

IN THE MATTER OF AN INVESTIGATION INTO  
GOVERNOR DAVID A. PATERSON'S  
ACQUISITION OF WORLD SERIES TICKETS,

DECISION and  
NOTICE OF  
CIVIL ASSESSMENT

GOVERNOR DAVID A. PATERSON,

Respondent.

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The New York State Commission on Public Integrity (“Commission”), at its December 9, 2010 meeting, considered the Hearing Officer’s Findings of Fact and Recommendation (“Hearing Officer’s Decision,” which is attached as Exhibit A) in the Matter of an Investigation into Governor David A. Paterson’s Acquisition of World Series Tickets, Governor David A. Paterson, Respondent (“Governor”). In accordance with 19 NYCRR Part 941.15(c), the Hearing Officer’s Decision is incorporated herein by reference and made part of this Decision and Notice of Civil Assessment. The Commission adopts the Hearing Officer’s findings of fact. The Commission agrees with and adopts the Hearing Officer’s legal conclusions that the Governor knowingly and intentionally violated Public Officers Law §§73(5)(a), 73(5)(b), 74(3)(d) and 74(3)(h) but modifies the Hearing Officer’s legal analysis, as set forth below. For the reasons set forth below, we also modify the Hearing Officer’s Decision insofar as the Commission determines that the Governor violated Public Officers Law §74(3)(f). Finally, the Commission also modifies the Hearing Officer’s Decision with respect to the civil penalty assessment and assesses a civil penalty of \$62,125.

## **PROCEDURAL BACKGROUND**

On March 3, 2010, the Commission issued a Notice of Reasonable Cause (“NORC”) alleging that the Governor had violated Public Officers Law §§73(5)(a), 73(5)(b), 74(3)(d), 74(3)(f) and 74(3)(h). (Hearing Officer’s Decision at p. 1) The alleged violations arose out of the Governor’s alleged solicitation, acceptance and receipt of five complimentary tickets to Game One of the 2009 World Series at Yankee Stadium (“Game One”) for himself, two aides, his teenage son and his son’s friend.

The Hearing Officer exercised her discretion to conduct the hearing on August 17, 2010 *ex parte* after a showing that the Governor and his representative of record had been properly notified of the pending hearing and the Governor, through his counsel, stated he would not participate. (Hearing Officer’s Decision at p. 1; Exs. 35, 36, 37, 38; Hearing Tr. at pp. 11-12, 13-14; *see* 19 NYCRR Part 941.12).

### **HEARING OFFICER CORRECTLY DETERMINED THE FACTS**

The Hearing Officer correctly determined the facts. The Commission hereby adopts the findings of fact set forth by the Hearing Officer (Hearing Officer’s Decision at p. 1-6) and incorporates those findings herein by reference.

### **HEARING OFFICER’S CONCLUSION OF LAW**

The Commission agrees with and adopts the Hearing Officer’s determination that the Governor knowingly and intentionally violated Public Officers Law §§73(5)(a), 73(5)(b), 74(3)(d) and 74(3)(h), but as discussed below, the Commission modifies the Hearing Officer’s legal analysis with respect to the Governor’s violation of §§73(5)(a) and (b). The Commission also determines that the Governor violated Public Officers Law §74(3)(f) and modifies the Hearing Officer’s Decision accordingly.

**A. Public Officers Law §73(5)(b): The Governor’s Untruthful Testimony**

The Commission determines that the Governor knowingly and intentionally violated Public Officers Law §73(5)(a) when he solicited, accepted and received five complimentary tickets to Game One. The Commission also determines that the Governor’s false and misleading testimony regarding his pre-game intention personally to pay for two of the five tickets, those used by his son and his son’s friend, and that the two tickets used by aides would also be paid for, is material to the Commission’s determination.

In this regard, the Hearing Officer’s Decision states:

Much was made at the hearing about the fact that the decision to offer payment at some point seemed to have been made after the game and likely in reaction to the inquiry by a reporter. While it is reasonable to assume that this was the case, the record is not crystal clear on this issue. Various parties testified to the timing of the actual payments, and to the timing of the intent to make said payments. In addition, an issue was raised about whether or not the Governor actually made out and signed the check that he ultimately used to pay for the teenager’s tickets. The Governor claimed that he intended to pay, for the teenagers at least, at the game and only attended to it a day or so later, and the record shows that no payment was made until sometime after Game 1. Thus, it is not necessary to find exactly when the Governor intended to pay because the fact is that neither he nor the other guests at Game 1 made payment to the Yankees until sometime after the Game. Likewise, the issue of who actually wrote or signed the check is immaterial, especially in light of the Governor’s disability which makes it likely that others often write and sign documents for him . . . .

(Hearing Officer’s Decision at p. 9).

We disagree with this aspect of the Hearing Officer’s Decision for the following reasons.

First, there is no record evidence that “others often write and sign documents for [the Governor].” (Hearing Officer’s Decision at p. 9) With respect to the specific check at issue, the Governor himself testified that he wrote all but the payee section and signed the check.

(Paterson Tr. at p. 6).<sup>1</sup> Peter Kauffmann, the Governor’s Communications Director, testified

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<sup>1</sup> The transcript of the Governor’s sworn interview conducted by the Commission on February 24, 2010 was admitted into evidence as Commission Exhibit 40. This transcript will be cited at “Paterson Tr.”

that, while it is a “painstaking process,” the Governor is able to and does read and sign legislation. (Hearing Tr. at p. 68). Thus, the record does not support the Hearing Officer’s assertion that the Governor must ask others to “write and sign documents for him.”

Moreover, the Commission determines that it is reasonable to infer that the Governor lied about when he formed the intent to pay for the tickets, perhaps in an effort to make it appear as though his conduct comported with the Public Officers Law as the Commission has construed it.<sup>2</sup> Regardless of why the Governor lied about his intention to pay for the tickets before Game One, the Governor’s intention in this regard is material to the Commission’s determination that the Governor violated Public Officers Law §73(5)(a) and (b). The Governor’s false testimony is also evidence that he knew his conduct was unlawful and, thus, is one factor underlying the Commission’s determination that the Governor violated Public Officers Law §§73(5)(a), 73(5)(b), 74(3)(d), 74(3)(f) and 74(3) (h). Cf. People v. Hernandez, 118 A.D.2d 729 (2d Dept. 1986) (criminal defendant’s attempt to suborn complainant’s false testimony admissible to show “consciousness of guilt”); Parrott v. Pelusio, 65 A.D.2d 914 (4<sup>th</sup> Dept. 1978) (civil defendant’s flight admissible to show “consciousness of guilt”).

Although he testified that he believed his own attendance at Game One was for official business, the Governor admitted that the attendance of his son and his son’s friend was not. (Paterson Tr. at pp. 14, 15). He testified that he always intended to pay for the tickets for his son and his son’s friend. (Paterson Tr. at p. 3, lines 18-20). He testified that on October 28, while at his residence, he wrote out a check for \$850 including the date and the amount in numbers and words, and signed the check. (Paterson Tr. at p. 47, line 10 and 11). The Governor testified that

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<sup>2</sup> The Commission has long held that anything for which a state officer or employee pays fair market value is not a gift. See Advisory Opinions 94-16 and 08-01. Accordingly, the Commission determined in Advisory Opinion No. 97-03 that Governor Pataki’s counsel had not violated the gift ban when he accepted a complimentary trip to the Super Bowl in New Orleans because he “promptly reimbursed . . . the market value of the benefit he received and promptly, although after the fact, made inquiry of the Commission and requested [a] formal opinion . . . .”

he did not complete the payee section on that date because he did not know who the payee was, and instead left that section blank. (Paterson Tr. at p. 40, line 19-21; p. 42, lines 3-19; p. 40, line 22-24).<sup>3</sup> He testified that he took the incomplete check with him in his pocket to the game, so he could pay while there. (Paterson Tr. at p. 41, lines 4-6). The Governor testified that, when no opportunity to pay presented itself while he was at the game, he gave the check to David Johnson, one of the aides who attended Game One with him, and asked him to send the check to the Yankees. (Paterson Tr. at p. 41, lines 7-24). When asked about the fact that the check was dated October 27, the Governor indicated he had written the check on the day of the game, October 28. (Paterson Tr. at p. 6). The letter to the Yankees that covered the check was postmarked October 30.

The Governor's testimony is undermined by the documentary and testimonial evidence, including the testimony of Mr. Kauffmann and the uncontested opinion of the Commission's handwriting expert, not to mention common sense.

### **1. Mr. Kauffmann's Testimony Refutes Governor's**

Mr. Kauffmann testified that the day after Game One, on October 29, 2009, Fredrick U. Dicker, a columnist for the New York Post, contacted him about the Governor's attendance at Game One, asking who attended with the Governor and whether anyone paid for their tickets. (Ex. 6). After receiving Mr. Dicker's inquiry, Mr. Kauffmann spoke with the Governor and Mr. Johnson, as well as other members of the Governor's staff, in an attempt to determine who attended Game One with the Governor, how tickets were obtained, and whether any of the tickets had been paid for. (Hearing Tr. at pp. 48, 50-51). Some of Mr. Kauffmann's

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<sup>3</sup> The Governor did not explain why he did not simply make the check payable to the New York Yankees, the logical payee under the circumstances.

conversations with the Governor were alone and some were held in Mr. Johnson's presence. (Hearing Tr. at p. 53).

In Mr. Kauffmann's first conversation with the Governor, which was outside of Mr. Johnson's presence, the Governor said that he was invited to the game by Randy Levine, President of the Yankees and the Governor's law school classmate. (Hearing Tr. at p. 52). Throughout Mr. Kauffmann's conversations with the Governor, the Governor repeatedly told him that the Governor could attend "a widely attended event of great importance to the state ... without having to pay for tickets." (Hearing Tr. at p. 53). Later, Mr. Kauffmann testified, Mr. Johnson was "very forceful and adamant about this point, that the Governor doesn't have to pay for tickets. These tickets are free." (Hearing Tr. at p. 54).

When Mr. Kauffmann counseled the Governor that from a press perspective "the smartest thing to do was to pay for all the tickets," the Governor's "general response was no, no, no, that's not how this works. Rudy Giuliani went to free Yankees' games for eight years as mayor. This is the way it works. And a widely attended event of ceremonial importance, special occasions for the state, in official capacity you don't have to pay." (Hearing Tr. at pp. 57-58).

During his conversations with Mr. Kauffmann, the Governor said nothing about his intention to pay for the tickets for his son or son's friend, nor did the Governor mention anything about having previously written a check in the amount of \$850 and giving it to Mr. Johnson as payment to the Yankees. (Hearing Tr. at p. 55). The Commission finds this point especially significant, since if the Governor had in fact already written the check, it is entirely illogical that he would have responded as Mr. Kauffmann testified.

At no time did Mr. Johnson tell Mr. Kauffmann that Mr. Johnson was in possession of a check from the Governor for two tickets. (Hearing Tr. at p. 55). Based upon his conversations

with the Governor and Mr. Johnson, Mr. Kauffmann believed that no tickets needed to be paid for because the Governor had attended Game One on official business. (Hearing Tr. at pp. 54, 57).

Mr. Kauffmann's testimony is corroborated by his noon email to Larry Schwartz, Secretary to the Governor; Peter Kiernan, Counsel to the Governor; and other members of the Executive Chamber. That email, which was Mr. Kauffmann's proposed response to Mr. Dicker, stated: "The Governor was invited by the Yankees to attend the opening game of the World Series in his official capacity, to represent the State of New York at a ceremonial occasion attended by First Lady Michelle Obama." (Ex. 6). The email further said that the Governor did not pay for any tickets. (Ex. 6).

At 1:26 PM, Mr. Kauffmann emailed Director of State Operations Mark Leinung, who had attended the game with the Governor's party, to give him a "heads up" that Mr. Dicker was asking questions about whether any of the Governor's guests paid for the tickets and that the "answer is no, no one paid, everyone was a guest of the Yankees . . . ." (Ex. 8).

At 1:44 PM, Mr. Leinung responded to Mr. Kauffmann's email, stating: "Thanks Peter." (Ex. 8).

Prior to receiving Mr. Leinung's response, at 1:33 PM, Mr. Kauffmann emailed Mr. Dicker stating: "The Governor was invited by the Yankees to attend the opening game of the World Series in his official capacity, to represent the State of New York at a ceremonial occasion." (Ex. 7).

Mr. Dicker called Mr. Kauffmann and informed him that the Yankees were disputing the Governor's account and that Mr. Levine had never invited the Governor to the game. (Hearing Tr. at p. 65). Mr. Kauffmann relayed this conversation to the Governor, who then conceded to

Mr. Kauffmann that Mr. Levine had not explicitly invited him to Game One. (Hearing Tr. at p. 65).<sup>4</sup> Mr. Kauffmann then had a conversation with Mr. Leinung, who stated that he would pay for his ticket. (Hearing Tr. at p. 60). When Mr. Kauffmann informed the Governor that Mr. Leinung was going to pay for his ticket, the Governor for the first time informed Mr. Kauffmann that he would pay for the tickets for his son and son's friend. (Hearing Tr. at p. 63).

## **2. Handwriting Expert Refutes Governor's Testimony**

Although it is apparent to a lay person, by comparing the check at issue with known examples of the handwriting of the Governor and Mr. Johnson, that the Governor's testimony about his preparation of most of the check at issue was false, the Commission retained a forensic document examiner (*i.e.*, a handwriting expert) whose report was admitted into evidence at the hearing. (Exs. 41 and 42). The expert examined documents known to be written by the Governor and Mr. Johnson and the check for \$850 received by the Yankees as payment for the Governor's son and son's friend. Based upon his review, the expert opined that Mr. Johnson, not the Governor, completed the check and that Mr. Johnson probably signed the check as well. (Exs. 41 and 42).

## **3. Yankee Officials Refute Governor's Testimony**

Prior to releasing the tickets, the Yankees telephoned Mr. Johnson and inquired about payment. (Hearing Tr. at p. 27). Mr. Johnson responded that payment was not required because all five tickets were being used for official State business. (Hearing Tr. at pp. 27-28). The Yankees, pursuant to their protocol, requested a letter from the Governor's Counsel stating that the tickets were for official business. (Hearing Tr. at pp. 18-19; 28-29). On October 28, 2009, Mr. Johnson's assistant emailed to the Yankees a letter signed by Mr. Kiernan stating that the

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<sup>4</sup> Neither Lonn Trost, the Yankees' General Counsel and Chief Operating Officer, nor the Yankees invited the Governor to Game One. (Hearing Tr. 19-20).

Governor would be attending in his official capacity. (Exs. 4 and 28). Based upon Mr. Johnson's representation that the tickets were being used for official business and Mr. Kiernan's letter, the Yankees released five free tickets for the Governor. (Hearing Tr. at p. 29).

The day after Game One, Mr. Johnson contacted Irfan Kirimica, Senior Director of Ticket Operations for the Yankees, and indicated that the Governor wanted to pay for the tickets. (Hearing Tr. at p. 36). Mr. Kirimica informed Mr. Johnson that he could take a credit card over the phone. (Hearing Tr. at p. 36). Mr. Johnson informed Mr. Kirimica that the Governor wanted to send a check for the tickets. (Hearing Tr. at p. 36).

**4. The Fact That, Before Game One, Governor Did Not Pay For His Son's Tickets To Opening Days Undermines Governor's Testimony That He Always Intended to Pay for Game One**

Finally, the Governor's past practice undermines his assertion that, before Game One, he intended to pay for the tickets for his son and son's friend. Specifically, the Governor attended the April 19, 2009 Opening Day at Yankee Stadium with his son. The record and testimonial evidence reveals that the Governor's staff secured free tickets from the Yankees for the Governor, members of his staff and his son. (Ex. 1; Paterson Tr. at p. 37, lines 17-19). The Governor did not pay for his son's ticket in April 2009, or at any time since. Similarly, the Governor attended the April 13, 2009 Opening Day at Citi Field with his son. The Governor testified that he did not pay for his ticket or his son's ticket. (Paterson Tr. at p. 46, lines 4-8).

The Governor attempted to explain away this discrepancy when he testified that in April 2009 he was advised by his Counsel that his son could attend the Opening Day games for free because the Governor was attending in his official capacity. (Paterson Tr. at p. 36, lines 13 through 22). The Governor further testified that the advice changed, but he could not remember with any specificity when the advice changed other than that the change occurred before Game

One. (Paterson Tr. at p. 36, line 19 through p. 37, line 16). Thus, the Governor's explanation is not credible.

The evidence demonstrates that the Governor did not pay and had no intention to pay for any of the tickets for Game One. As discussed below, his attendance at Game One was not officially related and does not meet the criteria of a widely attended event. Therefore, the Governor solicited, accepted and received five complimentary tickets to Game One of the World Series in violation of Public Officers Law §73(5)(a).

**B. Public Officers Law § 73(5)(b)**

In her decision, the hearing officer determined that there is “significant confusion by the parties in this matter about the overlap of the Legislative Law gift provisions and that found in the Public Officers Law” and that though the Governor technically violated §73(5)(b), his confusion on the law should result in no penalty. The Commission disagrees and rejects the Hearing Officer's conclusion in this regard. The Governor was charged with violating Public Officers Law §73(5)(b), not the Legislative Law. Thus, the relevant analysis is a comparison of the plain language of §73(5)(a) and (b), which reveals that the Legislature effectively created a rebuttable presumption that gifts from registered lobbyists or their clients are prohibited.

Public Officers Law §73(5)(a) prohibits a statewide public official from soliciting, accepting or receiving any gift of more than nominal value “under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.”

Public Officers Law §73(5)(b) prohibits a statewide public official from soliciting, accepting or receiving:

Any gift as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law *unless under the circumstances it is not reasonable to infer* that the gift was intended to influence him . . . .

(Emphasis supplied)

The plain language of §73(5)(a) permits a statewide elected official to accept or receive a gift unless it is reasonable to infer that the gift is intended to influence or reward his or her officials acts or decisions. To this end, the Commission and its predecessor agency, the Ethics Commission, have identified numerous instances in which acceptance of a gift is permissible or impermissible. *See* Advisory Opinions 92-01, 94-16, 95-38, 96-2, 96-22, 96-28, 97-3, 97-6, 97-10, 97-28, 03-05, 05-1, 06-1, 08-1, 08-4. On the other hand, the Commission has said that it would rarely, if ever, be permissible for a State official to solicit a gift. *See* Advisory Opinion No. 94-16, p. 12. By contrast to §73(5)(a), the plain language of §73(5)(b) prohibits a statewide elected official from soliciting or accepting gifts from a registered lobbyist or client unless it is unreasonable to presume the gift was intended to influence or reward him.

In both cases, certain enumerated items are excluded from the definition of a gift. *See* Legislative Law § 1-c(j); Advisory Opinion No. 08-01 (essentially incorporating exceptions to the definition of “gift” into Public Officers Law as “permissible gifts”). One of the enumerated items is complimentary attendance at a so-called widely attended event, as forth in Legislative Law §1-c(j)(ii), which provides:

The following are excluded from the definition of a gift:

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(ii) complimentary attendance, food and beverage offered by the sponsor of an event that is widely attended or was in good faith intended to be widely attended, when attendance at the event is related to the attendee's duties or responsibilities as a public official or allows the public official to perform a ceremonial function appropriate to his or her position[.]

Game One was not a widely attended event within the meaning of Legislative Law §1-c(j)(ii). Moreover, any confusion by the Governor in this regard does not excuse his violation of the Public Officers Law.

### **1. Game One was Not a Widely Attended Event**

The Commission has long recognized that a public official may accept complimentary attendance, including food and beverage, “offered by the sponsor of an event that is widely attended or was in good faith intended to be widely attended, when attendance at the event is related to the attendee’s duties and responsibility as a public official, or allows the public official to perform a ceremonial function appropriate to his or her position.” Advisory Opinions No. 94-16 and 08-01; *see also* Legislative Law §1-c(j)(ii)(“widely attended event” exception to Lobbying Act gift ban).

While the Commission concluded in the NORC that Game One satisfied some of the criteria of a widely attended event, based on the evidence presented at the hearing, the Commission determines that the Governor did not perform a ceremonial function and his attendance was not “related to the [Governor’s] duties and responsibility as a public official.”

By his own admission, the Governor did not speak at the opening ceremonies of Game One and was not even recognized by name during the public address announcement recognizing the public officials who were present. (Paterson Tr. at p. 17, lines 20-23). While there were opening ceremonies before Game One in which the First and Second Ladies participated (Hearing Tr. at pp. 22-23), the Governor had no involvement in the celebration and did not speak with the First or Second Ladies while they were in attendance at the game. (Paterson Tr. at p.

18). As the Hearing Officer stated, the Governor did not play a “public role” during Game One. (Hearing Officer’s Decision at p. 9).

While the Governor testified that events such as Game One are “high profile” and his failure to attend may result in further problems, the only problem he articulated was with those people who thought he should attend the game. (Paterson at p. 48). The Commission has held that “attendance at event at which the activities are substantially recreational in nature shall not be considered to be for a public purpose or related to a State employee’s official duties.” *See* Advisory Opinion 08-01. The Commission has not made an exception to this standard for Statewide elected officials or agency heads.

## **2. Mistaken Belief by the Governor and his Staff**

The record does not demonstrate any confusion by the Governor or his staff regarding the application to Game One of the widely attended event exception. Indeed, the Governor’s past practice of soliciting or accepting complimentary tickets to other sporting events (Ex. 1) demonstrates that he and his staff knew that the Governor was entitled to a complimentary ticket only if he were performing a ceremonial function. The record further demonstrates that rather than determining whether the Governor’s appearance at Game One met the criteria of a widely attended event, the Governor’s staff simply generated and sent a form waiver letter to the Yankees, since the Yankees said they would not release the tickets without first receiving payment or such a letter. (Exs. 4 & 28).

Moreover, the Governor’s conduct would not be excused even if he and his staff were confused about whether he was entitled to a complimentary ticket to Game One. The Commission has long held, and the Court of Appeals has agreed, that lack of knowledge of the law does not shield a state officer or employee from liability under the Public Officers Law. See

Matter of Gormley v. New York State Ethics Comm'n, 11 N.Y.3d 423, 427 (2008). If the Governor or his staff were confused about the law, either could have and should have sought advice from the Commission.

As it must, the Commission applies the same standard of liability to the Governor that it has long applied to all other state officers and employees.

**C. Public Officers Law §74(3)(f)**

The Commission determines that the Governor violated Public Officers Law §74(3)(f) which provides, in pertinent part, as follows:

An officer or state employee of a state agency ... should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

The Yankees are registered clients and lobbyists in New York State and, thus, are considered “disqualified sources” pursuant to the gift prohibition set forth in the Public Officers Law, as construed in Advisory Opinion Nos. 08-01 and 94-16. Statewide elected officials are, therefore, on notice that anything of value given by a disqualified source is presumed to be an impermissible gift. The Yankees have myriad and continuing business and financial interests that relate to the New York State government, particularly the Executive Branch of which Governor Paterson is the head. The interests include real estate and construction, stadium development and financing, tax matters, roads and public transportation. Thus, the Governor’s solicitation, acceptance and receipt of the complimentary tickets to Game One from the Yankees gives a reasonable basis for the impression that the Yankees can improperly influence the Governor or unduly enjoy his favor in the performance of his official duties. Moreover, even if the Governor performed a ceremonial function at Game One, the Public Officers Law would not permit the Governor to solicit, receive and accept complimentary tickets to Game One on behalf

of his son and his son's friend. That the Governor solicited, accepted and received complimentary tickets for his son and his son's friend further supports the Commission's determination that the Governor violated Public Officers Law §74(3)(f).

The Hearing Officer determined that the Governor did not violate §74(3)(f) because he caused a letter to be forwarded to the Yankees from his Counsel that he was attending Game One on official business. The Hearing Officer also stated that this letter appears to shield the Yankees from any finding of liability under the Legislative Law, although no alleged violation by the Yankees was a subject of the hearing. (Hearing Officer's Decision at para. 35, 36). The Yankees seeming compliance with the Legislative Law does not excuse the Governor's unethical conduct. While the Yankees may reasonably have relied upon the letter from the Governor's counsel, that letter does not, without more, shield the Governor from culpability. Accordingly, the Commission determines that there is also sufficient evidence to conclude that the Governor's conduct gives a reasonable basis for the impression that the Yankees can improperly influence him or unduly enjoy his favor in the performance of his duties. For these reasons, the Commission concludes that the Governor violated Public Officers Law §74(3)(f).

### **CIVIL PENALTY ASSESSMENT**

The maximum civil penalty authorized for a knowing and intentional violation of Public Officers Law §73(5)(a) is \$40,000, plus the value of any gift or benefit received as a result of such violation. Those who knowing and intentionally violate §73(b) are subject to the same penalty. Executive Law §94(13). The maximum civil penalty authorized for a knowing and intentional violation of Public Officers Law §74(3)(d) is \$10,000 plus the value of any gift or benefit received as a result of the violation. *Id.* The face value of each ticket was \$425 (Hearing Tr. at pp. 45 & Ex. 3); thus, the total value of the gift and benefit, *i.e.*, five tickets, was \$2,125.

The law does not authorize a civil penalty of a violation of Public Officers Law §74(3)(f) or (h). Thus, the maximum civil penalty that the Commission may assess in this case is \$96,375.

The Commission rejects the Hearing Officer's recommended civil penalty of \$10,125 and assesses a civil penalty in the total amount of \$62,125. This is comprised of three individual civil assessments of \$25,000 for the Governor's knowing and intentional violation of Public Officers Law §73(5)(a), \$25,000 for the Governor's knowing and intentional violation of Public Officers Law §73(5)(b) and \$10,000 for the Governor's knowing and intentional violation of Public Officers Law §74(3)(d). In addition, the Commission includes in the civil penalty assessment the total face value of the five tickets to Game One, which is \$2,125.

A civil penalty in the amount of \$62,125 is commensurate with the Governor's offenses and his position. The Governor solicited tickets from a registered lobbyist that lobbied the Executive Department. (Ex. 36). When members of the media learned of his conduct, he attempted to cover up his misdeeds by causing a check to be backdated. (Ex. 3). When questioned about his check under oath, the Governor told a story about making the check out at his home prior to leaving for the game. The Governor, as noted by the Hearing Officer, is "expected to set an example for all other state officers and employees." (Hearing Officer's Decision at p. 10). As the highest elective official in the State and its chief executive officer, the Governor occupies a unique position with respect to every other elected and appointed official and every State employee. If the imperative for government personnel to behave ethically is to be understood universally, this Commission must apply the rules exactly to those at the top, certainly no less vigorously than the Commission enforces the rules against State personnel in the middle and lower ranks. The Hearing Officer's recommended penalty does not bear an appropriate relationship to penalties that the Commission has imposed on others who have

violated the Public Officers Law, since in other cases, some litigated and others settled, the Commission has levied similarly large individual civil penalties on others whose violations were narrower or who held mid-level, not senior, offices. By his conduct, the Governor disregarded the State ethics laws. Accordingly, the Commission assesses a civil penalty in the amount of \$62,125.

### **Conclusion**

The Commission confirms and adopts as its own the factual findings set forth in the Hearing Officer's Decision and the legal conclusions in regard to the Governor's knowing and intentional violation of Public Officers Law §§73(5)(a), 73(5)(b), 74(3)(d) and 74(3)(h). The Hearing Officer properly found that the Governor knowingly and intentionally violated Public Officers Law §§73(5)(a) and 73(5)(b); however, the Commission modifies the Hearing Officer's legal analyses in this regard. The Commission further modifies the Hearing Officer's Decision by determining that the Governor also violated Public Officers Law §74(3)(f). The Commission imposes a civil penalty in the total amount of \$62,125 for the Governor's knowing and intentional violations of Public Officers Law §§73(5)(a), 73(5)(b) and 74(3)(d). The Commission imposes no civil penalty for the Governor's violation of §74(3)(f) and 74(3)(h), as the statute does not provide a monetary penalty for these violations.

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December 9, 2010