

IN THE MATTER OF PLEDGE 2 PROTECT, INC.

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SUBSTANTIAL BASIS INVESTIGATION REPORT  
AND SETTLEMENT AGREEMENT

Case No. 16-095

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, Pledge 2 Protect, Inc. ("Respondent") is a New York State not-for-profit organization whose mission was to raise awareness about and to oppose the City of New York's plan regarding a waste transfer station located in the Upper East Side of Manhattan;

WHEREAS, Respondent was a registered lobbyist for the period of April 25, 2013 to December 31, 2015, and is therefore subject to the jurisdiction of the Commission and the proscriptions set forth in the Lobbying Act;

WHEREAS, Respondent discontinued lobbying in 2016;

WHEREAS, the Lobbying Act requires lobbyists and clients of lobbyists to file public statements of registration and periodic reports containing accurate and complete information reflecting their activities and disclosing, among other things, "each source of funding over five thousand dollars from a single source" ("Lobbying Filings");

WHEREAS, in early 2013, Glenwood Management Corp., a real estate management company (the "Company") and Respondent received legal advice from an attorney licensed to practice in the State of New York (the "Attorney"), concerning, among other matters, how to comply with the Lobbying Act while maintaining the anonymity of certain donors;

WHEREAS, the Attorney advised the Company and Respondent, among other things, that to lawfully insure anonymity of sources of funding, donations should be made by donors to a law firm escrow account and then sums should be paid from the escrow account to the Respondent;

WHEREAS, the Attorney also advised Respondent, on multiple occasions, that identifying a law firm as the "source" of such donations in Respondent's Lobbying Filings would comply with the Lobbying Act;

WHEREAS, following the legal advice of the Attorney, an escrow account at a law firm known to the Company ("Law Firm") was used to make donations to the Respondent;

WHEREAS, Respondent followed the Attorney's advice, accepted donations from the Law Firm escrow account, and reported the Law Firm as the "source" of those donations ("Relevant Donations");

WHEREAS, Respondent's Lobbying Filings for the periods of July-December 2013, January-June 2014, and July-December 2014 listed the Law Firm as the source of the Relevant Donations based on monies transmitted from the attorney escrow account to Respondent pursuant to the advice and counsel of the Attorney;

WHEREAS, in June 2016, the Commission sent a 15-day letter to Respondent and a Notice of Substantial Basis Investigation to Respondent, in connection with the above-captioned matter, alleging Respondent had violated Section 1-j of the Lobbying Act in that Respondent knowingly and willfully submitted client semi-annual reports that failed to provide complete and accurate information relating to Respondent's sources of funding for the Relevant Donations. Respondent submitted a letter to the Commission denying the allegations contained in the Notice on the grounds that, among other things, Respondent reasonably relied on the advice of its attorney regarding how to legally report donations under the Lobbying Act;

WHEREAS, under these circumstances the Commission believes that the advice of the Attorney concerning the use of a law firm's escrow account to maintain donor anonymity was inconsistent with the Lobbying Act and the accompanying regulations;

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. Based on the Attorney's advice, Respondent's lobbying filings for the periods of July-December 2013, January-June 2014, and July-December 2014 listed the Law Firm as the source of funding for donations totaling \$1,023,473.00.
2. At the Commission's request, Respondent agrees to amend its Lobbying Filings in the reporting periods of July-December 2013, January-June 2014, and July-December 2014 to identify the Company as the source of the Relevant Donations, in full and final resolution of the matter within thirty (30) days of the execution of this Agreement.
3. 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.
4. If the Respondent fails to timely perform any conditions set forth in the Agreement, Respondent shall be in breach of this Agreement.

5. Respondent's current Board of Directors and officers agree 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.
6. 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.
7. Respondent shall upon request by the Commission, provide all documentation and information reasonably necessary for the Commission to verify compliance with this Agreement.
8. Respondent understands and acknowledges that, except as otherwise set forth herein, the Commission may investigate any other conduct, not covered by this Agreement, by Respondent and take any appropriate action.
9. 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 the allegations underlying the Notice of Substantial Basis Investigation in this matter in any forum. Nothing in the foregoing waiver shall preclude the Respondent from raising a defense that it did not materially breach this Agreement.
10. Respondent consents to the jurisdiction of the Commission in any proceeding to enforce this Agreement.
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. 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).

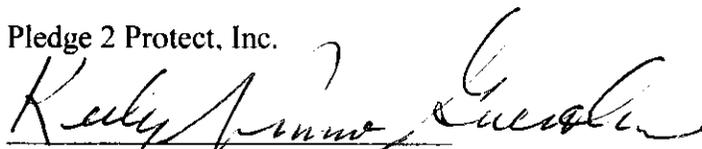
13. This Agreement constitutes the entire agreement between the parties and supersedes any prior communication, understanding, or agreement, whether oral or written, concerning the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth in this Agreement has been relied upon by any party to this Agreement.
14. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
15. This Agreement shall become effective upon execution by the Commission or its designee.
16. 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.
17. 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, Christopher J. Morvillo of Clifford Chance US LLP.

Dated: 6/2/17

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

ACCEPTED AND AGREED TO  
THIS 23 DAY OF May, 2017

Pledge 2 Protect, Inc.

  
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By: Kelly Nimmo-Guenther  
Title: President

Approved:

Michael K. Rozen  
Acting Chair

Robert Cohen  
Marvin E. Jacob  
Seymour Knox, IV  
Gary J. Lavine  
J. Gerard McAuliffe, Jr.  
David A. Renzi  
Dawn L. Smalls  
George H. Weissman  
Hon. Penny M. Wolfgang

Absent:

Hon. Renee R. Roth  
Members