Three Years Into the Non-Profit Revitalization Act of 2013

Expectations of, and Challenges Confronting, Not-for-Profit Boards

By Susan F. Zinder

I. Introduction

On December 18, 2013 New York Governor Andrew Cuomo signed into law the Nonprofit Revitalization Act of 2013 ("NPRA").[1] By adopting NPRA, the legislature sought to modernize New York's Not-for-Profit Corporation Law (the "NPCL") and strengthen the New York not-for-profit sector by increasing flexibility in board operations while raising board oversight expectations as to financial and operational matters, requiring board (rather than management) oversight of the annual audit, and increasing oversight of conflict of interest practices (particularly related party transactions).[2]

NPRA's adoption highlighted that not-for-profit governing boards need to actively understand their organizations' financial management and operational practices to fulfill their traditional oversight responsibilities and secure their organizations' futures. Adopted following the implementation of the Sarbanes-Oxley public company governance requirements, and the significant losses experienced by non-profits that invested in Bernard Madoff's funds, New York's adoption of NPRA demonstrated its expectations regarding effective not-for-profit governance. In fact, the day after NPRA was signed into law, New York State Attorney General Eric Schneiderman (the "AG") entered into an agreement with the Metropolitan New York Coordinating Council on Jewish Poverty ("Met Council") to reform its governance practices in the wake of charges that its CEO took kickbacks from its insurance broker for over 20 years unbeknownst to its board.[3]

In light of NPRA's implementation, and subsequent reporting in the mainstream press regarding not-for-profit operations and regulatory guidance, this article discusses certain post-NPRA situations and guidance that may help counsel educate not-for-profit board members in the fulfillment of their duties of care, obedience and loyalty.

II. Care in Action (or Not)

Under the duty of care, as set forth in Section 717(a) of the NPCL, directors are expected to act "with the care an ordinarily prudent person in a like position would exercise under similar circumstances." This formulation of the business judgment rule does not require that a decision be correct. It requires that a board member be attentive to the issues facing the organization and actively make decisions based on the information she receives in the belief that her decision is in the best interest of the organization.

Some may assume that, with large operating budgets, millions of dollars in annual operating revenue from city and state contracts, and large numbers of employees, our client institutional health care providers and social service agencies have boards comprised of sophisticated business executives, capable of guiding their institutions to success and financial stability. Yet any correlation between the size of an organization's budget and the ability of directors to effectively guide their organizations through difficult times is belied when an organization's critical challenges are revealed in the mainstream press.

(a) Abyssinian Development Corporation

According to *Crain's New York Business*, Abyssinian Development Corporation ("ADC"), may be

> Harlem's third largest landlord, after the New York City Housing Authority and Columbia University… [It] created public schools, ran after-school programs, trained Harlem residents for jobs, operated homeless shelters and assisted senior citizens…. [It set] in motion the renaissance of 125th Street…. [Yet by] 2011, unrestricted assets had slipped to less than $5 million, while liabilities had risen to more than $160 million.[4]

According to its Board Chair, by November 2015, even after it had sold off some of its real estate assets, ADC was still unable to afford accountants to prepare annual audits and tax filings and so had not submitted three years of filings (including corporate filings under the NPCL) required by the New York City Mayor's Office of Contract Services.[5] As a result of its filing failures, in September 2015 New York City advised ADC that $3 million in city contracts had been suspended.[6] Shortly thereafter it was reported that the AG had begun an investigation into ADC.[7]

Faced with the loss of the city contracts and the State investigation, ADC's board chair recognized the challenge of effective governance when he characterized his then-current board as being composed of individuals who are "faith based salt of the earth" and the organization as needing "new governance," including a "board chair who can attract others who can catch the vision to run this… more in line with the best secular business practices…. It's going to be tough. Tough for me to swallow but very necessary."[8]

The board chair's statement, coupled with ADC's failure to issue financial statements and submit the required filings,[9] raises questions about whether ADC's board was even able to fulfill its duty of care to the organization. To date no report has been issued describing any outcome to the investigation and there are no court findings in the matter. However, one can expect that the outstanding investigation has, at a minimum, required the organization to respond using its limited resources, and will result in governance changes similar to those that were required of the Met Council board to reinstate its contracts following the revelations that it had not caught its CEO taking kickbacks over a 20-year period.

(b) The Federation Employment and Guidance Services ("FEGS")

The ADC press reports demonstrate that one of the greatest governance challenges for our clients is attracting individuals capable of fulfilling their duty of care for effective financial and organizational oversight. The 2015 collapse and bankruptcy of FEGS also highlights this challenge. FEGS was founded in 1934 as a small non-profit employment agency. By the time it filed for bankruptcy 80 years later, its 29 board members and approximately 1,900 employees were providing a wide array of social services to over 120,000 individuals each year.[10] With an annual budget of approximately $229 million, it was one of the seven largest Jewish charities in the United States.[11] In November 2014, the New York Office of the Medicaid Inspector General claimed that FEGS's licensed home care services agency had overcharged Medicaid approximately $21 million out of $81 million in total Medicaid billings between 2006 and 2009.[12] A month later FEGS suddenly announced that it was facing a $20 million shortfall, and had an "urgent financial and cash crisis [with] resources…rapidly depleting."[13] By March 2015 it filed for bankruptcy. The affidavit of FEGS' CEO at the time of the bankruptcy filing is telling:

> No single, but rather a confluence of factors and events have led to FEGS' financial crisis. A continuing decrease in revenue without essential corresponding cost cuts led to substantial operating losses and escalating financial difficulties over the last several years. For example, while revenues fell between fiscal 2013 and 2014, aggregate salaries and benefits increased 7%. General operational and administrative inefficiencies also pervaded [FEGS's] programs. An outdated financial management system led to delays and considerable losses in billing and cash collections, causing a further drain on available cash and resources and also compromised management's ability to make responsive business decisions in a timely manner. [FEGS] was also overburdened by multiple space obligations which substantially exceeded [its] physical needs and financial capabilities…. An overly prohibitive administrative cost structure…was significantly more than target industry standards…. Contributing to [FEGS's] dwindling cash flow and mounting operating losses was [its] historical concentration on top line growth without due concern to contract viability within [its] existing administrative framework and business models.[14]

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Subsequent reviews of the organization's financials revealed that 74 percent of FEGS's 350 programs were losing money. Moreover, the corporation's attempt to turn its information technology department into a for-profit subsidiary that could provide information technology services to other social services agencies had instead cost FEGS more than $72 million between 2008 and 2014.[15]

The affidavit of FEGS' CEO causes an outside observer to wonder about the effectiveness of the board's oversight and its fulfillment of its corporate duties. The board's apparent failure to address FEGS' financial situation before it became untenable meant the loss of a critical New York social services agency. It also has had implications for the individual board members themselves. The Manhattan District Attorney's office, the New York Attorney General, and the U.S. Attorney General's office are all reported to have opened investigations (both civil and criminal) into the charity's failure, focusing on its for-profit subsidiary, whether anyone inappropriately benefited from it at the expense of FEGS, and the performance of the board.[16] Even without announced resolutions to the investigations, there is little doubt that they have been costly in time, reputation and finances, to both the debtor and to the individual board members who have had (and will have) to respond to the investigations with legal counsel.

III. Duty of Obedience—The Cooper Union for the Advancement of Science and Art ("Cooper Union")

Both not-for-profit and for-profit board members are expected to fulfill their duties of care and loyalty (see below); however, not-for-profit board members owe their organizations an additional duty, namely that of obedience to the organization's mission. This duty requires that board members deploy corporate resources for the tax-exempt mission of the organization as expressed in its charter documents.[17] But neither an organization's financial assets nor the seeming sophistication of its board members nor their commitment to the organization can guarantee that the board's governance practices will advance the corporate purpose. This was highlighted when the AG announced that he had resolved an investigation into the board of Cooper Union.[18]

The investigation was triggered by the protests and lawsuit filed by a faculty/student committee against the board in response to its decision to have Cooper Union charge tuition. Peter Cooper founded Cooper Union in 1859 with a bequest primarily of real estate assets in order to provide a free applied sciences education to all of its students who were to be admitted regardless of race, religion or sex. Its operations have since been funded through the income stream generated by its assets, particularly the land underneath the Chrysler Building. In 2006, believing that campus modernization would strengthen the organization's future, the board approved a construction plan to be financed by a mortgage secured by the Chrysler Building property.

The project's success hinged on several assumptions regarding expense reductions, fundraising, tax benefits, and investment gains. In addition, the board tied the compensation of the president of the school to the completion of the project. Yet, as the project took shape, and the 2008 economic recession took hold, the underlying financial projections failed. As a result, in 2013 the board was forced to stabilize the school's finances by charging tuition for essentially the first time in its history.

The faculty/student committee sued the board, alleging that its decision to charge tuition contravened the school's underlying mission. The AG then intervened in the committee's suit. The board defended itself, claiming that the charter gave it authority over how to pursue the school's educational objectives.[19]

In the September 2015 settlement of the suit, the AG avoided concluding that the board had failed in its duty of obedience to the school's mission. He asserted that there was no clear basis for concluding that the board had definitively violated its duty of obedience because of the age of the charter and because it had not previously been subject to judicial review. Moreover, from a practical viewpoint, continuing the litigation would entail costs the school could ill afford, and that at the time of settlement it would be "impractical for Cooper Union to comply, whether in part or in whole," with Peter Cooper's original bequest, as "Cooper Union does not now, and will not at any time in the foreseeable future, have the resources to restart and maintain…a tuition-free model."[20]

Yet the AG clearly had concerns that the board had lost sight of the importance of free tuition to the school's mission. According to the A.G's report, the financial plan failed "because its four key, *inadequately assessed assumptions* all went unrealized" (emphasis added). At the time the plan was approved

> [t]here was no [board] debate over four key optimistic assumptions that were at the heart of the loan plan. There was no substantive discussion of an apparent conflict of interest involving a key decision maker. There was no review of the future downsides to the overall plan even if it worked properly, and no acknowledgement of or planning for the potential failure of the plan…. There is no record of any contingency planning for the failure of one or more of the plan's key assumptions. There is no record that the Board ever discussed the potential need to charge tuition, and the likely impact of that decision, if the plan did not perform as expected.[21]

Indeed, "[the] decision to pursue the 2006 loan plan… demonstrated a weakness in trustee oversight functions that would persist over the following decade."[22]

In order to settle the suit, Cooper Union was required to adopt various "reforms of the school's outdated governances," including, accepting the appointment of a state-mandated independent financial monitor. Among the other reforms the AG required the board adopt, was a mandate that the board create a committee "dedicated to development of a strategic plan to return the school to its traditional tuition-free policy."[23] This mandate is clearly a reflection of the AG's concerns that part of the school's mission was sacrificed when the board decided to charge tuition. Factoring in the cost of the AG's investigation and settlement, as well as the reputational hit the organization incurred when it announced and implemented its new tuition structure, it is clear that the decision to impose school-wide tuition resulted in significant unanticipated costs to Cooper Union and its board.

IV. Duty of Loyalty

Careless decision-making may result in reputational and financial costs to both an organization and its board members, but on its own it rarely (if ever) results in enforcement actions, even if the decisions undermine an organization's mission. Boards are not only required to act carefully in support of a mission, but are required to make decisions "in good faith." "Bad faith" decisions, i.e., those in which directors place their own interests above those of the organization, trigger the duty of loyalty and result in enforcement. An example is the multi-year prison sentence imposed upon William Rapfogel, former Met Council CEO, for taking millions of dollars in kickbacks from Met Council's insurance broker over a 20-year period. In contrast, the board's failure to catch Rapfogel's fraud cost Met Council temporarily suspended contracts (while the fraud was investigated), and the acceptance of governance reforms and enhanced oversight, but not enforcement against the board or its members.[24] Met Council's board may not have effectively overseen its CEO, but it did not breach its duty of loyalty, and so the board was not subject to criminal enforcement.

(a) Homeland Foundation, Inc. ("Homeland")

Homeland represents a post-NPRA example of an organization and individuals who subjected themselves to increased enforcement for violations of the duty of loyalty. In September 2015, trustees of the Homeland Foundation, Inc., settled an investigation by the AG that they had breached their fiduciary duties by issuing grants to organizations connected with certain of the trustees in violation of Homeland's charter. Much of the subject grant funding went to schools that individual trustees or their children attended. In addition, a trustee and officer diverted to herself proceeds of a life insurance policy that were intended for the organization. In light of the various conflicts of interest, Homeland was required to implement various governance reforms, including removing certain members from its board, expanding its board, and revising its bylaws and conflicts of interest policy. Importantly, individual trustees were forced off the Homeland board and were required to repay Homeland over $4 million. The trustee who diverted funds to herself was banned for life from serving on a non-profit board, but other board members who did not benefit from the grants were barred from serving on other non-profit boards for a minimum of three years.[25]

(b) Carnegie Hall

To increase their oversight of potential conflicts and enforcement of the duty of loyalty, NPRA mandated that boards adopt conflicts of interest policies requiring that their members "act in the corporation's best interest," disclose any potential conflicts, and that any "related party transactions" be approved by the uninterested board members only after a determination that the transaction is "fair, reasonable and in the corporation's best interest."[26]

Changing board culture to reflect NPRA's standards can still pose challenges to affected not-for-profit organizations—even those that are receptive to NPRA's message. In September 2015, the mainstream press reported that the Carnegie Hall board chair had advised its board that the Executive and Artistic Director was not providing full financial information regarding Carnegie Hall's operations and had entered into a related party transaction without first obtaining the board's approval as required by NPRA.[27] When the matter hit the press it identified serious disagreements within the board and brought unwanted attention to the organization. In response, the board engaged outside counsel to review the board chair's accusations. By November, Carnegie Hall reported that the review found no evidence that the Executive and Artistic Director had impeded its proper governance, but acknowledged the importance of the chair's concerns, particularly in the wake of NPRA.[28] However, the public nature of the dispute appeared to undermine the organization and resulted in the loss of a significant donor, i.e., the board chair, who resigned.[29]

V. Regulatory Guidance for Board Members

Recognizing that unpaid not-for-profit board members are frequently challenged to fulfill their oversight responsibilities, both state and federal regulators have proactively issued guidance expressing their opinions as to how boards can (and should) use their care, obedience and loyalty to oversee their organizations.

(a) Charities Bureau of the Office of the New York State Attorney General ("Charities Bureau")

On April 13, 2015, the Charities Bureau of the Office of the Attorney General (the "Charities Bureau") issued three publications, including *Conflicts of Interest Policies Under the Nonprofit Revitalization Act of 2013, Whistleblower Policies Under the Nonprofit Revitalization Act of 2013* and *Internal Controls and Financial Accountability for Not-For-Profit Boards*. These publications try to explain to individual board members NPRA's expectations and requirements for oversight of conflicts of interest, related party transactions and whistleblower policies, as well as the importance of board oversight of an institution's internal controls.[30] A month later, the Charities Bureau published an updated version of *Right from the Start: Responsibilities of Directors of Not-for-Profit Corporations* intended to more generally educate not-for-profit boards regarding their common law duties of care, loyalty and obedience.[31] The publication lists multiple items that an individual should understand both before becoming, and while serving as, a board member. These include the organization's charter documents (including its 1023 application for federal tax exemption) and mission, its finances (including its annual financial statements, budget and cash flows, and audit letters), programs and activities. They are also expected to review the organization's governmental filings and ensure regulatory filings, such as CHAR filings (which ADC missed), are timely, accurate and up to date. From an operational perspective, the Charities Bureau expects each board member to understand "the organizational chart and… the accountability structure of the organization." While many not-for-profit boards have frequently been financially focused, the Charities Bureau is saying that financial understanding is necessary but it alone is not sufficient to fulfill a board member's responsibilities.[32]

(b) Board Guidance from the Federal Government

NPRA's adoption signaled, with its emphasis on the disclosure of conflicts of interest and the independent review of related party transactions, the importance New

York places on board members fulfilling their duty of loyalty by placing the organization ahead of their personal interests. U.S. Deputy Attorney General Sally Quillian Yates made perhaps the strongest statement of any regulator regarding the expectations of a board member's duty of loyalty in her memorandum "Individual Accountability for Corporate Wrongdoing" (the "Yates Memo").[33] The memorandum directed United States Attorneys to focus on individual accountability under both civil and criminal statutes when confronted by corporate misconduct. Board members may understandably want to protect individuals who made decisions on behalf of an organization that becomes subject to a federal investigation. The subject individuals may be respected long-term directors, officers or employees and also may be friends with some board members. Yet the Yates Memo states that in order for a corporation subject to a federal civil or criminal investigation to receive any credit for cooperating with the government, the board may not, and will not be able to, protect individual officers and directors from potential liability. It must report all information regarding their activities to the involved U.S. Attorney. Indeed, the Yates Memo announced that the Department of Justice would no longer resolve cases without a plan intended to hold individual corporate actors accountable for their actions.[34] It makes clear the government's position that a director's compliance oversight responsibilities and duty of loyalty to the organization take precedence over any sense of loyalty or responsibility owed to a target individual.

A few months before the Yates Memo was issued, the Office of the Inspector General of the United States Department of Health and Human Services (the "HHS OIG"), in collaboration with the American Health Lawyer's Association (the "AHLA"), the Association of Healthcare Internal Auditors, and the Health Care Compliance Association, updated its educational resource for healthcare governing boards *Practical Guidance for Health Care Governing Boards on Compliance Oversight (the "Compliance Guidance")*. As with the previously issued guidance, the document was intended to help boards fulfill their duties of care, loyalty and obedience as related to corporate compliance oversight. The Compliance Guidance emphasized that boards are expected to ensure that "(1) a corporate information and reporting system exists and (2) the reporting system is adequate to assure the board that appropriate information relating to compliance with applicable laws will come to its attention timely and as a matter of course." In order to do so, the HHS OIG expects that boards will monitor changes in the organization's regulatory and operating environment, and use that information to assess the "scope and adequacy of the compliance program [and its implementation by corporate officers and employees] in light of the size and complexity of their organization…."[35] Key among its recommendations is that the board set up clear reporting lines of responsibility for the compliance function and become familiar with who has compliance responsibilities and how the reporting lines work so that it fully understands how the organization approaches regulatory risk and how the compliance function operates within its organization to address that risk.

"Understanding the organization's processes for identifying and addressing operational and financial risks and opportunities—as well as compliance risks—is essential in order for a board member to fulfill her common law duties."

VI. Conclusion

The Compliance Guidance can be read solely as a compliance resource. But doing so misses a critical educational opportunity for boards that reinforces lessons learned from the above-described situations. Quite simply, if a board wants to fulfill its duties and effectively govern its organization (including managing risk and achieving corporate compliance), it must be familiar with and understand its overall organization the operation and the discrete functions within the organization, as well as the individuals charged with its management. Deleting the word "compliance" from passages of the Compliance Guidance leads to an obvious conclusion: for an organization to be successful in its compliance and its operational endeavors, its board members "need to be fully engaged in their oversight responsibilities." Whether they are overseeing compliance (including related party transactions), finance, operations, fundraising, risk management, quality or any organizational function, board members need to receive that information "in a format sufficient to satisfy [their] interests or concerns [and] fit their capacity to review that information.… Regular internal reviews that provide a board with a snapshot of where the organization is, and where it may be going,…should produce better…results and higher quality services."[36] Understanding the organization's processes for identifying and addressing operational and financial risks and opportunities—as well as compliance risks—is essential in order for a board member to fulfill her common law duties.

In the post-NPRA New York environment regulators, both federal and state, have provided boards with guidance to help them with their jobs. This guidance, together with press reports, cases and other governmental action, have placed boards on notice that poor decision-making will subject an organization to financial and reputational risk that threatens its ongoing viability. Additionally, conflicted loyalties will subject board members to individual financial risk and potential incarceration. Counsel needs to proactively and regularly remind board members of these risks by educating both the board, and management, on how to address organizational risks through greater board understanding of their organizations, their financial and other challenges, and the legal and operational environment in which they operate.

Endnotes

1. Chapter 549 of the Laws of 2013, as amended by Chapter 23 of the Laws of 2014 and Chapter 555 of the Laws of 2015. For a good summary of NPRA's provisions, see Mark Thomas, *The Nonprofit Revitalization Act of 2013*, 19 N.Y.St.B.A. Health L.J., Summer/ Fall 2014, pp. 39 - 41. It is also worth noting that since NPRA's adoption, the legislature has adopted various clarifications to specific definitions and provisions, but while the revisions are notable in advising boards as to the content of their corporate documents and certain deliberations, this article takes a more general approach to NPRA's provisions, and does not detail the revisions contained within the amendments. See Chapter 23 of the Laws of 2014 and Chapter 555 of the Laws of 2015.
2. Press Release, New York State Attorney General Eric Schneiderman, *A.G. Schneiderman's Nonprofit Revitalization Act Signed Into Law,* December 19, 2013, http://www.ag.ny.gov/press-release/ag-schneidermans-nonprofit-revitalization-act-signed-law.
3. Press Release, New York State Attorney General Eric Schneiderman, *A.G. Schneiderman & Comptroller Dinapoli Announce Agreement With Met Council To Restore Charity's Operations,* December 19, 2013, http://www.ag.ny.gov/press-release/ag-schneiderman-comptroller-dinapoli-announce-agreement-met-council-restore-charitys.
4. Aaron Elstein, *Rev. Calvin Butts seeks salvation for the church-based organization that resurrected Harlem*, Crain's New York Business, Nov. 22, 2015, http://www.crainsnewyork.com/article/20151122/REAL_ESTATE/311229998/rev-calvin-butts-seeks-salvation-for-the-church-based-organization-that-resurrected-harlem.
5. *Id.*
6. Juan Gonzalez, *Housing and social services arm of Harlem's Abyssinian Baptist Church cut off from $3.1M in city contracts due to overdue tax filings,* N.Y. Daily News, September 30, 2015, http://www.nydailynews.com/new-york/harlem-housing-developer-cut-3-1m-nyc-contracts-article-1.2379319.
7. Juan Gonzalez, *NY attorney general probes financially troubled Harlem nonprofit*, N.Y. Daily News, Nov. 17, 2015, http://www.nydailynews.com/new-york/ny-attorney-general-probes-financially-troubled-nonprofit-article-1.2438520.
8. *See supra*, note 4.
9. When working with their clients, counsel should remember that failure to submit required filings is not a risk exclusive to financially strapped clients. Even seemingly well-financed organizations, with access to highly competent counsel and high profile board members, may fail to submit the basic "CHAR" filings required to fundraise within the New York, and may thus face reputational costs from disclosure of such failings. On September 30, 2016, the A.G. announced that the private foundation of Republican Presidential Nominee Donald J. Trump was to immediately cease fundraising activities because it was "in violation of section 172 of Article 7-A New York's Executive Law" having solicited contributions in New York even though it had not registered with the Charities Bureau, had not submitted required annual financial reports, and had not submitted annual audits. Press Release, New York State Attorney General Eric Schneiderman, *New York Attorney General's Office Issues Notice Of Violation Directing Trump Foundation To Cease And Desist New York Solicitations,* October 3, 2016, http://www.ag.ny.gov/press-release/new-york-attorney-generals-office-issues-notice-violation-directing-trump-foundation. The violations were reported both locally and nationwide by a variety of media outlets while Mr. Trump was campaigning. See, e.g., Michael Virtanen, AP, *Attorney General to Trump Foundation: Stop Fundraising in New York*, Wash. Post, October 3, 2016, https://www.washingtonpost.com/politics/attorney-general-to-trump-foundation-stop-fundraising-in-ny/2016/10/03/3e721510-8990-11e6-8cdc-4fbb1973b506_story.html, and see Glenn Blain, *AG Eric Schneiderman orders Donald Trump foundation to cease fundraising in N.Y.,* N.Y. Daily News, Oct. 3, 2016, http://www.nydailynews.com/news/politics/schneiderman-orders-trump-foundation-cease-fundraising-n-y-article-1.2815824. The decision to order the Trump Foundation to cease fundraising appears to have followed from a decision by the AG to investigate the Trump Foundation after allegations that it had donated to a Florida politician's campaign and had purchased a painting that was housed at Trump's private club, Mar-a-Lago. See, e.g., Ken Lovett and Adam Edelman, *AG Eric Schneiderman to investigate Donald J. Trump Foundation as House Dems call for federal probe, N.Y. Daily News*, Sept. 13, 2016, http://www.nydailynews.com/news/politics/dems-call-federal-probe-trump-charity-donation-fl-ag-article-1.2790975.
10. *In re Federation Employment and Guidance Service Inc. d/b/a/ FEGS*, No. 15-7104 (Bankr. E.D.N.Y. filed Mar. 18, 2015), Woodlock Aff. Pursuant to Local Bankruptcy Rule 1007-4 and In Support of First Day Motions, p. 4, 5 and 14.
11. Josh Nathan-Kazis, *Sudden Collapse of FEGS Raises Disturbing Questions About Jewish Social Service System*, The Forward, February 9, 2015, http://forward.com/news/214314/sudden-collapse-of-fegs-raises-disturbing-question/.
12. Josh Nathan – Kazis, *FEGS Cascading Fiscal Woes Clear Months Before Group Rang the Alarm*, The Forward, March 17, 2015, http://forward.com/news/216744/fegs-cascading-fiscal-woes-clear-months-before-gro/.
13. *See supra, note 8*, at p. 11.
14. *Id*. at 9–10.
15. Josh Nathan-Kazis, *FEGS Execs Got Fat Payouts as Bankruptcy Loomed Amid Rampant Mismanagement*, The Forward, September 30, 2015, http://forward.com/news/national/321474/fegs-execs-got-payouts-while-staffers-struggled-and-services-suffered/.
16. See, e.g., Josh Nathan-Kazis, *Prosecutors Interviewed FEGS Board Members and Former Staff*, The Forward, May 13, 2016, http://forward.com/news/340646/prosecutors-interviewed-fegs-board-members-and-former-staff/.
17. New York State Attorney General, *Right from the Start: Responsibilities of Directors of Not-for-Profit Corporations*, May 15, 2015, p. 7, https://www.charitiesnys.com/pdfs/Right%20From%20the%20Start%20Final.pdf.
18. Press Release, New York State Attorney General Eric Schneiderman, *A.G. Schneiderman Announces Comprehensive Reform Package To Resolve Cooper Union Investigation And Lawsuit,* September 2, 2015, http://www.ag.ny.gov/press-release/ag-schneiderman-announces-comprehensive-reform-package-resolve-cooper-union.
19. *The Committee to Save Cooper Union, Inc., et al. v. The Board of Trustees of the Cooper Union*, [Proposed] Verified Cross-Petition of Intervenor Attorney General of the State of New York, Index No. 155185/2014 (Sept. 1, 2015), *at* 3, 4, and 50.
20. *Id*. at 52.
21. *Id*. at 18, 14, and 17.
22. *Id*. at 43.
23. *Id*. at 49.

24. Russ Buettner, *Rapfogel is Sentenced for Stealing From His Charity*, N.Y. Times, July 23, 2014, http://www.nytimes.com/2014/07/24/nyregion/rapfogel-sentenced-for-stealing-from-charity.html. Also, *see supra*, note 2.

25. Press Release, New York State Attorney General Eric Schneiderman, *A.G. Schneiderman Announces $4.3 Million Settlement With Former Leaders Of New York City-Based Charity Over Misuse Of Funds*, September 2, 2015, http://www.ag.ny.gov/press-release/ag-schneiderman-announces-43-million-settlement-former-leaders-new-york-city-based.

26. NPCL, Section 715(a).

27. Gregory Zuckerman and Jennifer Smith, *Discord Breaks Out at Carnegie Hall*, Wall St. Journal, September 16, 2015, http://www.wsj.com/articles/financier-accuses-carnegie-hall-board-of-poor-oversight-1442437620.

28. Michael Cooper, *Carnegie Hall Stands Behind Clive Gillinson After Review of Ronald Perelman's Complaints*, N.Y. Times, November 16, 2015, http://www.nytimes.com/2015/11/17/arts/music/carnegie-hall-stands-behind-clive-gillinson-after-review-of-ronald-perelmans-complaints.html.

29. Michael Cooper, *Ronald Perelman Quits Carnegie Hall Board*, N.Y. Times, Jan. 15, 2016, http://artsbeat.blogs.nytimes.com/2016/01/15/ronald-perelman-quits-carnegie-hall-board/.

30. New York State Attorney General, *Conflicts of Interest Policies Under the Nonprofit Revitalization Act of 2013*, https://charitiesnys.com/pdfs/Charities_Conflict_of_Interest.pdf, April 13, 2015; *Whistleblower Policies Under the Nonprofit Revitalization Act of 2013*, https://charitiesnys.com/pdfs/Charities_Whistleblower_Guidance.pdf, *April 13, 2015, and Internal Controls and Financial Accountability for Not-For-Profit Boards*, https://charitiesnys.com/pdfs/Charities_Internal_Controls.pdf, April 13, 2015.

31. *See supra*, note 16, at p. 5.

32. *Id*. at p. 2 and 3.

33. Memorandum from Deputy Attorney General Sally Quillian Yates of the Department of Justice on Individual Accountability for Corporate Wrongdoing (Sept. 9, 2015), available at https://www.justice.gov/dag/file/769036/download.

34. *Id*. at p.6.

35. U.S. Dep't of Health & Human Serv., Office of Inspector Gen., Am. Health Lawyers Ass'n & Health Care Compliance Ass'n, Practical Guidance for Health Care Governing Boards on Compliance Oversight (Apr. 20, 2015), available at http://oig.hhs.gov/compliance/compliance-guidance/compliance-resource-material.asp, p. 2, 3 and 4.

36. *Id*. at 1 and 10.

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