
IN THE MATTER OF BLACKBOARD, INC.,

Respondent.

SUBSTANTIAL BASIS INVESTIGATION REPORT

Case No. 12-31

INTRODUCTION

Pursuant to Executive Law §94(14-c), when the Joint Commission on Public Ethics (the "Commission") has found a substantial basis to conclude that a violation of Article 1-A of the Legislative Law (the "Lobbying Act") has occurred, the Commission shall issue a substantial basis investigation report. This report presents the Commission's findings that there is a substantial basis to conclude that Blackboard Inc. (the "Respondent") violated the Lobbying Act §1-j when it failed to file timely the 2010 January/June and 2010 July/December Client Semi-Annual Reports.

JURISDICTION OF THE COMMISSION

The Commission has authority to conduct an investigation to determine whether a substantial basis exists to conclude that a violation of the Lobbying Act has occurred by a lobbyist, public corporation, or client of a lobbyist as set forth in Executive Law §§94(13) & (14). Prior to commencing such an investigation, the statute requires that the subject of allegations be provided notice and fifteen days to respond to the allegations (known as a "15-Day Letter"). The matter must then be presented to the Commission, and the Commission must vote to commence an investigation.

If after the investigation has commenced, at least eight members of the Commission find a substantial basis to conclude that a violation of law has occurred, it shall issue a substantial basis investigation report, pursuant to Executive Law §94(14-c), containing its findings of fact and conclusions of law. The Commission shall make public such report within forty-five days of its issuance. The Commission is further authorized by Executive Law §94(14) to impose penalties for any violations as provided for in the Lobbying Act §1-o following a hearing in accordance with its regulations set forth at 19 NYCRR Part 941.

STATUTORY BACKGROUND

The Lobbying Act §1-j provides in relevant part:

(a) Semi-annual reports shall be filed by any client retaining, employing or designating a lobbyist or lobbyists, whether or not any such lobbyist was required to file a bi-monthly report, if such client reasonably anticipates that during the year such client will expend or incur an amount in excess of five thousand dollars of combined reportable compensation and expenses, as provided in paragraph five of subdivision (c) of this section, for the purposes of lobbying.

The Lobbying Act §1-o provides in relevant part:

(b)(i) A lobbyist, public corporation, or client who knowingly and willfully fails to file a statement or report within the time required for the filing of such report shall be subject to a civil penalty for each such failure or violation in an amount not to exceed the greater of \$25,000 dollars or three times the amount the person failed to report properly.

FINDINGS OF FACT

On November 26, 2009, lobbyist State Advisers, LLC ("State Advisers") filed a registration to lobby on behalf of the Respondent for the period November 1, 2009 through March 31, 2010. (See attachment 1) State Advisors also filed the contract for said lobbying services (see attachment 2) and a subsequent bimonthly reports. (See attachment 3)

As a registered client in 2010, the Respondent was required to comply with the reporting requirements set forth in the Lobbying Act.

The Commission has found, therefore, that the Respondent was required to file the 2010 January/June and 2010 July/December Client Semi-Annual Reports (the "Reports") by their statutory due dates, pursuant to the Lobbying Act §1-j, because the Respondent retained, employed or designated a lobbyist and the Respondent reasonably anticipated that it would expend or incur reportable compensation and expenses in an amount in excess of \$5,000 during the 2010 calendar year. The Commission has further found that the Respondent failed to file timely the Reports.

PROCEDURAL HISTORY

On April 20, 2011, the Respondent was sent Notice of Failure to File letters that its filings were overdue, that it was subject to late fees, and was given an opportunity to submit the required filings and avoid administrative enforcement procedures and applicable penalties, but still failed to file the required Reports. The Commission has further found that the Respondent failed to file timely the Reports.

On April 19, 2012, a 15-Day Letter was sent to the Respondent which afforded the Respondent fifteen days to file the Reports. (See Attachment 4)

No response was received from the Respondent.

On May 14, 2012, the Commission sent the Respondent a Notice of Substantial Basis Investigation. (See Attachment 5) To date the parties have been unable to resolve this matter.

CONCLUSION

Based on the Commission's investigation and the findings set forth above, the Commission has determined that a substantial basis exists to conclude that the Respondent violated the Lobbying Act in that Respondent knowingly and wilfully failed to file timely its 2010 January/June and 2010 July/December Client Semi-Annual Reports, and that the Respondent is subject to a civil penalty pursuant to the Lobbying Act §1-o in amount not to exceed \$25,000 for each violation, and other possible penalties, including suspension of lobbying activities and criminal prosecution.

Date: May 28, 2014

Approved: Daniel J. Horwitz
Chair

Paul Casteleiro
Hon. Joseph Covello
Marvin Jacob
Seymour Knox, IV
Gary J. Lavine
Hon. Mary Lou Rath
David A. Renzi
Michael A. Romeo, Sr.
Renee R. Roth

Absent: David Arroyo
Mittra Hormozi
George Weissman

Members