

STATE OF NEW YORK  
JOINT COMMISSION ON PUBLIC ETHICS

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Matter of State Advisors, LLC,  
Respondent.

"JCOPE" Rec'd  
SEP 15 2016

For Violation of "Lobbying Act," Article 1-A of  
Legislative Law, §§ 1-e and 1-h, for  
Failure to File 2011 to 2016  
Biennial Reports and Registrations

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This case was heard on August 11, 2016 at 11 a.m. in Albany, New York. Keith Sernick appeared as Responsible Party for Respondent *pro se*; Leah Ramos Esq. appeared on behalf of the Joint Commission on Public Ethics ("JCOPE" or "Commission").

**PROCEDURAL HISTORY**

Respondent is a lobbyist as that term is defined in §1-c (a) of Legislative Law, Article 1A (the "Lobbying Act"). As such he is required to submit certain filings and reports and pay certain fees to the Commission on a timely basis.

Specifically, respondent is required, pursuant to §1-e of the Lobbying Act, to file a registration for each of its clients and to pay \$200 or \$100 at the time of registration. The lobbyist is also required to provide a copy of its retainer or a contract with the client.

Pursuant to §1-h of the Lobbying Act, respondent is required to file reports demonstrating the lobbying activity on a bi-monthly basis for each client throughout the registration period. For the years 2011 to 2013 respondent failed to file 138 bi-monthly reports in a timely fashion. Still outstanding are 22 unpaid registration fees, 10 bimonthly reports that were not filed and 8 contracts which were not provided.

In April 2016 the Commission issued a Substantial Basis Investigation Report and Settlement Agreement (Exhibit 1). In the Agreement respondent acknowledged and admitted that it had failed to provide the Commission with the required filings and that it had failed to file on a timely basis in violation of §§ 1-e and 1-h of the Lobbying Act. (*Hearing Transcript* at 15).<sup>1</sup> Respondent is not exempt from filing.

It was further stipulated and agreed that respondent had failed to submit Statements of Registration, Lobbyist Bi-monthly reports, and valid authorizations for the relevant periods, all of which were detailed in Appendix A of the Agreement (¶1).

In ¶2 of the Agreement, respondent agreed to submit all missing documents within thirty days of signing the Agreement, as they were delineated in Appendix B.

Respondent agreed to update State Advisers LLC's profile and list Keith Sernick as the Responsible Party for the Relevant Period. (¶3; *Tr.* at 17). Mr. Sernick was described by Martin Levine in his testimony, as a "principal at State Advisers," a conclusion based on his review of contracts submitted to the Commission, the Substantial Basis Investigation Report and filings with the Commission.

In settlement of the violations, respondent agreed to pay the Commission \$62,000. This was to be paid at the rate of \$10,000 per month by the 15<sup>th</sup> of the month of April, 2016 through and including by the 15<sup>th</sup> of August 2016 and to pay \$12,000 by September 15, 2016. (¶4)

Other relevant terms detailed the manner in which respondent's future filings would be overseen by the Commission and that his lobbying activity conducted during the 2016-2017 biennial registration period would also be subject to oversight and review.

Respondent defaulted on the Agreement. He paid none of the monthly agreed-upon amounts. As a result of that breach, a Notice of Hearing was sent to

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<sup>1</sup> References to the Transcript of the Hearing held on August 11, 2016 will be made as "Tr."

respondent on June 30, 2016 (Ex. 5). That hearing was conducted on August 11, 2016. (*Id.* at 19)

## THE HEARING

Martin Levine, JCOPE's Director of Lobbying and Financial Disclosure Compliance, testified that the Lobbying Act directs that lobbyists and their clients must submit certain periodic reports of their activities and compensation ( *Tr* , at 7).

He explained that these requirements must be met by any lobbyist who "receives, incurs or expends more than \$5,000 in a year for lobbying activities." *Id.* at 8. Reports can be submitted on line or in hard copy and are reviewed, processed and posted to the public. *Id.* Mr. Levine stated that the statutory requirements were for biennial registration by lobbyists for each of their clients and bi-monthly reports for the prior two month period, for each client. The years which were considered in this Hearing were 2011/2012; 2013/2014; 2014/2015 and 2016 to the extent that the Settlement Agreement was executed in April of this year.

The registration agreement requires delivery of a fee with its submission as well as a copy of the contract between the client and the lobbyist. Its submission date is determined by the time that the threshold of \$5,000 is about to be met or, in the alternative, no later than ten days after the threshold is met.

Bi-monthly reports, Mr. Levine stated, relate actual lobbying expenses and activity for every client, even if that client has no activity for the specified period. A report is required in every case ( *Id.* at 10).

Failure to follow the statutory requirements can result in a late fee being assessed or a potential penalty of up to \$25,000.

Specifically as to State Advisers, Mr Levine stated that there were multiple instances of respondent not filing timely or not filing at all in a specific time period. *Id.* at 14. Specifically, Mr. Levine presented a report of late filings made by State Advisers in the period 2011 to 2015 (Exhibit 2). He explained the design

of the document he had created (*Tr.* at 21-22). State Advisors filed bimonthly reports late on 138 occasions from 2011 to 2013.

In Exhibit 3 in evidence, Mr Levine described the items that State Advisors had failed to submit to the Commission in the period 2011 to 2015 (*Id.* at 25-26). They include contracts, bi-monthly reports, and registration fees. This document also displayed the number of returned/dishonored checks which had been submitted by respondent in the same period . In this period State Advisors had failed to submit 40 items (10 bi-monthly reports, 22 registration fees, 8 contracts or retainer agreements) (*Id.* at 27).

Mr. Levine also testified about State Advisors' total compensation which it earned through lobbying activities in 2015 and which was reported for each of a number of clients for the 2015 calendar year. That amount was \$573,000 (*Ex.* 4;*Tr.* at 28-30).

Also called as a witness for the Commission was Ms. Lori Donadio, an investigative analyst for JCOPE, a position she has held since 2014 (*Tr.* at 32). Ms. Donadio's responsibilities include investigation of complaints of those entities which fail to fulfill the requirements of the Lobbying Act. Her investigation may result in the issuance of a "substantial basis investigation report" (*Tr.* at 34) which was the basis for a hearing in this matter.

Ms Donadio also assisted in the Commission's efforts to settle the litigation with State Advisors. She reviewed all the filings submitted by State Advisors and took note of the late filings as well as of any required filings that were not submitted. She also reviewed all registration fees that were required to be filed and those filings which contained checks which were later dishonored. She determined that 17 checks sent to the Commission by respondent were dishonored for insufficient funds. The total amount of the fees which were represented by those checks was \$3,390 (*Tr.* at 37; *Ex.* 6).

Ms. Donadio also reviewed respondent's history with the Commission insofar as it related to filings or failure to file on the part of respondent. According to her research, State Advisors failed to comply with the statutory requirements of the Lobbying Act since 2008. Prior to 2011 State Advisors did not file in a timely manner on fifteen occasions. Late fees were assessed by JCOPE, which were not

paid by State Advisers (*Tr.* at 40; Ex.7). Unpaid assessed penalties are referred to the State Attorney General's Office. In the case of State Advisers, the Attorney General's Office, unable to collect the late fees, sought and received a judgment in their favor against State Advisers, in the sum of \$4,135.52. \$3,040 was the unpaid assessments and the balance were collection costs (*Tr.* at 41-43; Ex.9).

Mr. Sernick did not testify nor did he provide any witnesses. His concluding remarks included the assertion that, as he had already stated, "I readily admitted what was brought before you, the late filings" (*Tr.* at 47). His problem, as he stated it, was that he was unable to pay the \$60,000 fine he had agreed to in April 2016. The reason as he described it, was a reduction of income. That is, the income identified on Exhibit 4, \$573,000, was not currently his income because of a loss of clients. His annual income was now \$122,000 (*Tr.* at 48). Mr. Sernick did not provide any documentary evidence to support this statement.

Mr. Sernick asserted his willingness to pay the fees or late filings. "I always worked with the Commission when they brought it to my attention to the best of my ability, and this is the position that I'm in now financially" (*Id.*).

In their closing statement JCOPE's counsel urged the Hearing Officer to impose a fine of \$250,000 based on the statutory amounts for civil fines, the respondent's history dating to 2008 of violating the Lobbying Act by failing to file and late filing. Additionally they sought \$4,200 in unpaid registration fees (*Tr.* at 48-50).

## DISCUSSION

Keith Sernick, having acknowledged in the Agreement that he is Responsible Party for the Respondent, has accepted as true and accurate the claims JCOPE has presented of incomplete or failed registrations, late filings, failed fee payments, disavowed checks. He has not offered any evidence that the history of his violations since 2008 is incorrectly stated. He has not indicated that his compensation of \$523,000 in 2015 was not accurate.

He has offered no excuse for his repeated and consistent violations. He claims that once having agreed to a settlement, his reduced income prevented him from paying any of the agreed-upon payments. There is no testimony of any

change in circumstances from April 1, 2016, the date of signing the Agreement, to April 15, 2016 when the first \$10,000 payment was due. There is no testimony or valid explanation as to the reason for his failure to timely file as required by statute, which has been the circumstance since 2008.

Certain conclusions can be drawn, however. The first is that respondent flouts the law and has done so since 2008. The filing of biennial registrations, bi-monthly reports, payment of fees, is on a schedule State Advisers has created for itself. That schedule only occasionally comports with the statutory scheme.

A second conclusion from the evidence submitted is that State Advisers' alleged willingness to work with the Commission, is a hollow and false assertion. In no regard has State Advisers actively worked to facilitate the aims of the statute or the Commission.

The agreement executed by respondent, which was disavowed two weeks after signing, is a clear indication of the inaccuracy of any statement in which respondent claims cooperative effort.

The Lobbying Act, in addition to specifying the conduct of lobbyists which must be reported, also provided the penalties for failing to do so. In pertinent part §1-o (b)(i) states:

A lobbyist ...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 **twenty-five thousand** dollars or three times the amount the person failed to report properly ....to be assessed by the commission. (emphasis added)

Respondent has 138 late filings and the 10 outstanding bimonthly reports, 22 unpaid registrations and 8 contracts that were never submitted. Notwithstanding these failures State Advisers continues to lobby and accept compensation for doing so. The respondent's history is also a consideration in assessing a fine as is the amount of compensation received during the years under review.

The civil penalty that could be assessed, based on the law, could be 3.7 million dollars, according to the commission. The commission is seeking a penalty of \$250,000. Prior cases in which the nature of the violation was failure to file,

assessed penalties of approximately \$5,000 for each violation. (See, *Matter of Community Redemption Center; Matter of Blackboard Inc.*). If respondent was charged a penalty of \$5,000 for each violation, the total amount of the penalty could be \$850,000. (*Tr.* at 50).

The commission's position relative to returning to the agreed upon amount in the Settlement, which respondent seems to assume will occur, is that respondent should not get the benefit or near or close to the settlement amount because of their default and the resultant need to proceed to hearing. Respondent, however, suggests that the previous settlement amount continues to be appropriate, but would need to be paid out in "twelve or eighteen parts." (*Tr.* at 51).

### RECOMMENDATION

Nothing in respondent's history reflects any intention to follow the law as it is written. Respondent's failure to adhere to the Settlement Agreement previously jointly agreed to is an indication of the weakness of its resolve to follow the statute and to provide the missing documents as it promised in the Settlement Agreement.

The conclusion that respondent knowingly and willfully failed to follow the statute is not in doubt. Assessing the penalty at \$5,000 per violation, although harsh, would be appropriate based on the conduct of this respondent. However, given the conduct displayed to date, it is entirely unlikely that respondent would make any effort to pay this amount.

The commission's suggestion for an appropriate penalty given the history of the respondent, its lack of respect for the law, its flouting of that law, and the flagrant abuse of the system is \$250,000.

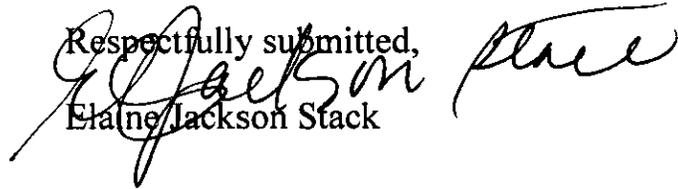
I recommend a penalty of \$180,000 as a reasonable compromise between the commission's recommendation and the statutory possibilities.

## POST HEARING COMMUNICATION

State Advisers sent a letter to the Hearing Officer relative to the hearing testimony. The Commission responded to that letter. The Hearing Officer did not. Those letters are provided to you for your examination.

Dated: September 14, 2016

Respectfully submitted,  
Elaine Jackson Stack

A handwritten signature in cursive script, appearing to read "Elaine Jackson Stack", is written over the typed name. The signature is written in black ink and is positioned to the right of the typed name.