, Mr. Kazuhiko Sakamoto, is the CEO of Marubeni Americas, the US subsidiary of a large Japanese trading company, Marubeni Corporation.

22. As of October 2005, the Board of JEI had 38 voting members. Thirty-five were senior executives from large Japanese corporations, two were from the Japanese public sector (Bank of Japan and Japanese Ministry of Finance), and one was a New York based lawyer whose employer is paid to render legal services to JEI. Many of the Trustees have very limited involvement while a small number of core members are intensely involved.

23. The Operating Group is headed by the Executive Secretary and is served by other staff members who are also representatives of large Japanese corporations. They are usually middle class managers of those corporations.

24. The Executive Secretary is the only full-time employee of the whole JEI with an exception of a few supporting staff members serving the Executive Secretary. Being the sole full-time staff member, the Executive Secretary plays a significant role. Most of the actions are prepared by the Operating Group to be approved by the Board of Trustees. There is no record showing that the Board has ever rejected a proposal from the Operating Group.

Insider Control

25. JEI's Board of Trustees is structured quite similarly to the majority of Japanese corporations where insiders are designed to dominate the organization.

26. The "insiders" in this instance are JEI Companies through their CEO's and senior executives.

27. JEI governance is designed to prevent diversity or independent thinking. There are no representatives of the beneficiaries. The Board of Directors does not include a representative from any of the PTA organizations of JEI's full-time or part-time programs. There is no professional educator. There is not a single woman. There are no Americans on the Board, even though the JEI programs are located in America.

28. This lack of diversity, independence, or checks and balances is normal practice for Japanese business corporations.

29. I compiled data to show how the insider control structure of JEI mirrors the governance practices of the JEI Companies. See Addendum, Table A.

30. Table A reports on the board structure of 28 of the JEI Companies. There is virtually complete insider control of every corporation. Half of the companies don't have a single independent outside director. In almost every other company the outsiders are a token minority. For example, Mitsubishi Corporation has 16 Board members 14 of which are insiders. The other two are chairmen of Mitsubishi Heavy and Mitsubishi Electric. Both companies are regarded as siblings of Mitsubishi Corporation. (A few exceptions from the pattern of extreme insider control can be found in global Japanese companies such as Sony Corporation, where the CEO is an UK national and many Board members are truly outsiders.)

31. It appears that the JEI Board of Trustees is even trying to maintain such lack of diversity. Several years ago, there was a discussion at the Operating Group if the Board should include school principals as a Trustee with a voting right. This has not been materialized yet. The continuing practice is that the term of each trustee (business executive) ends either at the expiration of a set duration or if and when he receives a new business assignment to another region. Any new appointment of a Trustee, including the Chairman, goes to a person who belongs to this closed, insular community. Such new appointments have been unanimously approved by the Board all the time.

Interrelationships Among JEI Companies

32. Not only is JEI governed by male business executives nominated by an insider set of Japanese business corporations, but also these business corporations are themselves interrelated. This is a further obstacle to the exercise of independent judgment by any of the trustees.

33. As described earlier, 35 Japanese companies have seats at the JEI Trustee Board. Each one of them is related to some or most of the others. The relationship is very complex. One dimension of analysis is by industry. I have compiled relational information on the JEI companies in the industries of trading, finance, logistics providers, and manufacturing.

Interrelationships by Industry Group

Trading

34. The Japanese trading industry plays a leadership role in Japanese overseas education, not only in the United States but also in the other parts of the world. Companies in this industry have an extensive global network that helped Japan's export-led economic recovery after World War II. In every Japanese expatriate community in the world, this industry is very influential.

35. The five largest companies in this industry (namely Mitsubishi, Mitsui, Sumitomo, Marubeni and Itochu) are often referred as "the Big Five." Each of them has a seat at the JEI Trustee Board. (Another significant trading company that appoints a JEI trustee is Sojitz Corp.) Table B lists the companies and their corresponding trustees on the JEI Board.

36. The CEO of Marubeni Americas, Mr. Kazuhiko Sakamoto, is the current President of JEI, and has presided over the decision-making regarding the sale of the Greenwich Campus. A former long-time Mitsubishi Corporation employee, Mr. Shigehiko Matsumura, was heavily involved in the proposed deal with WFHA, in his capacity as JEI Executive Secretary.

37. The six JEI trading companies compete with one another. At the same time, however, they undertake many projects together. Also, they have strong common interests on

business, legal, regulatory, foreign relations and other matters that negatively or positively affect Japanese trading companies in the global economy.

38. Lately, the Big Five have increased their exposure to commodity/resources business, such as oil, natural gas and basic metals. As each project is large and many of them are in socially unstable developing countries, they undertake such development projects together. The practice is somewhat similar to syndicate loans in the banking business. Latest examples include a Brazilian crude oil project by Mitsubishi and Marubeni (announced March 2005).²

39. These kinds of joint projects do not stay only in the commodity field. Numerous joint projects are being established and undertaken by these trading companies and their subsidiaries worldwide. This situation creates a ground for insular, closed nature of this community across the companies.

Finance

40. Another dimension of interrelationships is financial. See Tables C and D.

41. First, there are relationships among financial institutions. Just as I noted above regarding the trading industry, banks that compete with each other also are involved in many joint projects. Also, they work together when they negotiate with regulators in US and Japan. In Table C, I listed JEI Companies in the financial industry and named the currently serving Trustees appointed by those financial companies.

42. Second, there are relationships between the financial companies and companies in other sectors. Banks, together with insurance companies, own many companies through equity and debt holdings. Typically their equity ownership by one company is less than 5%. Beyond

² Details can be found in the website http://www.japancorp.net/article.asp?Art_ID=9557

5%, there are many accounting and regulatory nuisances. Also, the Japanese financial regulator changed the rule to discourage too much equity ownership in aggregate. A 5% stake, when it is stand-alone, cannot influence the company. But when he can assume that other banks and insurance companies can act together, they actually do in many occasions; their 5% ownership means a lot more than it nominally implies.

43. Ownership through debt is more powerful. When a company is in a financial difficulty, debt holders can determine the solvency.

44. Several JEI companies experienced seriously tight financial conditions in the last several years. Those distressed companies were technically controlled by the largest debt investor, which is in most cases a commercial bank.

45. Table D displays information about the five JEI Companies whose credit ratings went below the investment grade BBB during the period 1999 – 2005. The right column lists the major debt holders for each of the distressed JEI Companies. All of the major debt holders in the column are JEI Companies or their parents or affiliates.

46. In summary, JEI-related commercial banks and insurance companies had more actual control over JEI Companies in other sectors than it would appear from a superficial look at corporate ownership structures.

Logistics Providers

47. Another dimension of interrelationship is based upon the industry of logistics providers. I have listed the four JEI Companies – and their respective appointees to the JEI Board of Trustees – in Table E.

48. Kajima is a general contractor specializing in large scale structures. Nippon Express and Yamato are land transportation companies. Nippon Yusen is a marine transportation company. Two airlines, Japan Airlines and All Nippon Airways, also have seats at JEI's Trustee Board. For these logistics providers operating in the New York area, all the other JEI Companies at JEI are either their existing clients or significant client prospects.

49. It is not difficult to understand that when the senior executives of the logistics providers are acting as JEI Trustees they want to act cooperatively, not confrontationally, in relationship to the JEI Trustees who are the senior executives of their customers and hoped for customers.

Manufacturing

50. Another dimension of interrelationship is through the manufacturing sector of Japanese industry. Table F is my listing of the 12 JEI Companies that are established representatives of the Japanese export-manufacturing sector, and of their respective appointees to the JEI Board of Trustees.

51. Contrary to the image you might have, this segment is not large in the expatriate community in New York. Their presence in the United States is significant, but none of them has a manufacturing site in New York area. The number of Japanese expatriates and their families is rather small in comparison to trading companies and financials. Manufacturing companies take more leadership roles in other parts of the United States where they have manufacturing sites and larger expatriates' community. There is no wonder that the Japanese school in Columbus, Ohio has been managed by executives of Honda Motor related companies, as they are the largest employer in the State of Ohio including American companies.

52. The nature of the relationship of a company in this group and with other JEI Companies depends on the character of the company's products – consumer goods as distinguished from industrial intermediate goods.

53. In the past, most of the Japanese manufacturing companies heavily relied on large Japanese trading companies and Japanese banks to do overseas business. Trading companies helped the manufacturers both as marketer and as business consultants. In years past, most Japanese manufacturing companies did not know how to distribute their products in foreign countries. They had no experience to deal with foreign regulators. Managing financial operation outside Japan was a real challenge, which was supported by subsidiaries of Japanese banks. Now, however, the large Japanese manufacturers are sophisticated about export marketing and financial management, with which they do not need much help from Japanese trading companies or banks to do business overseas. They focus on their final clients as opposed to the interrelationship with other Japanese companies.

54. Hence, the business executives from companies that manufacture mainly consumer goods are the least restrained in their relationships with their counterparts from trading companies.

55. By contrast, intermediate goods manufacturers such as steel or chemical producers are more dependent upon their relationships with Japanese companies in other sectors. Their clients are not ultimate consumers but rather the Japanese companies in the manufacturing, trading, and logistics providers sectors.

56. Based on my experience serving on the PTA Task Force (which was created to present critiques of and alternatives to the JEI plan to sell the Greenwich Campus), the Trustees

who come from the manufacturing industry group are not very active in JEI governance. For example, the PTA Taskforce tried to communicate with Trustees from this group but enjoyed limited success. In September 2005, JEI held three sessions where they tried to convince the parents that the selling of the Greenwich Campus was a sound plan. To my knowledge none of the Trustees who attended those sessions was an executive of a manufacturing company

Interrelationships By Ownership

57. Cross shareholdings is another well researched subject of Japanese corporations. Japanese style is indirect and complicated.

58. Typically, a company does not own more than 5% of the stake of its group companies. But they can own a lot more than 5% in aggregated basis as a group. In the usual situation, each company is fairly independent. But once an emergency occurs, such shareholders act as a group and exercise a lot more than 5% influence as a group.

59. A hostile takeover by an outsider is a perfect example of an emergency. A group of shareholders is expected to act together to defend the existing management. Trustees are fully aware that their employers are locked into such a rigid system of behavior. Acting independently and being confrontational to the system is difficult, even if the transaction – such as JEI's plan to sell the Greenwich Campus – is theoretically unrelated to the employer's business transactions.

60. I did research into the cross-shareholding relationships among JEI Companies. Publicly traded Japanese companies are required to disclose the 10 largest shareholders semi-annually. I prepared Table G, which shows cross-ownership of 29 JEI Companies by other JEI Companies.

Interrelationship By History

61. There are many academic studies on “Zaibatsu” and “Keiretsu”. They refer to Japanese corporate groups through the origin, rather than business relationships. Please see the footnote for the description.³ Since the crash of the so called bubble economy that took place in the early 1990’s, such historical ties became relatively weaker as many companies became to realize the cost of such ties, including maintaining a high level of cross-held shares of group companies in their balance sheet. However, the latest regulatory and social changes made the discussion about anti-takeover measures a realistic subject. Zaibatsu and Keiretsu are regaining the momentum.

62. Let’s take Mitsubishi Group as an example. The group started in 1870 as a marine transportation company. It quickly expanded into industries such as mining, shipbuilding, banking, insurance, warehousing, international trade, aerospace, oil, real estate, and so on. The group was dissolved after World War II by the order of the US Government and each business unit became an independent company. But the companies still maintain a strong

³ Zaibatsu: (z’bäts) (KEY) [Jap.,=money clique], the great family-controlled banking and industrial combines of modern Japan. The leading zaibatsu (called keiretsu after World War II) are Mitsui, Mitsubishi, Dai Ichi Kangyo, Sumitomo, Sanwa, and Fuyo. They gained a position in the Japanese economy with no exact parallel elsewhere. Although the Mitsui were powerful bankers under the shogunate, most of the other zaibatsu developed after the Meiji restoration (1868), when, by subsidies and a favorable tax policy, the new government granted them a privileged position in the economic development of Japan. Later they helped finance strategic semiofficial enterprises in Japan and abroad, particularly in Taiwan and Korea. In the early 1930s the military clique tried to break the economic power of the zaibatsu but failed. In 1937 the four leading zaibatsu controlled directly one third of all bank deposits, one third of all foreign trade, one half of Japan’s shipbuilding and maritime shipping, and most of the heavy industries. They maintained close relations with the major political parties. After Japan’s surrender (1945) in World War II, the breakup of the zaibatsu was announced as a major aim of the Allied occupation, but in the 1950s and 1960s groups based on the old zaibatsu reemerged as keiretsu. The decision on the part of these groups in the post-World War II era to pool their resources greatly influenced Japan’s subsequent rise as a global business power. Source: The Columbia Encyclopedia, Sixth Edition. Copyright © 2001-05 Columbia University Press.

relationship as a family. The following JEI Companies are regarded as core members of

Mitsubishi Group companies:

- Mitsubishi Corporation
- Mitsubishi Chemical Holdings
- Mitsubishi UFJ Bank
- Mitsubishi UFJ Trust Bank
- Nippon Yusen Kaisha
- Tokio Marine and Fire

63. They are members of a private club called “Kinyo-kai”⁴. CEOs or chairmen of 29 Mitsubishi group companies get together to have luncheon together on the second Friday every month.

64. Each company is expected to contribute to the group beyond economic rationale when another group company is in trouble. The latest example is the case of Mitsubishi Motor. Their sales declined drastically after a series of product recalls and withdrawal of its partner, Daimler Chrysler, in 2004. The company became almost insolvent but Mitsubishi Group companies such as Mitsubishi Corporation, Bank of Tokyo Mitsubishi and Mitsubishi Heavy Industries provided all the possible means of supports. Their contributions were severely criticized by the capital market, especially by overseas equity investors whose voices were completely ignored.

65. Most companies at JEI belong to a certain industry group. The strength of relationship and its enforcement power vary at each case. However, the fact that they obtain the membership of such prestigious gathering keeps them from acting independently.

⁴ “Kinyo” means Friday in English.

Cultural And Social Interrelationships

66. Other than business interrelationships within JEI companies, cultural and social aspects are worthwhile to be mentioned. There are many academic attempts to analyze the group dynamism of Japanese people. We do not repeat those here, but would like to mention that they tend to avoid being confrontational and appreciate the unity within the group. Those academic analyses have found that such dynamism produced both positive and negative outcomes. Extreme examples of negatives are the initiation of World War II and the creation of the so-called “bubble economy” in the late 80’s. Once group dynamism set the direction, it hardly accepts modification although people feel that it could be wrong. Until everybody recognizes unbearable and irrecoverable damages, it keeps moving.

67. At the point when the PTA questioned the transaction and brought several alternatives to JEI’s plan, I think many JEI trustees realized that their sales and leaseback plan was not perfect, if not wrong. But we have not seen any evidence that someone took an action to acknowledge that. Instead, the core members tried even harder to unite the JEI members.

68. PTA members who tried to reach trustees by telephone directly were told that trustees had been instructed by JEI officials not to engage in any direct communications with the parents.

69. My fellow PTA parents who are employed by JEI Companies also reported that they had pressure put on them by bosses or human resources officials to refrain from participating in PTA’s activities objecting to the sale. Business interrelationships set the ground for the JEI Companies to act like this. But the cultural and social aspect – group dynamism- also plays a significant role.

Conclusion

70. As a parent who sends my two children to the Japanese School of New York, I am very concerned about how a closed, insular group of senior Japanese business corporation executives rubber stamped a plainly wrong decision to sell the school's educational campus, and to sell it to a favored buyer for at least \$6.8 million below its value.

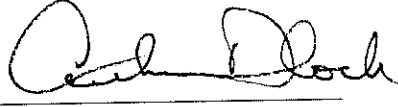
71. The point of my affidavit is not that Japanese business-corporate governance practices are better or worse than American business-corporate practices.

72. I am saying that standard Japanese business-corporate practices – extreme insider governing boards, lack of diversity, nondisclosure, absence of checks and balances, multiple business interrelations and group loyalties that stifle independent action – should not be the mode of governance of a nonprofit educational corporation.

73. Based on the facts I have described, and the other facts set forth in the PTA's objections, the JEI Board of Trustees' decision to sell the Greenwich Campus, and the specific Contract to sell the property to WFHA for \$20 million, do not deserve any deference and should be subjected to severe scrutiny.


YUKIO SASAKI

Sworn to before me this
15 day of March 2006


Notary Public

ARTHUR R. BLOCK
Notary Public, State Of New York
No. 02BL4662471
Qualified In New York County
Commission Expires April 30, 2007