

ORIGINAL

DISABLED AMERICAN VETERANS  
DEPARTMENT OF FLORIDA, INC.

DISABLED AMERICAN VETERANS,  
DEPARTMENT OF FLORIDA, INC.  
Plaintiff,

vs.

PAUL BRANESKY,  
Respondent.

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ADMINISTRATIVE HEARING

(January 25, 2006)

American Legion Post 111  
6918 N. Florida Ave.  
Tampa, Florida

REPORTED BY:

Amy McNeely  
Court Reporter  
Notary Public  
State of Florida at Large

*AccuScript*  
REPORTING AGENCY

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APPEARANCES:

Commander David Stone  
Comrade Adjutant Al Linden  
Vice Commander John Haynes  
Judge Advocate Harry McDonald  
State Inspector Carlos Rainwater  
John Keller  
Angel Riveria  
Bill Norris  
Frank Tracy  
Jim Whitney  
John McCoy  
John Houyou

ALSO PRESENT:

ROBERTO RUELO, Esquire  
16409 Ashwood Drive  
Tampa, Florida 33624

Attorney for Respondent

1           COMMANDER STONE: This is an Executive  
2           Committee Special Session, January 25,  
3           2006, at 10:30 a.m.

4           I hereby declare this meeting to be an  
5           Executive Session for the duration. The  
6           purpose of this Special Meeting of the  
7           Department Executive Committee is as stated  
8           in the meeting notice dated September 6,  
9           2005, and no other business will be  
10          transacted. Specifically, we are here to  
11          resolve any and all pending charges of  
12          bylaw violations in the case of Paul  
13          Branesky. The hearing will be conducted in  
14          accordance with Article 16 of the DAV  
15          National Bylaws and within the policy  
16          regulations established by the DAV National  
17          Executive Committee, Regulation Number 6  
18          for department disciplinary hearings.

19          Comrade Adjutant, will you read into  
20          the record the National Executive Committee  
21          Regulation Number 6?

22          MR. LINDEN: All disciplinary hearings  
23          conducted before the State Executive  
24          Committee pursuant to Article XVI of the  
25          National Bylaws must be conducted before a

1 quorum of the State Executive Committee,  
2 and a majority of the voting members of the  
3 State Executive Committee shall constitute  
4 a quorum. The member charged with a  
5 violation shall be allowed representation  
6 at the hearing by a person of his or her  
7 choice and at his or her expense. The  
8 department may also be represented by  
9 counsel. Both the member and the  
10 department shall have the right to examine  
11 and cross-examine witnesses and to  
12 introduce real and documentary evidence.  
13 Technical rules of evidence shall not apply  
14 at this hearing and any relevant evidence,  
15 including hearsay evidence, may be  
16 admitted. The State Commander shall  
17 preside at the hearing and rule on the  
18 admission and exclusion of evidence, and  
19 exercise all powers relating to the conduct  
20 of this hearing. The State Commander may  
21 consult with the Department Judge Advocate  
22 regarding the conduct of the hearing. All  
23 disciplinary hearings conducted before the  
24 State Executive Committee, pursuant to  
25 Article XVI of the National Bylaws, will be

1 recorded by a certified court reporter. A  
2 copy of the transcript will be furnished to  
3 the member charged with a violation and to  
4 the National Commander. At the conclusion  
5 of all testimony, a vote shall be taken to  
6 determine the guilt or innocence of the  
7 member with respect to each charge. A  
8 majority vote will be required to find a  
9 member guilty of a charge. In the event  
10 the member is found to be guilty of any  
11 charge, the State Executive Committee by  
12 majority vote must then adopt, amend or  
13 reject the Commander's recommendation as to  
14 the penalty to be imposed. All voting  
15 shall be recorded by the court reporter in  
16 the transcript of the hearing. The  
17 decisions of the State Executive Committee  
18 are subject to the approval of the National  
19 Commander, which approval shall be granted  
20 or denied within 30 days of the time in  
21 which the National Commander receives a  
22 copy of the transcript of the hearing.  
23 Written notification of the National  
24 Commander's decision shall be provided to  
25 the member charged and to the State

1 Commander.

2           COMMANDER STONE: Thank you, Commander  
3 Adjutant. This hearing will be conducted  
4 in the following manner: The charges and  
5 specifications will be read. The accused  
6 will be asked to enter his plea. The  
7 Department Inspector will render the  
8 results of his investigation and provide  
9 all evidence. The accused will then be  
10 allowed to make an explanation, introduce  
11 witnesses, and offer testimony with respect  
12 to guilt or innocence. Either party will  
13 be allowed to cross-examine the other's  
14 witnesses and introduce rebutting  
15 testimony. After evidence and testimony is  
16 presented to you, the Department Executive  
17 Committee will be asked to vote on each of  
18 the charges and specifications. If found  
19 guilty, the accused will then be permitted  
20 to present statements in extenuation and  
21 mitigation. The Department Executive  
22 Committee will then adopt, amend, or reject  
23 any recommended punishment. All parties to  
24 this hearing are to conduct themselves in a  
25 mature and professional manner, and any

1           conduct contrary to the maintenance of the  
2           proper decorum will be cause to remove the  
3           offending party from the meeting room.

4           Comrade Adjutant, is the accused  
5           present?

6           MR. LINDEN: Yes.

7           COMMANDER STONE: Was the accused  
8           notified in accordance with the  
9           requirements of the National Executive  
10          Regulation 77?

11          MR. LINDEN: The accused was notified  
12          by letter dated May 19, 2005, and sent by  
13          registered mail, return receipt requested.  
14          A copy of the letter has been provided to  
15          each member present at this hearing.

16          COMMANDER STONE: Comrade Adjutant, is  
17          a certified court stenographer present to  
18          record the hearing?

19          MR. LINDEN: Yes.

20          COMMANDER STONE: At this time I'd like  
21          to announce the appointments of the  
22          following individuals to collect and count  
23          all ballots; Harry McDonald and John  
24          Haynes.

25          Is the Department ready present its case?

1 MR. RAINWATER: We are.

2 MR. McDonald: Excuse me, Commander, is  
3 John Haynes appointed or John Kell~~AT~~?

4 COMMANDER STONE: John Kell~~AT~~ and  
5 yourself. Should be John Kell~~AT~~.

6 MR. RAINWATER: The Department is  
7 prepared to present.

8 COMMANDER STONE: Is the accused ready  
9 and does he understand the procedures for  
10 this hearing?

11 MR. RUELO: Mr. State Chairman,  
12 Commander, my name is Roberto Ruelo. I am  
13 the attorney for Paul Branesky. We are  
14 ready for the hearing.

15 COMMANDER STONE: Comrade Adjutant,  
16 will you read the charges and  
17 specifications?

18 MR. LINDEN: The charges and  
19 specifications are contained in the letter  
20 of notification dated May 19, 2005, to Paul  
21 Branesky. Charge 1, Paul Branesky issued  
22 numerous checks and withdrawals on chapter  
23 accounts with only his signature affixed.  
24 Article VI, Section 6, of the chapter  
25 bylaws require that all checks and



1 withdrawals shall be countersigned by the  
2 Commander, or in his extended absence, the  
3 Senior Vice-commander.

4 Charge 2, Paul Branesky, Treasurer,  
5 failed to safeguard the funds of Chapter 9.

6 Charge 3, Paul Branesky gave false  
7 information to the Pinellas County  
8 Sheriff's Office regarding theft of chapter  
9 funds.

10 Charge 4, Paul Branesky using only his  
11 signature, wrote Check Number 2196 for \$500  
12 cash with a notation, "Donation for  
13 Hurricane Charlie."

14 Charge 5, Paul Branesky, at a chapter  
15 meeting on 11/15/04, violated Article VII,  
16 Section 11, of the chapter bylaws and  
17 Article XVI, Section 16.1, Paragraph 1-C,  
18 DAV National Bylaws, by exhibiting conduct  
19 not conducive to the best interests of the  
20 organization and contrary to the  
21 maintenance of proper order and decorum.

22 MR. MCDONALD: Mr. Linden, Harry  
23 McDonald, question. On Charge 5, you said  
24 violated Article VII and the script says  
25 Article VI. Which is it?

1 MR. LINDEN: It is Article VI as  
2 printed.

3 COMMANDER STONE: Paul Branesky, to the  
4 charges and specifications, how do you  
5 plead?

6 MR. BRANESKY: Not guilty.

7 COMMANDER STONE: Inspector, please  
8 proceed with the presentation of the  
9 charges and specifications.

10 MR. RUELO: State Commander, before we  
11 proceed, I'd like to make a preliminary  
12 motion, and before I can do that, I would  
13 like to pass around a written response or  
14 evidence. If you could allow me, I would  
15 like to submit it.

16 COMMANDER STONE: Okay.

17 MR. RUELO: I am submitting the  
18 original signed copies to the State  
19 Commander and duplicate copies to Mr.  
20 Rainwater, Mr. Linden, to the Adjutant, and  
21 to each one of the members.

22 Can I explain what is in the folder?  
23 On the first page it's a motion to dismiss  
24 all evidence in chief and then it is  
25 followed by the affidavits of Mr. Branesky

1 and his witnesses. The witnesses are John  
2 Golden, Phillip Meskin, Della Switzer, and  
3 Karen Switzer, and then it's followed by  
4 the exhibits, Exhibit A through Exhibit U,  
5 and then the NEXUS would be the court cases  
6 that we would cite to support our  
7 contention, NEXUS A, A-1, through D.

8 In the motion to dismiss our contention  
9 on page 1 of the motion is that Mr.  
10 Branesky's suspension is void from issue or  
11 void from the beginning because the  
12 procedure for suspension as prescribed in  
13 the DAV National Bylaws was not followed.

14 As you will see, in the National  
15 Bylaws, Section 16.3, Paragraph 2, that the  
16 National Commander can suspend a member  
17 effective immediately. Also, the State  
18 Commander can also suspend a member  
19 effectively immediately, but the suspension  
20 of the State Commander should be copied for  
21 the National Commander. In this case,  
22 honorable members of this Executive  
23 Committee, the suspension of Mr. Branesky  
24 was only done by the Chapter Commander, Mr.  
25 King, but nowhere in the bylaws of the

1 chapter or in the bylaws of the state  
2 committee is there any provision  
3 authorizing the chapter commander to  
4 suspend a member.

5 So on that basis, I request that the  
6 suspension of Mr. Branesky be voided from  
7 the beginning because there's no authority  
8 on the part of the state commander to  
9 suspend a member. Only the national  
10 commander and the state commander can  
11 suspend a member under the National Bylaws.

12 In the case of Thompson vs. Grand  
13 International Brothers of Locomotive  
14 Engineers, which is Annex A, it was decided  
15 by the court, in note number one, that the  
16 act of a supreme officer of the fraternal  
17 organization in confirming the wrongful  
18 expulsion of a member from the association  
19 by a subordinate division with knowledge or  
20 notice of the wrongfulness of the expulsion  
21 renders the association liable for the  
22 wrong done by the subordinate division. In  
23 that case, the chapter of the brotherhood  
24 organization expelled a member on the  
25 ground that that member wrote a letter to a

1 expelled member of that fraternal  
2 organization encouraging that the member to  
3 sue the employer. There was a provision in  
4 the bylaws of the association that a member  
5 should not sign anything that would be  
6 wrongful or detrimental to the interest of  
7 the association. The court in that case  
8 said that the association has the right  
9 under the bylaws to suspend or expel a  
10 member but that the reason for the  
11 expulsion was wrongful in that case because  
12 the officer or member that wrote the letter  
13 was following the laws of the organization  
14 as well as the laws of the land. But in  
15 that case, despite the fact that the head  
16 of that mother organization knew of the  
17 wrongful expulsion of the member, still  
18 that mother organization went along with  
19 expulsion decided by the chapter. So the  
20 mother organization was also included in  
21 the case for damages.

22 So in this case, honorable members of  
23 the committee, you have a chance to correct  
24 the wrongful suspension of Mr. Branesky by  
25 the chapter commander, and so that you will

1 correct this wrongful suspension or  
2 injustice, you are given the chance at this  
3 point to correct or rectify the wrong done  
4 by the chapter commander.

5 Also the Chapter 9 was already  
6 abolished and merged with Chapter 13, so  
7 even if Mr. Branesky is reinstated as the  
8 treasurer of Chapter 9, there's no more  
9 position or office to go back to, so  
10 there's no need for us to prolong the  
11 evidence of the state by continuing with  
12 this hearing because there's no more office  
13 to which Mr. Branesky can be returned to.

14 Please remember that Mr. Branesky was  
15 suspended not as a member of Chapter 9, but  
16 as treasurer of Chapter 9. So since  
17 Chapter 9 is no longer existing, what is  
18 the point of continuing with this hearing  
19 when Mr. Branesky can no longer return to  
20 the office, if and when his suspension is  
21 lifted by this honorable body? So in order  
22 to stop the expense, the time and effort,  
23 and money on the part of Mr. Branesky to  
24 redeem his good name and make his situation  
25 whole, I request this honorable committee

1 to lift or cancel or withdrawal the  
2 suspension from the very beginning,  
3 because, for the first part, for the first  
4 reason, there was no lawful suspension  
5 order from the state commander or the  
6 national commander, and second, if and when  
7 Mr. Branesky is exonerated of these  
8 charges, he has no more position to return  
9 to. He remains a member, but he's no  
10 longer a treasurer anyway because there's  
11 no more office to return to because of the  
12 abolition of Chapter 9. So on this basis,  
13 I respectfully request that motion to  
14 dismiss be granted at this time to save us  
15 all the trouble and expense of continuing  
16 with this full-blown hearing.

17 COMMANDER STONE: I'd like to defer to  
18 our inspector on this.

19 MR. RAINWATER: Thank you, Commander.

20 First of all, our learned counsel has  
21 made a very articulate presentation. You  
22 are to be congratulated on your study of  
23 the DAV Bylaws; however, the motion to  
24 dismiss, based on the fact that the chapter  
25 commander had no authority to suspend the



1 accused may or may not be the case.

2 However, the whole point becomes moot.

3 I refer you to Exhibit 8 of the  
4 Department's case. Exhibit 8 consists of  
5 the minutes of the meeting of Chapter 9  
6 dated November 15, 2004. I refer you to  
7 page 3, a direct quote and writing from Mr.  
8 Branesky, "I resign effective immediately."  
9 So the point of moving to dismiss based on  
10 a suspension which is improper or not in  
11 accordance with National Bylaws becomes  
12 moot because, in effect, Mr. Branesky said,  
13 "I resign."

14 MR. RUELO: May I respond to that Mr.  
15 State Commander?

16 COMMANDER STONE: Yes, sir.

17 MR. RUELO: The minutes of November 15,  
18 2004, which is Exhibit 8 of the state's  
19 case, has not yet been proven to be the  
20 actual minutes of that meeting. In fact,  
21 it was not signed by anybody. Anybody can  
22 produce this document. Besides, it will be  
23 shown during the testimony by Mr. Branesky  
24 that he did not utter these words. Also,  
25 assuming that he did utter these words,



1 still it will not render the case moot, as  
2 advanced by Mr. Rainwater, because this  
3 utterance will not do away with the naked  
4 fact that his suspension was not authorized  
5 by the DAV National Bylaws or the state  
6 bylaws or the chapter bylaws.

7 I think under the case that I cited,  
8 the court case, the court said that an  
9 organization like yours should follow  
10 strictly what is in your constitution and  
11 bylaws. Otherwise, if you deviate from  
12 that and violate the rights of your  
13 members, you can be sued for damages, so I  
14 think the basic fact remains that the  
15 suspension of Mr. Branesky since February  
16 14, 2004, was effected because of the order  
17 of suspension by the chapter commander,  
18 which under the bylaws of the chapter,  
19 state or national bylaws are not allowed.  
20 Only the national commander and the state  
21 commander have the power under the bylaws  
22 to suspend a member. So I believe that in  
23 order for the DAV to have its credibility,  
24 and in order not to be brought to courts or  
25 any other forum, that they should abide by

1 the bylaws, whether it is for their own  
2 benefit or not, because we are here to  
3 follow the bylaws and the constitution of  
4 DAV, not to deviate from it in order to  
5 satisfy the whims and purposes of a certain  
6 officer.

7 I believe we are operating under the  
8 theory that no one is above the law and  
9 therefore we should not make exceptions.  
10 We should follow strictly what the bylaws  
11 say, and since the bylaws do not empower  
12 the chapter commander to suspend anybody,  
13 then we should abide by it. If this  
14 suspension was done by the State Commander,  
15 Mr. Stone, or by the National Commander,  
16 then we would gladly follow it because we  
17 are here to be good members of the Veterans  
18 and also the Disabled American Veterans.

19 Thank you.

20 COMMANDER STONE: I'd like to call on  
21 our Judge Advocate to clarify the --

22 MR. MCDONALD: Commander, I suggest at  
23 this time that both counsel and the  
24 defendant be asked to leave the room so the  
25 Executive Committee can discuss the motion

1 and see what decision we want to make on  
2 it.

3 COMMANDER STONE: Did you hear that?

4 MR. MCDONALD: Harry McDonald, Judge  
5 Advocate. I want to call your attention to  
6 the minutes of the meeting which is dated  
7 11/15/04, showing that Mr. Branesky  
8 resigned in his position as chapter  
9 treasurer, and it wasn't until February of  
10 2005 that the Commander wrote a letter  
11 saying that he was suspended. I would also  
12 like to point out that this letter  
13 suspended him as treasurer, not from  
14 membership. Only the National Commander or  
15 the State Commander can suspend from  
16 national membership, but suspension as a  
17 treasurer for malfeasance I think is a  
18 proper action that would be taken to  
19 protect the funds of the chapter, not  
20 withstanding that there's nothing in the  
21 bylaws to cover it. At this time,  
22 Commander, I recommend that we have a  
23 secret ballot on whether or not we approve  
24 of dismissing the charges against Mr.  
25 Branesky as requested by his attorney.

1 (AT THIS TIME MR. RAINWATER, MR. RUELO  
2 AND MR. BRANESKY LEFT THE ROOM.)

3 COMMANDER STONE: Everybody understand  
4 that now? We are going to vote on whether  
5 we approve of the motion to be dismissed or  
6 disapprove.

7 MR. MCDONALD: "Yes," would say that it  
8 would be dismissed, and "no" would be that  
9 we would continue to press the charges.

10 (AT THIS TIME A SECRET BALLOT VOTE WAS  
11 UNDERTAKEN.)

12 MR. MCDONALD: Commander, it's  
13 unanimous that we will not dismiss the  
14 charges.

15 COMMANDER STONE: Okay, unanimous we  
16 will not dismiss charges. John, please  
17 call them back into the room.

18 (AT THIS TIME MR. RAINWATER, MR. RUELO  
19 AND MR. BRANESKY RE-ENTERED THE HEARING  
20 ROOM.)

21 COMMANDER STONE: Gentlemen, we've  
22 taken a secret ballot on whether to dismiss  
23 or to go on with the case, and by unanimous  
24 decision we have agreed to go on with the  
25 case after hearing our Judge Advocate