

HAND DELIVERED
RECEIVED MAY 06 2014

STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS

540 Broadway
Albany, New York 12207

IN THE MATTER OF JOHN SIEBER,
Former Assistant Vice President of Finance of
Roswell Park Cancer Institute (RPCI).

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. 13-113

WHEREAS, the Joint Commission on Public Ethics ("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 the Public Officers Law 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 Executive Law;

WHEREAS, this Settlement Agreement ("Agreement") is entered into by and between the Commission and John Sieber ("Respondent");

WHEREAS, Respondent was employed by the Roswell Park Cancer Institute (the "RPCI") as the Assistant Vice President of Finance from January 3, 2006 to January 26, 2011;

WHEREAS, on July 30, 2013, RPCI notified the Commission of an unintended variance from the Public Officer's Law §73(8) when it had hired Sieber in April 2011 as an independent contractor shortly after Sieber left RPCI's employment and RPCI requested retroactive approval to allow RPCI to continue to work with Sieber;

WHEREAS, RPCI and Sieber have cooperated with the Commission in providing information regarding potential Public Officer's Law violations;

WHEREAS, the Respondent has waived notification in writing of possible violations pursuant to Executive Law §94(13)(a) and 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 mutual covenants made herein, as the final settlement of this matter, the parties stipulate and agree that:

- I. Between April 2011 and March 2013, RPCI, without obtaining approval from the Commission, repeatedly requested that Sieber provide services to RPCI on different projects and entered into various contracts with Sieber relating to those services. Specifically, the relevant conduct included the following:

- a. In 2007, Sieber, while employed at RPCI, was part of a team that reviewed contracts in response to a request for proposal to find an outside auditor for RPCI. The team recommended to the RPCI Audit Committee the approval of the contract for auditing services between RPCI and an regional accounting firm Freed Maxick CPAs, P.C. ("Freed Maxick"). On September 11, 2007, the RPCI Audit Committee approved the RPCI-Freed Maxick contract for an initial three year term (2008-2010) with an option to extend for another three years (2011-2013).
 - b. On January 26, 2011, Sieber left RPCI and joined Palladian Health LLC as its Chief Financial Officer. Shortly thereafter, RPCI reached out to Sieber and retained him to help train RPCI's new Assistant Vice President of Finance.
 - c. In early 2012, Sieber left Palladian Health, LLC and became self-employed. In or about April 2012, RPCI again reached out to Sieber and retained him to help RPCI coordinate a request for proposal for a national consultant for RPCI's restructuring project.
 - d. On May 15, 2012, Sieber joined Freed Maxick as a director and shareholder. Around the same time, RPCI reached out to and retained Freed Maxick to again request Sieber to work on its budget because key members of RPCI's budget team departed. At Freed Maxick, Sieber continued to work on the RPCI restructuring project and RPCI paid Freed Maxick for the work.
- II. Respondent acknowledges that Public Officers Law §73(8)(a)(i) prohibits a former state employee within a period of two years after termination of service or employment from appearing or practicing before such state agency or receive compensation for any such services rendered by such former employee on behalf of any firm in relation to any case, proceeding or application or other matter before such agency.
 - III. Pursuant to Freed Maxick and Sieber's agreement, Sieber's compensation at Freed Maxick from May 16, 2012 to April 30, 2014 was a fixed amount that was not contingent on business that Sieber brought in. Sieber acknowledges and represents that his compensation does not include net revenues from the 2007 RPCI-Freed Maxick auditing contract and its extensions of that contract. Sieber agrees that he shall not receive net revenues from the extension of the RPCI-Freed Maxick contract for the fiscal year of 2014-2015. Sieber also agrees to provide the Commission with sworn affidavit(s) and supporting documents reflecting that he does not receive any net revenues addressed in this paragraph.
 - IV. Respondent agrees to seek advice and/or approval from the Commission if RPCI would like to engage him or if he is to personally and directly receive net revenues from work done by Freed Maxick for services in relation to any case, proceeding, application or transaction with which he was directly concerned and in which he personally participated or which was under his active consideration while working at RPCI. There is no prohibition against Respondent working on strategic,

transformation/ performance improvement, project management, acquisition/joint venture/valuation, financial reporting, or budgeting assignments commencing in 2014 or later provided that those services do not involve matters that he worked on while employed by RPCI.

- V. In consideration of the facts above, the Respondent agrees to pay the Commission in the amount of \$2,500.00 within thirty (30) days of the execution of this agreement.
- VI. If Respondent fails to timely perform the conditions set forth in 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: (1) 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 (2) 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. To the extent that representations made by Respondent are later found to be materially incomplete or inaccurate by the Commission, Respondent shall be in breach of this Agreement.
- IX. Notwithstanding the provisions of this Agreement, Respondent understands and acknowledges that the Commission may investigate other knowing and intentional violations of the Public Officers Law, if any, by Respondent and take any appropriate action.
- X. 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.
- XI. 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.

- XII. Respondent consents to the jurisdiction of the Commission in any proceeding or action to enforce this Agreement.
- XIII. 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).
- XIV. 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.
- XV. 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.
- XVI. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
- XVII. This Agreement shall become effective upon execution by the Commission or its designee.
- XVIII. 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.
- XIX. 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: May 12, 2014

Letizia Tagliafierro

Letizia Tagliafierro
Executive Director

New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO
THIS 12 DAY OF May, 2014

Respondent

By: John Sieber

Name: John Sieber

Approved: Daniel J. Horwitz
Chair

Paul Casteleiro
Hon. Joseph Covello
LaShann DeArcy
Mitra Hormozi
Marvin E. Jacob
Seymour Knox, IV
Gary J. Lavine
Hon. Mary Lou Rath
David A. Renzi
Michael A. Romeo, Sr.
Hon. Renee R. Roth
George H. Weissman

Members