

HAND DELIVERED

RECEIVED JUL 19 2013

STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS

540 Broadway
Albany, New York 12207

IN THE MATTER OF MERCURY
PUBLIC AFFAIRS, LOBBYIST

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. 12-145

WHEREAS, the Joint Commission on Public Ethics (the "Commission") has authority pursuant to Executive Law §94 to conduct an investigation to determine whether a substantial basis exists to conclude that a violation of Article 1-A of the Legislative Law (the "Lobbying Act") has occurred, to issue a report of its finding of a substantial basis to conclude that a violation has occurred, and to impose penalties for such violation as provided for in the Lobbying Act;

WHEREAS, this Settlement Agreement ("Agreement") is entered into by and between the Commission and Mercury Public Affairs (the "Respondent");

WHEREAS, Respondent, as a registered lobbyist in 2011-2012, is required to comply with the reporting requirements set forth in the Lobbying Act;

WHEREAS, Respondent voluntarily reported that, due, in significant part, to the misfeasance and nonfeasance of an employee (the "Former Employee"), who worked for Respondent from September 6, 2011 to July 15, 2012, Respondent had not submitted certain filings that were required to be submitted to the Commission during the 2011-2012 biennial registration period (the "Relevant Period"), pursuant to the Lobbying Act, and that certain filings that had been submitted to the Commission by the Respondent, during the Relevant Period, were either incomplete or inaccurate;

WHEREAS, Respondent cooperated with the Commission and has submitted all filings required to be submitted, and amended filings that it had submitted, during the Relevant Period;

WHEREAS, pursuant to the Lobbying Act §§1-e and 1-h, the Commission is authorized to impose a fee not to exceed twenty-five dollars per day for each day that a statement of registration or required amendment is late and, pursuant to Lobbying Act §1-o (b)(i) and (b)(ii), may impose penalties in an amount not to exceed the greater of twenty-five thousand dollars or three times the amount the person failed to report properly, or the greater of fifty thousand dollars or five times the amount the person failed to report properly, respectively;

WHEREAS, in lieu of appearing in an adjudicatory proceeding that could result in the assessment of a civil penalty against Respondent, the parties to this Agreement have agreed to resolve their dispute in a manner that avoids further administrative proceedings;

NOW THEREFORE, in consideration of the fact that Respondent voluntarily reported to the Commission, has cooperated with the Commission, has amended and submitted Respondent's filings, and in consideration of the mutual covenants made herein, as the final settlement of the violations set forth herein, the parties stipulate and agree as follows:

- I. As a result of, in significant part, the misfeasance and nonfeasance of the Former Employee, Respondent failed to submit or submitted inaccurate and incomplete filings during the Relevant Period, including lobbyist Statements of Registration, lobbyist Bi-Monthly Reports, as well as the Client-Semi Annual Reports required on its own behalf, in violation of §§ 1-e, 1-h(a), 1-j of the Lobbying Act.
- II. Respondent agrees to proceed without the notice and opportunity to respond as provided in Executive Law §94(13).
- III. Respondent agrees to pay to the Commission the amount of \$20,000 in settlement of said violations within 30 days of the execution of this Agreement.
- IV. During the remainder of the 2013-2014 biennial registration period, in addition to any random audit of Respondent's filings that the Commission may perform in accordance with and pursuant to §1-d of the Lobbying Act, the Respondent shall cooperate with any request by the Commission to review records relating to lobbying activity conducted during the 2013-2014 biennial registration period to determine whether filings required to be made by Respondent have been made in a timely manner and are accurate and complete.
- V. Respondent further agrees to assist the Commission should it determine that any additional filings submitted, or required to be submitted, during the Relevant Period are not accurately completed.
- VI. If Respondent fails to timely perform the conditions set forth in Paragraphs III - V of this Agreement, Respondent will be in breach of this Agreement, and it shall be in the Commission's sole discretion to deem the Agreement null and void in its entirety, issue a new Substantial Basis Investigation Report, which may include additional charges against Respondent, and proceed with an enforcement action. As to any new Substantial Basis Investigation Report or enforcement action by the Commission pursuant to this paragraph: (i) Respondent waives any claim that such action is time-barred by a statute of limitations or any other time-related defenses, provided that such action would not have been time-barred if brought on or before the date of this Agreement; and (ii) Respondent expressly acknowledges and agrees that the Commission may use any statements herein, or any other statements, documents or other materials produced or provided by Respondent prior to or after the date of this Agreement, including, but not limited to, any statements, documents, or other materials, if any, provided for the purposes of settlement negotiations or in submissions by Respondent or by counsel on behalf of

Respondent, in any enforcement proceeding against Respondent relating to the allegations herein.

- VII. Respondent shall, upon request by the Commission, provide all documentation and information reasonably necessary for the Commission to verify compliance with this Agreement.
- VIII. The Commission has agreed to the terms of this Agreement based on, among other things, the representations made to the Commission by Respondent and its counsel. To the extent that representations made by Respondent or its counsel are later found to be materially incomplete or inaccurate by the Commission, Respondent shall be in breach of this Agreement under Paragraph VI. herein.
- IX. Notwithstanding the provisions of this Agreement, Respondent understands and acknowledges that the Commission may investigate other alleged violations of the Lobbying Act, if any, by Respondent and take any appropriate action. However, the Commission will not seek to impose any other late fee or civil penalty, or take other enforcement action, relating to Respondent's filings submitted or required to be submitted during the Relevant Period, unless the Commission determines that Respondent knowingly and willfully violated the Lobbying Act due to conduct of someone other than the Former Employee.
- X. Respondent hereby waives any rights, as provided in §1-o(c)(iii) of the Lobbying Act, to relief from the assessment of a penalty and may not assert such right in relation to any future enforcement proceeding.
- XI. Respondent waives any statute of limitations or other time-related defenses applicable to the subject of the Agreement and any claims arising from or relating thereto, as well as any right to appeal or challenge the determination or conduct of the Commission relating to this matter in an article 78 proceeding or by any other means.
- XII. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
- XIII. Respondent consents to the jurisdiction of the Commission in any proceeding or action to enforce this Agreement.
- XIV. It is understood that this Agreement is not confidential and will be made public within 45 days of its execution in accordance with Executive Law §§94(14) & (19).
- XV. Respondent agrees not to take any action or to make, permit to be made, authorize, or agree to, any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Respondent's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Commission is not a party. A violation of this Paragraph constitutes a breach of this Agreement by Respondent under Paragraph VI. herein.

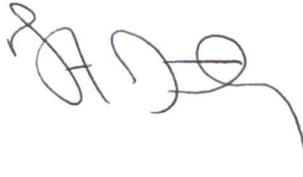
- XVI. This Agreement constitutes the entire agreement between the parties and supersedes any prior communication, understanding, or agreement, whether oral or written, concerning the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth in this Agreement has been relied upon by any party to this Agreement.
- XVII. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
- XVIII. This Agreement shall become effective once executed by Respondent and the Commission, or its designee.
- XIX. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
- XX. By signing below, Respondent acknowledges reading this Agreement in its entirety, understanding all terms and conditions of this Agreement, and having done so, knowingly, voluntarily, and freely enters into this Agreement.

Dated: 9/11/2013

Letizia Tagliarino
New York State
Joint Commission on Public Ethics

ACCEPTED AND AGREED TO
THIS 15 DAY OF July, 2013

Respondent
By: THOMAS DOHERTY
Name: Thomas Doherty
Title: PARTNER



Approved: Daniel J. Horwitz
Chair

Patrick J. Bulgaro
Hon. Joseph Covello
LaShann M. DeArcy
Hon. Vincent A. DeIorio
Marvin E. Jacob
Seymour Knox, IV
Gary J. Lavine
Hon. Mary Lou Rath
David A. Renzi
George H. Weissman
Members

Absent: David Arroyo
Mitra Hormozi
Ellen Yaroshefsky
Members