STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

540 Broadway
Albany, New York 12207

IN THE MATTER OF SEVEN CIVIL PENALTY REFERRALS ISSUED BY THE NEW YORK TEMPORARY STATE COMMISSION ON LOBBYING ON SEPTEMBER 6, 2007 ALLEGING THAT JARED ABBRUZZESE VIOLATED LEGISLATIVE LAW §1-m.

DECISION AND ORDER

On September 6, 2007, the New York Temporary State Commission on Lobbying (the "Lobbying Commission") determined that there was reasonable cause to believe that Jared Abbruzzese was a lobbyist who had violated Legislative Law ("Lobbying Act") §1-m on seven occasions, that the matter should be referred to a hearing and that a notice should be sent to Mr. Abbruzzese apprising him of the alleged violations. The Lobbying Commission never sent to Mr. Abbruzzese a notice of hearing or a notice of the seven alleged violations ("Referrals"). The Commission on Public Integrity ("Commission"), however, did send the Referrals to Mr. Abbruzzese's counsel. Since the Commission has determined, for the reasons stated below, that there is not reasonable cause to believe Mr. Abbruzzese violated Lobbying Act §1-m in the manner alleged, rather than sending a hearing notice to Mr. Abbruzzese, we issue this Decision and Order dismissing the Referrals with prejudice.

The Referrals allege that, between January 2005 and January 2006, Jared Abbruzzese, then an Albany businessman and an unpaid member of the board of directors of Friends of New York Racing, Inc. ("FNYR"), unlawfully offered gifts in the form of free air travel to Senate Majority Leader Joseph L. Bruno, a public official, in violation of Lobbying Act §1-m. During the period relevant to the Referrals, the law then applicable barred any person "required to

register" with the Lobbying Commission from offering or giving a gift valued in excess of $75 to a public official; this rule was commonly called the "gift ban." After further investigation of the matter by this Commission, there is insufficient evidence to support a finding of reasonable cause that Mr. Abbruzzese was, during the relevant period, a person "required to register" under the Lobby Act, *i.e.* a person "retained, employed or designated" to engage in lobbying. Additionally, under the current circumstances, it seems extremely unlikely that additional evidence supportive of that proposition could be gathered or exists.

I. BACKGROUND

A. Friends of New York Racing, Inc.

The Lobbying Commission's Referrals are based upon Mr. Abbruzzese's alleged activities as an unpaid director of FNYR, which was dissolved on June 19, 2006.[1] During the relevant time period, in addition to Mr. Abbruzzese, eighteen other individuals were unpaid directors of FNYR.[2]

According to FNYR's final report, FNYR was a New York State not-for-profit corporation established to encourage horse racing in the State of New York.[3] Presumably because it believed that some if its activities would or might constitute "lobbying" under extant law, on December 29, 2004, FNYR filed a registration statement with the Lobbying Commission for the 2005-2006 biennial period. With its registration, FNYR submitted a letter from Timothy G. Smith, FNYR's President and Chief Executive Officer, designating Mr. Smith as an in-house lobbyist on FNYR's behalf for the time period commencing on January 3, 2005 and ending on

[1] New York State Department of State Website, Division of Corporations, Entity Information Database.

[2] Referrals; FNYR, Preliminary Report, July 2005.

[3] *See*, FNYR, The Way Forward: Report and Recommendations, December 2005, p.2.

December 31, 2006.[4] In addition to Mr. Smith, FNYR retained outside lobbyists to work on its behalf; those lobbyists also filed registration statements and bi-monthly reports. An unpaid board member of FNYR, Mr. Abbruzzese was neither designated by FNYR as a lobbyist for the organization, nor separately retained or employed by FNYR as a lobbyist.[5]

B. The Lobbying Commission's Investigation

On or about December 3, 2005, the Lobbying Commission initiated an investigation into the conduct of Mr. Abbruzzese and FNYR. Among the issues under investigation was whether Mr. Abbruzzese provided free private air travel to then Senate Majority Leader Joseph L. Bruno, a public official.

The Lobbying Commission issued a subpoena *duces tecum* and *ad testificandum* to Mr. Abbruzzese on May 25, 2006. On July 5, 2006, Mr. Abbruzzese moved pursuant to C.P.L.R. §2304 to quash the subpoena in Albany County Supreme Court; he alleged, *inter alia*, that the subpoena exceeded the Lobbying Commission's jurisdictional authority. That issue was litigated through and including an appeal to the Appellate Division, Third Department, which issued an order on August 2, 2007 compelling compliance with the subpoena. Every court that reached the issue held that the Lobbying Commission's issuance of the subpoena was proper and lawful. Abbruzzese v. New York Temporary State Commission on Lobbying, 43 A.D.2d 518 (3d Dept. 2007). By the time the Court of Appeals denied review on October 31, 2007, however, the Public Employee Ethics Reform Act (L. 2007, ch. 14) ("PEERA") had been enacted into law. Among other provisions, PEERA created this Commission, merging the Lobbying Commission and the New York State Ethics Commission effective September 22, 2007. Pursuant to PEERA

[4] *See*, FNYR's 2005-2006 registration statement.

[5] FNYR filed eight required lobbyist bi-monthly reports, the last of which was for the March-April, 2006 bi-monthly period.

§36 *et seq*., the powers, duties, and authority of the Lobbying Commission were transferred to this Commission with regard to ongoing Lobbying Commission matters.

C. Lobbying Commission Approved The Referrals At Its Final Meeting

On September 6, 2007, at what its members and staff understood would be the Lobbying Commission's final meeting, the Lobbying Commission approved the Referrals, which, pursuant to PEERA, were carried forward to this Commission.[6] The Referrals were directed at the conduct of Mr. Abbruzzese personally. The Lobbying Commission did not consider or approve a referral as to the conduct of FNYR as an organization, as distinct from Jared Abbruzzese personally. Whether this was an oversight on the part of the Lobbying Commission's staff, or a deliberate choice, is unclear; that issue was neither presented to the Lobbying Commission at its final meeting, nor discussed in the underlying documentation.

D. Further Investigation and Information Gathering by this Commission

In the period since the Referrals were made, this Commission has gathered and attempted to gather additional evidence with respect to Mr. Abbruzzese's conduct and status in 2005 and 2006, including, specifically, to determine whether Mr. Abbruzzese engaged in "lobbying" such that he would have been a person "required to register" under the Lobbying Act. Among other steps taken, Commission staff has interviewed five additional witnesses, bringing the total to 16, reviewed all of FNYR's reports and corporate meeting minutes of FNYR from 2005-2006, and monitored the criminal trial of former Senator Bruno, at which Mr. Abbruzzese testified as witness for the Government.

[6] When it issued the Referrals, although, as discussed above, the Lobbying Commission had successfully resisted Mr. Abbruzzese's application to quash an investigative subpoena seeking documents and testimony, Mr. Abbruzzese had not yet complied with the subpoena.

Commission staff has sought testimony on these matters directly from both Mr. Abbruzzese and former Senator Bruno. In the case of Mr. Abbruzzese, who now resides in Florida, he has indicated through counsel that he will not appear for a Commission interview, and has no intention of returning to New York to be subpoenaed or of authorizing his attorney to accept a Commission subpoena on his behalf. In the case of former Senator Bruno, his counsel has indicated to staff that, given the pending criminal case against him, if called, Mr. Bruno would decline to provide testimony based upon the Fifth Amendment constitutional privilege against self-incrimination. Consequently, the two witnesses most likely to be in possession of first-hand information relevant to the question whether Mr. Abbruzzese lobbied then Senator Bruno – namely Jared Abbruzzese and Joseph L. Bruno – are, for different reasons, unavailable to the Commission.

To be sure, the evidence gathered by the Lobbying Commission and this Commission creates reasonable ground to believe that Mr. Abbruzzese or a corporation he owned or controlled paid for the private aircraft flights on which Senator Bruno travelled to political and social functions. What is missing, however, is a reasonable basis to conclude that Mr. Abbruzzese engaged in "lobbying" as that term is defined in the Lobbying Act and, thus, was required to register under the Lobbying Act. On that issue, there simply is no evidence one way or the other, and no realistic prospect that it can be obtained in the foreseeable future.[7]

[7] Further evidence developed by this Commission about the conduct of FNYR suggests that FNYR may have advocated against certain budget allocations that would negatively impact horse racing in New York State. There is no evidence, however, linking Mr. Abbruzzese's actions to this advocacy against budget allocations or any other legislation.

II. **ANALYSIS**

A. Only A Person Required to File a Registration or Report Is Subject to Gift Ban

During the relevant time period,[8] only a person "required to file a statement or report pursuant to the [Lobbying Act],"[9] was prohibited from offering a gift to a public official.[10] Since the instant record contains insufficient evidence that Mr. Abbruzzese was a person "required to register" under the Lobbying Act (*i.e.*, that he engaged in "lobbying" as defined therein), there is no basis upon which to proceed with the Lobbying Act violations the Referrals allege against him.[11] By its terms as it then existed, §1-m would also subject to the gift ban a person or entity that was required to file a client semi-annual report; however, neither Referrals do not allege that

[8] In considering the Referrals, the Commission applies the Lobbying Act provisions in effect during the relevant time period. *See Generally* McKinney's Statutes, §52. The legislature must state specifically that a statute has retroactive effect. Simonson v. International Bank, 14 N.Y.2d 281, 289 - 290 (1964). Therefore, any changes in the Lobbying Act enacted after 2006 are irrelevant in this case.

[9] Former §1-m, relating to the offering of gifts, added by L.1999, ch. 2, § 2, effective Jan. 1, 2000, repealed by PEERA, L.2007, c. 14, § 19, effective April 25, 2007.

[10] By comparison, PEERA broadened Lobbying Act §1-m to prohibit any "individual or entity *required to be listed on a statement of registration* pursuant to" the Lobbying Act from offering or giving a gift to a public official under specified circumstances. L. 2007, ch. 14, §19 (emphasis supplied). PEERA also amended the Lobbying Act to add a new requirement that a corporation that files a registration statement, such as FNYR, must list on its registration statement "any officer or employee of such lobbyist who engages in any lobbying activities or who is employed in an organization's division that engages in lobbying activities of the organization." Lobbying Act §1-e(c)(1). Although it is not a term the Lobbying Act employs, such an officer or employee is generally referred to as an "additional lobbyist." During the relevant time period, however, the Lobbying Act did not require an additional lobbyist to be listed on a registration statement, although Lobbying Commission forms included space for additional lobbyists and they often were listed.

[11] Both the Lobbying Commission and this Commission have consistently determined that a person or entity who does file a registration statement or client semi-annual report is subject to the Lobbying Act's provisions, even if the person was not required to file the registration statement or client semi-annual report. This Decision and Order does not modify this longstanding construction of the Commission's authority and duty to administer and enforce the Lobbying Act. Since FNYR had filed a registration statement (as well as a client semi-annual report), the Lobbying Commission may have had a basis upon which to charge FNYR with violations of the Lobbying Act, but the Lobbying Commission did not do so. The Lobbying Commission may have decided not to pursue FNYR because, by the time it issued the Referrals, FNYR had been dissolved for over a year and had no assets in New York.

Mr. Abbruzzese was subject to the reporting requirements applicable to lobbying clients set forth in Lobbying Act 1-j, and there is not reasonable cause to believe he was.

B. Because He Was Not a Lobbyist, Mr. Abbruzzese Was Not Required To File a Registration Statement

Mr. Abbruzzese was not required to file a registration statement under the Lobbying Act because, under the circumstances and during the relevant time period, only a "lobbyist" was required to do so. The statute described those persons required to file a registration statement in Lobbying Act §1-e(a)(1). A "lobbyist" was defined as a "person or organization retained, employed or designated by any client to engage in lobbying." Lobbying Act §1-c(a). Based on the record evidence, there is not reasonable cause to believe that FNYR "retained, employed or designated [Mr. Abbruzzese] to engage in lobbying," and, thus, not reasonable cause to believe that Mr. Abbruzzese was a lobbyist required to file a registration statement under the Lobbying Act. [12]

C. FNYR Did Not Explicitly Retain, Employ or Designate Mr. Abbruzzese As A Lobbyist

1. Mr. Abbruzzese Not Listed As a Lobbyist on FNYR's Registration

Based on FNYR's registration statement and its client semi-annual reports filed with the Lobbying Commission, only Mr. Smith and professional, retained outside lobbyists were

[12] With respect to a lobbyist's statutory obligation to file a registration statement, during the relevant time period, the Lobbying Act provided, in pertinent part, as follows:

Lobbying Act §1-e (a)(1) **Statement of Registration.** Every lobbyist shall annually file with the commission, on forms provided by the commission, a statement of registration for each calendar year; provided, however, that the filing of such statement of registration shall not be required of any lobbyist who (i) in any year does not expend, incur or receive an amount in excess of two thousand dollars for years prior to two thousand six and in excess of five thousand dollars in the year two thousand six and the years thereafter of reportable compensation and expenses, as provided in paragraph five of subdivision (b) of section one-h of this article, for the purposes of lobbying … .

"retained, employed or designated" to lobby on FNYR's behalf. FNYR did not explicitly state that it had "retained, employed or designated" Mr. Abbruzzese or any of the eighteen other directors to lobby on its behalf. The fact that Mr. Abbruzzese was a member of FNYR's board does not make him a "lobbyist" for the client, in this case FNYR itself. In order to have that status, a person must be "retained, employed or designated" as a lobbyist, which Mr. Abbruzzese was not.

2. FNYR's President And Only In-House Lobbyist Did Not Say Mr. Abbruzzese Was A Lobbyist For FNYR

The Lobbying Commission's investigation included a June 16, 2006 interview of Timothy G. Smith, FNYR's President and Chief Executive Officer and the only in-house lobbyist that FNYR listed on its filings with the Lobbying Commission. Lobbying Commission Executive Director David Grandeau conducted the interview. Mr. Grandeau asked questions about the nature of FNYR's activity and Mr. Smith's role as the designated in-house lobbyist for the organization.[13] But, for reasons that the record does not make apparent, Mr. Grandeau did not ask Mr. Smith whether FNYR had retained, employed or designated Mr. Abbruzzese to engage in lobbying, whether Mr. Abbruzzese was, in fact, a lobbyist for FNYR or whether Mr. Abbruzzese engaged in lobbying on behalf of FNYR. Nor did Mr. Smith state that Mr. Abbruzzese was retained, employed or designated as a lobbyist for FNYR.[14] This investigative gap was reflected in the Referrals themselves, which offered no evidence that Mr. Abbruzzese was, in fact, a lobbyist for FNYR.

[13] *See*, Referrals, Exhibit 11, Smith Interview Transcript, June 16, 2006, pages 4-46.

[14] *Id.*

This Commission spoke with Mr. Smith's attorney in September 2010, who said that Mr. Smith now resides in Florida and is unwilling to provide further testimony to the Commission. The attorney also stated that he was not authorized to accept a subpoena on Mr. Smith's behalf.

3. Meeting With Senator Bruno in Spring 2005 Does Not Provide Reasonable Cause to Believe that Mr. Abbruzzese Was A Lobbyist

According to the Referrals, Mr. Smith confirmed during the Lobbying Commission interview that Mr. Abbruzzese arranged a meeting in Spring 2005 between Mr. Smith and then Senate Majority Leader Bruno. The Referrals do not describe what was discussed in that meeting, nor do they attempt to articulate, as a legal or factual matter, how arranging for (or participating in) this meeting shows that Mr. Abbruzzese was retained, employed or designated as a lobbyist for FNYR or, that he engaged in lobbying on behalf of FNYR. Indeed, standing alone, the evidence adduced from Mr. Smith does not provide reasonable cause to believe that, based on this Spring 2005 meeting, Mr. Abbruzzese lobbied on behalf of FNYR.

According to Mr. Smith's interview, Mr. Smith conducted a twenty to thirty minute meeting with Senator Bruno at Mr. Abbruzzese's home in the Spring 2005.[15] Mr. Smith was not asked what was discussed during this meeting. In sworn testimony regarding the meeting at Mr. Bruno's criminal trial, United States v. Joseph L. Bruno, No. 09-CR-29 (NDNY Proceedings on November 20, 2009), Mr. Abbruzzese acknowledged under oath that he arranged a meeting between Senator Bruno and Mr. Smith at his home in the Spring, 2005. (*Id.*, Transcript, November 20, 2009, at 49 ["Bruno Trial Transcript"]) Mr. Abbruzzese testified that he made introductions at the meeting, left, and returned at the end without taking any active role in any matters discussed between Mr. Smith and Senator Bruno. (Bruno Trial Transcript at 49 lines 3

[15] *Id.*, pages 40-41.

through 9) Mr. Abbruzzese further testified that his contacts with Senator Bruno during the relevant time period were focused on personal and business issues, almost all of which involved millions of dollars in investment or profit by and to Mr. Abbruzzese or his for-profit corporate interests, but that did not include FNYR's agenda.[16] This meeting occurred after the passage of the 2005 budget, which is discussed above in footnote 7.

The Referrals noted that Mr. Smith said he believed that Mr. Abbruzzese and Senator Bruno were good friends who spoke periodically about horse racing in New York. Other than this passing reference by Mr. Smith, the Referrals contain no further evidence to support an assertion that Mr. Abbruzzese communicated with then Senator Bruno about pending legislation – the key to determining whether there has been "lobbying" under the Lobbying Act.

In sum, the Referrals, the Lobbying Commission's interview of Mr. Smith, Mr. Abbruzzese's sworn testimony, and the other record evidence do not provide reasonable cause to believe that Jared Abbruzzese was a party to any discussion or lobbying effort conducted on behalf of FNYR. For these additional reasons, the record evidence does not provide reasonable cause to believe that Mr. Abbruzzese was retained, employed or designated as a lobbyist for FNYR.[17]

[16] Bruno Trial Transcript, Testimony of Jared Abbruzzese, at 17-20; 42-46; 49-53; 55-57; 62-64; 80-83; 87-91; 100-102; 105-108; 109-110; and at 125-126.

[17] The Referrals also state that Mr. Smith said that Mr. Abbruzzese provided political and policy advice to him, based on what Mr. Abbruzzese believed Senator Bruno would support (Smith Transcript at 49). Such record evidence does not support a determination that there is reasonable cause to believe that Mr. Abbruzzese was a lobbyist for FNYR.

D. The Referrals Do Not Allege That Mr. Abbruzzese Was Required to Register or Report As A Lobbyist

The Lobbying Commission Referrals focus on whether Jared Abbruzzese paid for certain private aircraft flights on which then Senator Bruno travelled. This was viewed, it seems, as the heart of the matter. But the Referrals do not discuss whether the record evidence provides reasonable cause to believe that Mr. Abbruzzese was required to file a registration statement or was retained, employed or designated as a lobbyist for FNYR. This failure is puzzling, since the factual predicate for charging a person for a violation of the "gift ban" is that such a person was "required to register" with the Lobbying Commission.

When the conduct of an organization falls within the ambit of the Lobbying Commission's authority, it is the organization, not its board members, that is considered to be the client that may designate or employ an in-house lobbyist and/or retain an outside lobbyist. Mr. Abbruzzese's mere status as an unpaid board member of FNYR did not automatically render him a "lobbyist" for FNYR. It has never been the rule that the fact that a person is a director of a corporation that is a "client," without more, subjects him to the registration and reporting requirements and the restrictions set forth in the Lobbying Act as a "lobbyist." Indeed, the requirement that an organizational client designate a natural person (employees, board members or otherwise) as an in-house "lobbyist" demonstrates that to assign such automatic status to board members would be violative of the intent of the Lobbying Act's framers.

Finally, as discussed above, no evidence has yet emerged that creates reasonable cause to believe that Mr. Abbruzzese became a "lobbyist" for FNYR by virtue of his conduct. No witness has stated, and no document has been produced, to suggest that Mr. Abbruzzese participated in discussions with Sen. Bruno or any other public official on behalf of FNYR

relating to any pending legislation. And the people who would have information on that subject (i) never were asked relevant questions by the staff of the Lobbying Commission or (ii) denied that it occurred (as Mr. Abbruzzese did in his testimony in Sen. Bruno's criminal trial) or (iii) have led us to believe that they would not cooperate in this Commission's investigation (as Messrs. Abbruzzese, Bruno and Smith have). In light of these difficulties, which are beyond the control of this Commission, and the fact that FNYR no longer exists, the utility of further inquiry appears nil.

In the end, the Referrals are silent with respect to this determinative issue. Instead of addressing the substance of Mr. Abbruzzese's conduct in the context of the Lobbying Commission's jurisdiction, the Referrals simply declare, without analysis or citation: "As a director of [FNYR], a corporation which was both a registered lobbyist and a client, Mr. Abbruzzese was subject to the jurisdiction of the Lobbying Act, specifically the gift ban of Section 1-m." As discussed above, however, neither the version of §1-m in effect during the relevant time period, nor any other authority we have found supports a conclusion that, without evidence that he filed a registration statement or, at least, that he should have done so, an uncompensated director of a corporation that had filed a lobbyist registration statement was restricted by the gift ban -- especially in the absence of evidence that the director was retained, employed or designated as a lobbyist or, at the very least, engaged in lobbying on the corporation's behalf. By its terms, §1-m – the gift ban -- applied only to those persons required to file a registration statement or a client semi-annual report.

Put another way, the evidence mentioned in the Referrals, and that developed since, does not demonstrate that Mr. Abbruzzese was subject to the gift ban.

Notably, were evidence developed that suggested that Mr. Abbruzzese, an unpaid board member, had "lobbied" on behalf of FNYR, the correct analysis would be to hold FNYR liable for those acts, as a client of a lobbyist and a lobbying entity so reported to the Lobbying Commission. As the Referrals correctly state, FNYR may have been liable under the Lobbying Act for Mr. Abbruzzese's activities on the theory that "[a] corporation, being an artificial entity existing wholly in the conception of the law, must of necessity act through its agents, officers and directors. The directors are the executive representatives of a corporation." An act by a corporate director performed in furtherance of a corporate purpose can and does bind the corporation. In this case, the possible violation that would arise – were these the facts that emerged – would be that FNYR failed to disclose ("designate") Mr. Abbruzzese as an in-house lobbyist, when in fact he acted as one. The Lobbying Commission staff never articulated the issue this way, however. Since the Lobbying Commission chose not to issue any Referrals against FNYR, these observations are not directly relevant to an analysis of the determinative issue, which is whether there is reasonable cause to believe that Mr. Abbruzzese was required to file a registration statement.

E. Lobbying Commission Opinions Issued Before The Referrals Are Inapposite

Finally, the Lobbying Commission may have based its decision to approve the Referrals on three opinions of the Lobbying Commission, Opinion No. 9 (78-9), Opinion No. 24 (79-5), and Opinion No. 40 (97-2), all of which had been published a decade or more before the Referrals, although the Lobbying Commission did not cite them in the Referrals. These opinions address the requirement of employees and *compensated* directors who engage in lobbying for a corporation with which they are so associated to register and report as lobbyists for the corporation, if they otherwise meet all other relevant criteria set forth in the Lobbying Act, such

as compensation and expenses in excess of the statutory threshold (emphasis supplied). The circumstances of this case are materially different from the circumstances presented in these three above-referenced opinions -- FNYR did not compensate Mr. Abbruzzese and the corporation, FNYR, had registered as a lobbyist for itself.

Moreover, these opinions must be viewed and applied in light of the Lobbying Commission's application of the Lobbying Act's reporting requirements applicable to corporations that lobbied on their own behalf. During the relevant period (indeed, during virtually all of its existence), the Lobbying Commission allowed a corporation to comply with the Lobbying Act's registration and reporting requirements in one of two ways, but did not require compliance in both ways. First, a corporation could do what FNYR did, which is register as a lobbyist for itself as client, listing a principal lobbyist and any additional in-house lobbyists as well as reporting to the Commission as a client with retained outside lobbyists.[18] Lobbying Commission forms provided space for a corporation to list such additional in-house lobbyists. Alternatively, an "in-house" person, such as an employee, officer or director, could register as a lobbyist, disclosing the corporation as a client.[19] The opinions reference the Lobbying Commission Guidelines in this respect. The Guidelines did not require both the client corporation and its in-house lobbyists to register as lobbyists, and the Lobbying Commission accepted one or the other as compliance with the Lobbying Act's registration requirement. Here, inasmuch as Mr. Smith was designated as an additional in-house lobbyist for FNYR as client, and inasmuch as the investigation of both the Lobbying Commission and this Commission have

[18] *Cf.* www.nyintegrity.org (Forms and Instructions, "Lobbying", "Principal lobbyist name", "Additional lobbyists"). Although PEERA modified the law in certain material respects, the pertinent aspects of the Commission's current instructions are not materially different from those in effect during the relevant time period. FNYR could easily have designated Mr. Abbruzzese as an additional lobbyist on its registration, on a registration amendment and on any bi-monthly report, but did not do so.

[19] *Id.*

not revealed evidence that Mr. Abbruzzese was retained, employed or designated or acted as a "lobbyist," and thus was "required to register," there is not a basis to proceed on the theory of the Referrals to wit: that, in 2005 and 2006, Mr. Abbruzzese was a person whose conduct was covered by the gift ban because he was an unpaid director of FNYR.

III. CONCLUSION

Based on the record evidence, the Commission has determined that there is not reasonable cause to believe that Jared Abbruzzese was required to file a lobbyist registration statement. Thus, there is not reasonable cause to believe that he was subject to the "gift ban" set forth in §1-m of the Lobbying Act in effect during the relevant time period. Furthermore, based on the record developed, and the representations of counsel for Mr. Abbruzzese, former Senator Bruno and Timothy Smith, FNYR's former President, this Commission concludes that further investigation is unlikely to lead to admissible evidence that Mr. Abbruzzese engaged in lobbying such that his registration with the Lobbying Commission was required.

The Commission hereby dismisses with prejudice the Referrals the Lobbying Commission approved alleging that Mr. Abbruzzese violated §1-m of the Lobbying Act as that law existed in 2005 and 2006.

All concur:

Michael G. Cherkasky,
Chairman
Virginia M. Apuzzo
John M. Brickman
Andrew G. Celli, Jr.
Richard D. Emery
Hon. Howard A. Levine
John T. Mitchell
Mark G. Peters
Joseph A. Spinelli
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December 9, 2010