

HAND DELIVERED

STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS

540 Broadway
Albany, New York 12207

IN THE MATTER OF FRED HIFFA.

"JCOPF" Rec'd
FEB - 8 2017

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. 16-096

WHEREAS, the Joint Commission on Public Ethics ("Commission") is authorized by 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 ("Lobbying Act") has occurred, to issue a report of its findings of fact and conclusions of law, and to impose penalties for any violation; and

WHEREAS, in 2005-2006, Fred Hiffa ("Respondent") was a registered lobbyist with the former firm Ostroff, Hiffa, & Associates, Inc. ("Ostroff Hiffa Firm"), and has been a registered lobbyist since that time through the present, and is therefore subject to the jurisdiction of the Commission and the proscriptions set forth in the Lobbying Act;

WHEREAS, in 2006, Respondent caused the Ostroff Hiffa Firm to retain the law firm of Santangelo, Randazzo & Mangone ("SRM") to retain the legal services of SRM and Matthew Libous, the emancipated son of former New York State Senator Thomas Libous, who at the time served as Chair of the Senate Transportation Committee; and that Respondent had known Matthew Libous since he was young through a personal relationship with his father, Senator Thomas Libous;

WHEREAS, in 2010, the federal government initiated an investigation of Senator Libous relating to, among other things, SRM's employment of Matthew Libous, and in the context of that investigation obtained documents from the Ostroff Hiffa Firm and interviewed, among others, Respondent;

WHEREAS, on June 30, 2014, Senator Libous was indicted by the federal government for violating 18 U.S.C. §1001, and was eventually tried and convicted in the matter entitled *United States v. Thomas Libous*, 14 Cr. 440 (S.D.N.Y. 2015); on August 12, 2016, counsel for Senator Libous filed a motion to vacate Libous's conviction based on his death and for the return of his payment of a \$50,000 fine to the Estate of Thomas Libous and on August 29, 2016, the federal government consented to the vacatur of his conviction based on his death, but opposed the return of the fine, and the matter is pending before the United State Court of Appeals for the Second Circuit;

WHEREAS, Anthony Mangone, a partner at SRM and others testified in connection with the federal criminal prosecutions in *United States v. Thomas Libous* and *United States v. Sandy Annabi and Zehy Jereis*, 10 Cr. 007 (S.D.N.Y. 2012), concerning SRM's employment of Matthew Libous, allegedly at the request of Senator Libous;

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WHEREAS, Mangone testified in the federal prosecutions that, on or about September through December 2005, Senator Libous asked SRM to employ Matthew Libous as an associate at a salary of \$100,000 in addition to other benefits, including a car; that Senator Libous informed Mangone that he had another arrangement with the Ostroff Hiffa Firm to pay Matthew Libous an additional \$50,000, and later advised Mangone that the Ostroff Hiffa Firm would pay SRM the \$50,000 rather than pay Matthew Libous directly; that SRM terminated Matthew Libous due to his poor performance and other issues, but SRM continued to accept fees from the Ostroff Hiffa Firm and pass them on to Matthew Libous; that Mangone had no knowledge of work performed by Matthew Libous for the Ostroff Hiffa Firm and, in another federal prosecution, Matthew Libous alleged that he performed around 150 hours of service for the Ostroff Hiffa Firm;

WHEREAS, the conduct underlying this proceeding occurred over ten years ago and, as a result, certain documents belonging to the Ostroff Hiffa Firm are unavailable through no fault of the Respondent and Senator Libous is now deceased;

WHEREAS, during the period 2005-2006, Section 1-m of the Lobbying Act prohibited any lobbyist from "offer[ing] or giv[ing] a gift with a value in excess of seventy-five dollars to any public official";

WHEREAS, during the period 2005-2006, Section 1-c of the Lobbying Law defined the term "gift" as "anything of value given to a public official including, but not limited to, food, beverages, entertainment or tickets to events where the general public is charged for admission";

WHEREAS, on June 6, 2016, the Commission sent a 15-day letter to Respondent alleging a violation of section 1-m of the Lobbying Act and on July 8, 2016, Respondent submitted a response denying the allegations in their entirety;

WHEREAS, on August 2, 2016, the Commission voted to commence an investigation of the matter; and

WHEREAS, Respondent and the Commission have agreed to resolve this matter in a manner that avoids further administrative and adjudicatory proceedings with the Commission, or sanctions or penalties by the Commission, except as provided below.

NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of this matter with respect to Respondent, the parties stipulate and agree to the following relevant facts, terms and conditions all of which they acknowledge to be true:

1. In January 2006, Respondent caused the Ostroff Hiffa Firm to retain and pay SRM \$4,166 per month for one year in order to obtain the legal services of the law firm and Matthew Libous. Respondent executed the retainer agreement. While Matthew Libous was employed at SRM, Respondent lobbied Senator Thomas Libous, Chair of the Transportation Committee, on behalf of his clients.
2. Respondent agrees to pay to the Commission the amount of ten thousand dollars (\$10,000) in full and final resolution of the matter within thirty (30) days of the execution of this Agreement.

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3. Respondent agrees to cooperate fully with any related investigation by the Commission, including but not limited to, providing any and all relevant documents and providing truthful testimony in any future investigations or proceedings related to this matter.
4. The Commission has agreed to the terms of this Agreement based on, among other things, the representations made to the Commission by Respondent. To the extent that representations made by Respondent are later found by the Commission to be materially incomplete or inaccurate, Respondent shall be in breach of this Agreement.
5. If the Respondent fails to timely perform any conditions set forth in the Agreement, Respondent shall be in breach of this Agreement.
6. 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.
7. Upon a breach of this Agreement, the Commission shall have sole discretion to deem the Agreement null and void in its entirety, issue a new Notice of Substantial Basis Investigation and Hearing, which may include additional charges against Respondent, proceed with an enforcement action, and then issue a new Substantial Investigation Report. As to any new Substantial Basis Investigation Report or enforcement action by the Commission pursuant to this paragraph: (1) Respondent waives any claim that such action is time-barred by a statute of limitations or any other time-related defenses; and (2) Respondent expressly acknowledges and agrees that the Commission may use any statements herein, or any other statements, documents or materials produced or provided by Respondent prior to or after the date of this Agreement, including, but not limited to, any statements, documents, or materials, if any, provided for the purposes of settlement negotiations or in submissions by Respondent or by counsel on behalf of Respondent, in any proceeding against Respondent relating to the allegations herein.
8. Respondent shall upon request by the Commission, provide all documentation and information reasonably necessary for the Commission to verify compliance with this Agreement and otherwise cooperate with the Commission in complying with this Agreement.
9. Respondent understands and acknowledges that the Commission may investigate any other conduct, not covered by this Agreement, by Respondent and take any appropriate action.
10. Respondent waives the right to assert any defenses or any challenges to this Agreement, as well as any right to appeal or challenge the determination or conduct of the Commission relating to this matter in any forum.

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11. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
12. Respondent consents to the jurisdiction of the Commission in any proceeding to enforce this Agreement.
13. It is understood that this Agreement is not confidential and will be made public within forty five (45) days of its execution in accordance with Executive Law §§94(14) & (19).
14. 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.
15. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
16. This Agreement shall become effective upon execution by the Commission or its designee.
17. 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.
18. 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. Respondent was represented by counsel, Mark Glaser of Greenberg Traurig LLP.

Dated: 2/22/17



Seth Agata
Executive Director
New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO
THIS 6 DAY OF Feb., 2017



Fred Hiffa, Respondent.

Approved:

Michael K. Rozen
Acting Chair

Robert Cohen
Marvin E. Jacob
Seymour Knox, IV
Hon. Eileen Koretz
Gary J. Lavine
J. Gerard McAuliffe, Jr.
David A. Renzi
Hon. Renee R. Roth
Dawn L. Smalls
Hon. Penny M. Wolfgang

Members