

STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS
IN THE MATTER OF KENNETH MARVET,
Former Special Counsel at
The New York Liquidation Bureau.

540 Broadway
Albany, New York 12207

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. 17-133

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 any violations of the Public Officers Law have occurred, to issue a report of its findings of fact and conclusions of law, and to impose penalties for any violation;

WHEREAS, Kenneth Marvet (“Respondent”) was employed as a Special Counsel at the New York Liquidation Bureau (NYLB) from June 1, 2010 through October 23, 2017;

WHEREAS, on December 26, 2017, a letter was sent to Respondent alleging violations of Public Officers Law § 73-a and §§ 74(3)(a), (d), (e) and (f) which afforded Respondent fifteen (15) days to respond and Respondent responded on February 8, 2018 denying that the allegations violated the Public Officers Law;

WHEREAS, the Respondent was a “state officer or employee” as defined by Public Officers Law § 73-a, and as such submitted a Financial Disclosure Statement to the Commission for the calendar year 2015;

WHEREAS, Question 4(a) of the statutory Financial Disclosure Statement contained in Public Officers Law § 73-a, states in pertinent part that a covered individual must “List any office, trusteeship, directorship, partnership, or position of any nature, whether compensated or not, held by the reporting individual with any firm, corporation, association, partnership, or other organization other than the State of New York”;

WHEREAS, from about 2011 to 2014, Respondent represented the NYLB in an adversarial proceeding against an individual who was also a former principal of two estates that were under receivership of the NYLB. The adversarial proceeding was concluded in 2014 with the payment of a settlement and the individual receiving a full release and discharge from any further liability. In 2015, Respondent entered into a business relationship with such individual to form a holding company named Darwin & DaVinci;

WHEREAS, Respondent and the Commission, the parties to this Settlement Agreement (“Agreement”), have agreed to resolve this matter in a manner that avoids additional administrative and/or adjudicatory proceedings; and

NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of this matter, the parties stipulate and agree that:

1. Respondent concedes that while employed at the NYLB, he failed to disclose on his Financial Disclosure Statement for 2015, his uncompensated position with the Delaware-incorporated start-up entity Darwin & DaVinci as required pursuant to Question 4 (a) of the Financial Disclosure Statement in Public Officers Law § 73-a.
2. Respondent agrees to pay to the Commission the amount of one thousand dollars (\$1,000.00) in settlement of said violation within sixty (60) days of the signing of this agreement.
3. Respondent also agrees to file with the Commission an accurate and complete amended Financial Disclosure Statement for the year 2015 within thirty (30) days of the signing of this Agreement.
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 Notice of Substantial Investigation and Hearing which may include additional charges against Respondent, proceed with an enforcement action, and then issue a new Substantial Investigation Report; or to deem the Respondent in breach of this Agreement and pursue, in court, any other remedy to which the Commission is entitled at law or in equity, including, but not limited to, specific performance or injunction. 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.
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.
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 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 is represented by counsel, Karl Sleight, Esq. of Harris Beach PLLC.

Dated: 7/10/18



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

ACCEPTED AND AGREED TO
THIS 28 DAY OF JUNE, 2018

Respondent

By:


Name: Kenneth Marvet

Approved:

Michael K. Rozen
Chair

James E. Dering
Marvin E. Jacob
Seymour Knox, IV
Gary J. Lavine
J. Gerard McAuliffe, Jr.
David McNamara
Barry C. Sample
Dawn L. Smalls
George H. Weissman
James A. Yates
Members

Robert Cohen
Absent