



**New York City Campaign Finance Board**  
 100 Church Street, 12<sup>th</sup> Floor, New York, NY 10007  
 212.409.1800 | www.nycffb.info

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December 11, 2014

**By First Class Mail and E-mail**

Allison Feldman  
 NYCLASS

[REDACTED]  
 [REDACTED]

Martin Connor, Esq.

[REDACTED]  
 [REDACTED]

**FINAL BOARD DETERMINATION**

The New York City Campaign Finance Board (the “Board” or “CFB”), at a meeting held on December 11, 2014, made the following final determination concerning the New Yorkers for Clean, Livable and Safe Streets (“NYCLASS”):

The Board determined that NYCLASS and its authorized representative, Allison Feldman, (collectively, “the Spender”), by their retained compliance agent, violated the New York City Charter (“Charter”) and Board Rules and are jointly and severally liable for paying \$26,054 in penalties as follows:

1. Total penalties of \$16,054 for cooperating in expenditures reported to be independent. *See* Charter §1052(a)(15); Board Rules 1-08(f)(1), (3), 13-05; CFB Advisory Op. 2009-7 (Aug. 6, 2009) (“A.O. 2009-7”).
2. Total penalties of \$10,000 for material misrepresentation. *See* Charter §1052(a)(15)(d); Board Rules 13-01 *et seq.*

The Board Rules apply not only to expenditures made by campaigns, but also to expenditures made by outside parties on behalf of, or in opposition to, campaigns. *See* Charter § 1502(a)(15); Board Rules 13-01 *et seq.*

Expenditures that are made without the cooperation of a campaign are referred to as “independent.” The New York City Campaign Finance Act (the “Act”) defines “independent” activity as that in which a candidate or a candidate’s committee “did not authorize, request, suggest, foster or cooperate.” New York City Administrative Code (“Admin. Code”) § 3-702(8). Once an independent spender has exceeded certain financial thresholds, that spender must timely disclose its expenditures via the Board’s online Independent Expenditure Disclosure System (“IEDS”). *See* Board Rules 13-01 *et seq.* Each independent spender designates an authorized representative to file its disclosure statements. *See* Board Rule 13-02.

Before making its first IEDS filing, each spender’s authorized representative attests to the following in a form submitted to the Board:

- I understand that I am responsible for the accuracy and completeness of all disclosure statements filed from this IEDS account [.]
- I understand that the failure to abide by the requirements of NYC Charter § 1052(a)(15) and Chapter 13 of the CFB’s Rules may result in penalties of up to \$10,000 per violation.
- I understand that intentionally or knowingly making a false written statement to the CFB, including but not limited to in the form of an electronic submission, is a Class A misdemeanor pursuant to NYC Charter § 1052(a)(15)(d) and New York state Penal Law section 210.45.

Additionally, before submitting each IEDS filing, the filer is required to affirm, *inter alia*, the following statements:

- I hereby verify that I have reviewed this disclosure statement and that it is true and complete to the best of my knowledge.
- I hereby verify that to the best of my knowledge, information, and belief, the expenditures reported in this disclosure statement that refer to any candidate in a covered election were not authorized, requested, suggested, fostered, or cooperated in by such candidate, any opponent of such candidate, or any agent of such candidate or opponent.
- I understand that the failure to abide by the requirements of NYC Charter § 1052(a)(15) and Chapter 13 of the CFB’s Rules may result in penalties of up to \$10,000 per violation.
- I understand that intentionally or knowingly making a false written statement to the CFB, including but not limited to in the form of an electronic submission, is a Class A misdemeanor pursuant to NYC Charter § 1052(a)(15)(d) and New York state Penal Law section 210.45.
- I have read and understand the foregoing. I understand that by clicking the submit button below I am electronically signing and filing a disclosure statement with the New York City Campaign Finance Board.

Expenditures made with the cooperation of a campaign may not be reported as independent. *See* Board Rule 13-05. Such expenditures are in-kind contributions, which must be accounted for and reported by campaigns. *See* Admin. Code § 3-703(6)(a); Board Rules 1-04(a), (g), 3-03(c), 4-01(c). In-kind contributions are considered both contributions and expenditures, subject to the contribution and expenditure limits. *See* Board Rules 1-08(f)(1), (3).

During the 2013 election cycle, the Advance Group (“TAG”) served as the general consultant to, and therefore an agent of, the 2013 election campaigns of Laurie Cumbo and Mark Levine (collectively, the “Campaigns”). TAG also served as the general consultant to NYCLASS. A contract between NYCLASS and TAG, which covers a two-year period beginning August 13, 2012,<sup>1</sup> states that TAG was responsible for conducting “day-in-day-out activities” on behalf of NYCLASS, including, *inter alia*, “manag[ing] an electoral program consisting of endorsements and independent expenditures for the 2013 Mayoral/City Council races” and “oversee[ing] and manag[ing] NYCLASS staff[.]” At the time NYCLASS reported making independent expenditures to benefit the Campaigns, NYCLASS was located in the TAG office, its political director was TAG president Scott Levenson, and its communications director was TAG communications director Chelsea Connor. Sixty-six percent of the expenditures NYCLASS reported to the New York State Board of Elections for the 2013 primary election were to TAG. NYCLASS’s independent spending disclosure account was established, and its filings submitted to the CFB, by TAG’s then-director of lobbying and government relations, Jamin Sewell.

The relationships between the Campaigns and TAG, and between NYCLASS and TAG, met the parameters delineated in Board Rule 1-08(f)(1)(v) (the “Rule”): the entity making the expenditure (NYCLASS) and the candidates (Cumbo and Levine) had “each retained, consulted, or otherwise been in communication with the same third party” (TAG), and “the candidate[s] knew or should have known” that their “campaign[s]’ communications with or relationship” to TAG “would inform or result in expenditures” made by NYCLASS to benefit their campaigns.<sup>2</sup> As a result, expenditures by NYCLASS in support of the Campaigns could not be and were not independent of the Campaigns. NYCLASS is a corporation and therefore prohibited from making campaign contributions, including non-independent expenditures (i.e., in-kind contributions).

On September 3, 2013, Jamin Sewell of TAG filed an authorized representative form, signed by Allison Feldman, on behalf of NYCLASS, agreeing that both Feldman and NYCLASS would be jointly and severally liable for any penalties resulting from NYCLASS’s independent spending in the 2013 elections. On September 8, 2013, NYCLASS submitted an IEDS filing, by Sewell, reporting independent expenditures on behalf of the Cumbo Campaign in the amount of \$7,618 and on behalf of the Levine Campaign in the amount of \$8,436. The expenditures were for campaign literature. By submitting this filing, NYCLASS, by its agent TAG, represented itself as an independent entity making expenditures that were not authorized, requested, fostered, suggested, or cooperated in by the Campaigns.

On September 9, Board staff sent a letter to NYCLASS citing the Rule and noting that, based on the above information, it appeared that the Campaigns and NYCLASS had relationships with TAG that the Rule deemed non-independent. The letter further reminded NYCLASS that reporting a non-independent expenditure as independent would be a violation of the Charter and Board Rules subject to penalties for which NYCLASS and its authorized representative would be jointly and severally liable, and

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<sup>1</sup> The contract was subsequently terminated in late 2013. The parties entered into a new contract, limited to lobbying services only, in January 2014; NYCLASS terminated that contract on May 16, 2014.

<sup>2</sup> “[A] ‘candidate’ includes every authorized committee of the candidate, the treasurer of each such committee, and any other agent of the candidate.” Board Rule 1-02.

that non-independent expenditures made on behalf of a campaign are considered in-kind contributions and subject to the contribution and expenditure limits of the Act.

On October 1, 2013, CFB staff sent NYCLASS two Notices of Alleged Violations and Recommended Penalties (“Penalty Notices”) – one for each Campaign – recommending that the Board find that the expenditures made by NYCLASS were not independent, and that therefore NYCLASS should be penalized for making expenditures coordinated with campaigns and for material misrepresentation. NYCLASS contested the staff’s recommendation and requested that this matter be heard before the Office of Administrative Trials and Hearings (OATH). Consequently, on March 3, 2014, CFB staff served NYCLASS with two OATH petitions – one for each Campaign – recommending total penalties of \$36,054. The petitions also recommended separate violations and penalties against co-respondents TAG and the Campaigns. On May 21, 2014, the Board issued two Final Board Determinations assessing penalties against the Campaigns for accepting and failing to report over-the-limit in-kind contributions from a prohibited source, thus resolving the matter relating to the Campaigns and leaving NYCLASS and TAG as parties to the OATH proceeding.

On December 5, 2014, Allison Feldman and Steve Nislick each submitted a sworn statement to CFB staff. Nislick stated that he was not aware that TAG was working as an agent for the Campaigns, and that if he had been so aware, he would not have authorized the creation and distribution of the literature. Feldman stated that she was made aware of TAG’s relationships with the Campaigns, but a TAG representative assured her that measures were being taken to ensure legal compliance. Both Nislick and Feldman stated that NYCLASS relied upon TAG’s professional advice regarding compliance with all applicable campaign finance laws. Also on December 5, NYCLASS waived its right to adjudication before OATH and stated that it would not contest CFB staff’s recommendation to the Board. The OATH proceeding remains pending against TAG. While the Act subjects a candidate’s agent to civil penalties for the agent’s violation of the Act or Board Rules, the Charter provisions and Board Rules governing independent expenditures do not provide for similar liability for violations by agents of independent spenders. *See* Charter § 1052(a)(15); Admin. Code §§ 3-710.5, 3-711(1); Board Rules 1-02, 13-01 *et seq.*; Final Determination No. 2003-2 (Aug. 26, 2003). For this reason, the Board, in its OATH petitions, has alleged violations against TAG only as an agent of the Campaigns, even though TAG also acted as an agent of NYCLASS.

The Board found that NYCLASS’s expenditures were not independent of the Campaigns, due to the parties’ relationships with TAG. The Board assessed penalties of the amount of each expenditure (\$7,618 for Cumbo; \$8,436 for Levine) for cooperating in expenditures reported to be independent, plus a penalty of \$10,000 (\$5,000 per campaign) for material misrepresentation for submission of the IEDS filing by its agent TAG stating that the expenditures were independent. Because the Board found credible NYCLASS’s assertion that it was unaware of TAG’s relationship with the Campaigns, and that its actions were conducted in reliance upon TAG’s assurances that they were in compliance with the law, the Board did not assess the maximum penalty for misrepresentation, which would be \$10,000 per campaign. In assessing credibility, the Board considered the content of the sworn statements, as well as the aforementioned contract between NYCLASS and TAG, in which, in addition to assuming responsibility for NYCLASS’s endorsements and independent expenditures for the 2013 election cycle and the oversight and management of NYCLASS’s staff, TAG “represents and warrants that it will . . . at all times comply with all applicable federal, state, local, and foreign laws [.]”

The 2013 election cycle was the first in which the Board's independent expenditure disclosure rules were in effect. The fact that some spenders may not have been fully aware of the regulations and requirements concerning independent spending informed the Board's acceptance of NYCLASS's statement that it was unaware of TAG's activities. However, in future election cycles, spenders will be expected to familiarize themselves with the Board's requirements in this area, and will be held responsible for ensuring that they and their agents remain in compliance. The legal and factual conclusions stated in this Determination are limited to this Spender, this election cycle, and the expenditures described herein, and have no legal or factual relevance to any other expenditures.

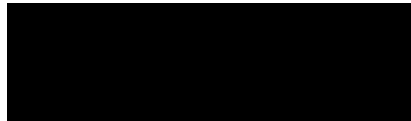
**The Board determined that the amount due is \$26,054.**

You must pay to the Board the full amount due of \$26,054 no later than January 12, 2015. Checks should be made payable to the "New York City Election Campaign Finance Fund," and mailed to the attention of Bethany M. Perskie, Associate Counsel, New York City Campaign Finance Board, 100 Church St., 12th Floor, New York, New York 10007, or delivered to the offices of the Board.

If the Board is not in receipt of the full \$26,054 by January 12, 2015, the Spender's name and the unpaid amount will be posted on the Board's website, and the Board may initiate a civil action against the Spender to compel payment.

You may challenge this final determination, within four months, in the New York State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

If you need additional time to pay this amount or if you have any questions concerning this Final Board Determination, please contact Ms. Perskie at (212) 409-1861 or [bperskie@nyccfb.info](mailto:bperskie@nyccfb.info).



signature on original

Sue Ellen Dodell  
General Counsel

**NEW YORK CITY  
CAMPAIGN FINANCE BOARD**

SED/BMP