

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

Plaintiff,

v.

THE NATIONAL RIFLE ASSOCIATION OF
AMERICA, WAYNE LAPIERRE,
WILSON PHILLIPS, JOHN FRAZER, and
JOSHUA POWELL,

Defendants.

Index No. 451625/2020
Hon. Joel M. Cohen

Motion Sequence No. 45

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANT WILSON H. PHILLIPS'S
MOTION FOR SUMMARY JUDGMENT**

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	3
I. NRA POLICIES RELATING TO PROCUREMENT AND CONFLICT OF INTEREST AND RELATED PARTY TRANSACTIONS	3
II. PHILLIPS’S EMPLOYEE COMPENSATION AND POST-EMPLOYMENT CONSULTING AGREEMENT	6
III. THE HOMETELOS CONTRACT	7
ARGUMENT	9
I. LEGAL STANDARD.....	9
II. THERE ARE, AT A MINIMUM, ISSUES OF FACT AS TO WHETHER THE CONSULTING AGREEMENT WAS A RELATED PARTY TRANSACTION THAT MANDATE DENIAL OF PHILLIPS’S MOTION FOR SUMMARY JUDGMENT SEEKING DISMISSAL OF THE TWELFTH CAUSE OF ACTION	10
III. ISSUES OF FACT REMAIN CONCERNING PHILLIPS’S BREACHES OF HIS FIDUCIARY DUTY STEMMING FROM BOTH HIS CONSULTING AGREEMENT AND HIS ROLE WITH RESPECT TO THE NRA’S PAYMENTS TO HOMETELOS	13
A. Phillips Breached His Fiduciary Duties by Entering Into the Consulting Agreement...	15
B. Phillips Breached his Fiduciary Duties by Causing the NRA to Enter Into the HomeTelos Contract.....	16
CONCLUSION.....	18

TABLE OF AUTHORITIES**Page(s)****CASES**

<i>American Home Assur. Co. v. Amerford Intern. Corp.</i> , 200 A.D.2d 472 (1st Dep't 1994)	10
<i>Consumers Union of U.S., Inc. v. State</i> , 5 N.Y.3d 327 (2005)	13, 16
<i>Friends of Thayer Lake LLC v. Brown</i> , 27 N.Y.3d 1039 (2016)	10
<i>Higgins v. New York Stock Exchange, Inc.</i> , 10 Misc. 3d 257, 806 N.Y.S.2d 339 (Sup. Ct. N.Y. Cnty. 2005)	14
<i>LaGrega v. Farrell Lines, Inc.</i> , 156 A.D.2d 205 (1st Dep't 1989)	18
<i>Martha Graham School & Dance Foundation, Inc. v. Martha Graham Center of Contemporary Dance, Inc.</i> , 224 F. Supp. 2d 567 (S.D.N.Y. 2002), aff'd in part, vacated in part, 380 F.3d 624 (2d Cir. 2004)	13
<i>People by James v. National Rifle Association of America, Inc.</i> , 74 Misc.3d 998 (Sup. Ct. N.Y. Cnty. 2022)	12
<i>People ex rel. Spitzer v. Grasso</i> , 50 A.D.3d 535 (1st Dep't 2008)	9
<i>People v. National Rifle Association of America, Inc.</i> , 165 N.Y.S.3d 234 (Sup. Ct. N.Y. Cnty. 2022)	14, 16
<i>S.H. & Helen R. Scheuer Family Foundation, Inc., By & Through Scheuer v. 61 Associates</i> , 582 N.Y.S.2d 662 (1st Dep't 1992)	14
<i>Spitzer v. Schussel</i> , 17 Misc. 3d 1120(A), 851 N.Y.S.2d 74 (Sup. Ct. N.Y. Cnty. 2007)	9
<i>Trustees of Columbia University in City of New York v. D'Agostino Supermarkets, Inc.</i> , 36 N.Y.3d 69 (2020)	9-10
<i>Vega v. Restani Const. Corp.</i> , 18 N.Y.3d 499 (2012)	10

STATUTES

EPTL § 8-1.4.....	13
EPTL § 8-1.9.....	11, 15
N-PCL § 102.....	10
N-PCL § 715.....	<i>passim</i>

OTHER AUTHORITIES

1 New York Nonprofit Law and Practice § 6.04[2]	14
Leadership Committee for Nonprofit Revitalization, <i>Report to Attorney General</i> <i>Eric T. Schneiderman</i> , 26 (Feb. 16, 2012)	12
Office of the New York State Attorney General Charities Bureau, Charities Symposium: Doing Well While Doing Good, <i>Conflicts of Interest Policies</i> <i>under the Not-For-Profit Corporation Law</i> (Sept. 2018)	11

On behalf of the Plaintiff, the People of the State of New York (“Plaintiff”), the Office of Attorney General Letitia James (“OAG”) respectfully submits this memorandum of law in opposition to Defendant Wilson H. Phillips’s motion for partial summary judgment, Motion Sequence Number 45.

PRELIMINARY STATEMENT

For twenty-five years, Defendant Wilson H. Phillips served as the Treasurer and Chief Financial Officer (“CFO”) of the National Rifle Association of America (“NRA”), and as the righthand man to Defendant Wayne LaPierre, the NRA’s Executive Vice President (“EVP”). In this action, Plaintiff alleges Phillips breached his fiduciary duties to the NRA by personally wasting, and permitting or facilitating the waste of, the NRA’s charitable assets; failing to act on whistleblower complaints; entering into numerous contracts on his own or the NRA’s behalf that were tainted by conflicts of interest, several of which had no mandatory deliverables or comparable requirements; approving or enabling the payments of unapproved and unratified related party transactions; hiding millions of dollars’ worth of NRA executive personal expenditures through the use of a pass-through arrangement with an NRA vendor; facilitating false and misleading representations in the NRA’s regulatory filings; and generally breaching his fiduciary duties to the NRA and its membership by failing, as the NRA’s Treasurer and CFO, to safeguard the NRA’s charitable assets. *See, e.g.*, NYSCEF 646 at ¶¶ 181-91, 209-50, 267-72, 307, 312-444, 654-57, 670-73. Additionally, Plaintiff alleges that Phillips engaged in an improper related party transaction related to his own post-employment consulting agreement with the NRA. *Id.* at ¶¶ 686-89.

Phillips now seeks partial summary judgment with respect to two limited transactions that constitute a fraction of the overall misconduct on which the Complaint’s claims against him are

based. Even if his motion is granted with respect to those transactions—which for the reasons set forth below it should not be—it would not result in his dismissal from this action or limit the evidence that the Court would need to consider when this action is tried. Specifically, Phillips seeks partial summary judgment on Plaintiff’s Fourth (breaches of fiduciary duty under the Not-for-Profit Corporation Law (“N-PCL”)) and Eighth (failure to properly administer charitable assets under the Estates, Powers and Trusts Law (“EPTL”)) causes of action, and full summary judgment on Plaintiff’s Twelfth (improper related party transactions under the N-PCL and EPTL) cause of action in the Second Amended Complaint. NYSCEF 646 at ¶¶ 654–657, 670–673, 686–689. Phillips argues that the lucrative consulting agreement he entered into with the NRA shortly before his retirement does not constitute a related party transaction, and that neither that agreement nor a separate contract he caused the NRA to enter into with HomeTelos, a company owned by a woman he admits was at one point his significant other, resulted in a breach of the fiduciary duties he owes the NRA. Both arguments fail.

First, material issues of fact remain precluding a grant of summary judgment to Phillips on claims relating to his post-employment consulting agreement. Phillips’s only argument as to why the contract was not a related party transaction relies on a misinterpretation of guidance issued by the OAG Charities Bureau that states that transactions setting reasonable *employee compensation* are not treated as a related party transactions under N-PCL § 715. That guidance has no application here and does not address contracts, like the one at issue: a post-employment, self-renewing consulting contract commencing after Phillips’s retirement without an end date that, on its face, could only be terminated by Phillips or by his death or disability, and which entitled him, after his retirement, to a flat monthly fee of \$30,000, with no specific deliverables or metrics for his performance and where there is no evidence that he rendered valuable services to the NRA.

Second, material issues of fact remain as to whether Phillips breached the fiduciary duties he owed to the NRA with respect to both the consulting agreement and the contract with HomeTelos by (1) failing to disclose his conflicts to the NRA's audit committee as required by law and the NRA's policies, (2) making or facilitating the NRA's misrepresentations to its regulators concerning conflicts of interest, and (3) by failing to carry out his duties as Treasurer and CFO to ensure that the NRA's policies and procedures, as set out by both the NRA Board and EVP Wayne LaPierre, were followed.

For the reasons provided below, Plaintiff respectfully requests that the Court deny Phillips's motion for partial summary judgment in its entirety.

STATEMENT OF FACTS

From the early 1990s until September 2018, when he retired, Phillips was the Treasurer and CFO of the NRA. Counter Statement of Material Facts in Opp. to Mot. for Summ. J. ("CSOMF") ¶ 1. As Treasurer of the NRA, Phillips was obligated to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] CSOMF ¶ 23. And as CFO of the NRA, Phillips's duties were expanded to include other tasks not directly delegated by the Board of Directors, such as overseeing the NRA's information technology department. CSOMF ¶ 23.

I. NRA POLICIES RELATING TO PROCUREMENT AND CONFLICT OF INTEREST AND RELATED PARTY TRANSACTIONS

Among the financial policies that Phillips was charged with operating in accordance with is [REDACTED]. CSOMF ¶ 24. The policy was in effect until the end of Phillips's tenure and remains in place. Among other things,

that policy requires officers to [REDACTED]

[REDACTED] CSOMF ¶ 24. [REDACTED]

[REDACTED] CSOMF ¶ 24. Furthermore, [REDACTED]

[REDACTED] *Id.* The procurement policy also governs the approval authority for contracts that meet certain monetary thresholds. As relevant here, the policy requires that

[REDACTED]

[REDACTED]

[REDACTED]

CSOMF ¶ 25. Additionally, a 2012 NRA policy implementing the procurement policy requires that all contracts worth in excess of \$100,000 in a twelve-month period have a business case analysis prepared prior to execution. CSOMF ¶ 25.

The NRA represented in its IRS 990 for 2014 and 2015, which Phillips signed under penalty of perjury, and certified as accurate in the CHAR500 the NRA filed with the New York Attorney General, that the NRA had a written conflict of interest policy, its officers, directors and

key employees were required to disclose annually conflicts and the organization regularly and consistently monitored compliance with the policy. CSOMF ¶ 29. Both filings that Phillips signed claimed that the NRA “takes conflicts of interest very seriously and utilizes a statement of corporate ethics. To monitor and enforce corporate filings, annual filings must be provided to the Office of the Secretary and General Counsel”. *Id.*

In 2016, [REDACTED]

[REDACTED] CSOMF ¶ 28. [REDACTED]

[REDACTED] *Id.* [REDACTED]

[REDACTED] *Id.*

Additionally, the NRA Employee Handbook had, for at least the period from 2004 to the present, a Statement of Corporate Ethics applicable to all employees. CSOMF ¶ 26. It directs, in relevant part, that NRA

employees shall not become involved in any activity which might influence, be reasonably expected to influence, or give the appearance of influencing their objective business judgment in dealing with others. Employees shall not become involved in conflict of interest situations Each officer . . . shall have responsibility . . . to report all known (or suspected) violations of said policies to the [EVP] of the Association, the Treasurer of the Association, and to other persons whom they designate. Where a question arises whether a particular anticipated course of business conduct is ethical or legal, the individual contemplating the action or directed to perform the action shall seek advice from the Office of the General Counsel of the Association.

Id. (together with the Conflict of Interest and Related Party Transaction Policy, the “Conflicts Policies”).

II. PHILLIPS'S EMPLOYEE COMPENSATION AND POST-EMPLOYMENT CONSULTING AGREEMENT

Prior to Phillips's retirement in 2018, he entered into an Independent Consulting Agreement with the NRA, with an effective date of December 31, 2018 (the "Consulting Agreement"), that provided for payments to Phillips of \$360,000 per year. CSOMF ¶ 8. [REDACTED]

[REDACTED] CSOMF ¶ 6. [REDACTED]

[REDACTED] CSOMF ¶¶ 10, 25.

The Consulting Agreement had an initial four-year term, but also provided for automatic renewal for an additional four-year term, unless Phillips died, became incapacitated for a continuous period of 90 days, or otherwise chose to terminate the agreement. CSOMF ¶ 8. Under the terms of the Consulting Agreement, Phillips was to be paid \$30,000 per month, CSOMF ¶ 8, and was to "provide advisory services" and to "coordinate with NRA's Executive Vice President, Treasurer and CFO and Executive Director, Office of Advancement to build and maintain relationships with major gifts donors, identify and cultivate relationships with fundraising partners and identify prospective high net worth individuals to solicit for major gifts." CSOMF ¶ 9. The Consulting Agreement did not contain any deliverables. *Id.*

Contrary to Phillips's assertion that he performed his obligations under the Consulting Agreement, [REDACTED]

[REDACTED] CSOMF ¶ 11. Indeed, the individuals at the NRA responsible

under the Consulting Agreement for coordinating Phillips's post-employment consulting

activities—namely EVP Wayne LaPierre, Executive Director of Advancement Tyler Schropp, and Treasurer and CFO Craig Spray—each testified that [REDACTED]

[REDACTED]. CSOMF ¶¶ 9, 11.

In addition to being paid \$150,000 for approximately five months under the terms of the Consulting Agreement, [REDACTED]

[REDACTED] CSOMF ¶ 12.

Under the NRA's bylaws, [REDACTED]

[REDACTED]. CSOMF ¶ 30. [REDACTED]

[REDACTED].
CSOMF ¶¶ 32-33.

The NRA was required to disclose payments to officers in its IRS Form 990, Schedule J, and to represent the basis for the payment in Schedule J, Part I, Line 3. CSOMF ¶ 35. The NRA's 2018 and 2019 IRS 990s do not disclose the consulting arrangement with Phillips at all, or that it was made without complying with the NRA policies. In addition, Schedule L, Part IV of the 2018 and 2019 IRS Forms 990, concerning transactions with interested persons, do not disclose the consulting agreement made with Phillips in 2018. *Id.*

III. THE HOMETELOS CONTRACT

In September 2014, the NRA contracted with HomeTelos L.P. for software development services. CSOMF ¶ 13. The contract provided for over \$1,000,000 in payments from the NRA to HomeTelos over fourteen months. CSOMF ¶¶ 18, 38. Phillips participated in negotiating the

contract (CSOMF ¶ 16), [REDACTED] (*id.*), was the “responsible officer” for the contract (*id.*), was responsible for the financial and business review of the contract for both the Treasurer’s Office and the Financial Services Division (*id.*), was responsible for receiving notices and communications under the terms of the contract (*id.*), and signed the contract on behalf of the NRA. *Id.* ¶ 21

Throughout the process of negotiating, reviewing, approving, and executing the contract, and in violation of the Financial Policies and Conflicts Policies he was charged with overseeing and abiding by, Phillips failed to disclose his “longstanding personal relationship” with the “chairman and founder” of HomeTelos, Nancy Richards. CSOMF ¶ 18, 23-28. Phillips acknowledges that he had a romantic relationship with Ms. Richards but asserts that his romantic relationship with Ms. Richards ended in 2010, with a personal friendship continuing afterwards. CSOMF ¶ 15. Phillips does not dispute that he had a personal relationship with Ms. Richards at the time the HomeTelos Contract was signed, but does dispute whether it was still a romantic relationship at that point. However, Ms. Richards was known among at least some NRA directors and employees as Phillips’s “girlfriend” or “significant other” during the term of the HomeTelos Contract and until his retirement in 2018. CSOMF ¶ 15. His relationship with Ms. Richards triggered his obligation to disclose the relationship in accordance with the NRA’s policies. CSOMF ¶¶ 15, 17.

On the eve of his retirement in September 2018, Phillips finally disclosed his relationship with Ms. Richards to the Audit Committee, and revealed that the NRA paid Ms. Richards’s company approximately \$1,360,000 on the contract between September 2014 and May 2017. CSOMF ¶ 18. The same month, the Audit Committee retroactively ratified the NRA’s transaction

with HomeTelos.¹ *Id.* Under the NRA’s own policies, Phillips was obligated to disclose his conflict to the Audit Committee: Charles Cotton, current NRA President and longtime Audit Committee member and occasional chair, stated in sworn testimony [REDACTED]

[REDACTED]

[REDACTED]

CSOMF ¶ 17. He understood [REDACTED].” CSOMF ¶ 15.

ARGUMENT

I. LEGAL STANDARD

“On a motion for summary judgment, the moving party must ‘make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.’ *Trustees of Columbia University in City of New York v. D’Agostino Supermarkets, Inc.*, 36 N.Y.3d 69, 73-74 (2020) (quoting *Xiang Fu He v. Troon Management, Inc.*, 34 N.Y.3d 167, 175 (2019); *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986)). “Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers.” *People ex rel. Spitzer v. Grasso*, 50 A.D.3d 535, 545 (1st Dep’t 2008); *see also Spitzer v. Schussel*, 17 Misc. 3d 1120(A), 851 N.Y.S.2d 74 (Sup. Ct. N.Y. Cnty. 2007) (“In order to achieve summary judgment in their favor defendants are obligated to affirmatively prove their own freedom from liability, as a matter of law.”).

Even where the movant proffers sufficient evidence to make such a showing, the nonmoving party may defeat summary judgment by establishing “the existence of material issues

¹ At the same Audit Committee meeting, the Audit Committee also purportedly ratified a yacht trip that Phillips took on a yacht owned by David McKenzie, the principal of several large NRA vendors. NYSCEF 646 at ¶¶ 241-43. Ms. Richards joined Phillips on that trip. CSOMF ¶ 15.

of fact which require a trial of the action.” *D’Agostino Supermarkets*, 36 N.Y.3d at 74 (citing *Vega v. Restani Const. Corp.*, 18 N.Y.3d 499, 503 (2012)). In deciding a motion for summary judgment, the “facts must be viewed ‘in the light most favorable to the non-moving party.’” *Vega*, 18 N.Y.3d at 503 (quoting *Ortiz v. Varsity Holdings, LLC*, 18 N.Y.3d 335, 339 (2011)). And “[i]t is a well settled rule that summary judgment should not be granted where there is any doubt as to the existence of a triable issue, or where the existence of an issue is arguable.” *American Home Assur. Co. v. Amerford Intern. Corp.*, 200 A.D.2d 472, 473 (1st Dep’t 1994) (citations omitted); *see also Friends of Thayer Lake LLC v. Brown*, 27 N.Y.3d 1039, 1043 (2016) (citing *Kriz v. Schum*, 75 N.Y.2d 25, 33–34 (1989)) (“Summary judgment is inappropriate in any case where there are material issues of fact in dispute or where more than one conclusion may be drawn from the established facts.”).

II. THERE ARE, AT A MINIMUM, ISSUES OF FACT AS TO WHETHER THE CONSULTING AGREEMENT WAS A RELATED PARTY TRANSACTION THAT MANDATE DENIAL OF PHILLIPS’S MOTION FOR SUMMARY JUDGMENT SEEKING DISMISSAL OF THE TWELFTH CAUSE OF ACTION

In the Twelfth Cause of Action, Plaintiff alleges that Phillips engaged in a wrongful related party transaction under both the N-PCL and EPTL by entering into the Consulting Agreement. NYSCEF 646 at ¶¶ 686-89. Phillips’s argument that the Consulting Agreement is not a related party transaction fails as a matter of fact and law. A “related party transaction” is defined in the N-PCL as “any transaction, agreement or any other arrangement in which a related party [which includes officers] has a financial interest and in which the corporation or any affiliate of the corporation is a participant,” with certain exceptions not relevant here. N-PCL § 102(a)(23)

and (24). The N-PCL prohibits an organization from entering into a related party transaction

unless the transaction is determined by the board, or an authorized committee thereof, to be fair, reasonable and in the corporation’s best interest at the time of

such determination. Any director, officer, or key person who has an interest in a related party transaction shall disclose in good faith to the board, or an authorized committee thereof, the material facts concerning such interest.

N-PCL § 715(a). The EPTL similarly forbids related party transactions absent appropriate approval and obligates the conflicted party to disclose their conflict to the appropriate trustees. EPTL § 8-1.9(a)(6), (a)(8), and (c)(1).

The only basis Phillips offers for challenging the Consulting Agreement as a related party transaction is a stretched misinterpretation of guidance by the OAG Charities Bureau concerning conflicts of interest. That guidance provides that “[t]ransactions related to compensation of employees, officers or directors . . . are not considered related party transactions.” Office of the New York State Attorney General Charities Bureau, Charities Symposium: Doing Well While Doing Good, *Conflicts of Interest Policies under the Not-For-Profit Corporation Law* at 7, PDF pg. 43 (Sept. 2018), available at <https://www.charitiesnys.com/pdfs/sympguidance.pdf>. That guidance is intended to avoid turning employee or officer compensation into a prohibited related party transaction. But the Consulting Agreement is not related to Phillips’s compensation *as an employee or officer of the NRA*—instead, the agreement by its very terms compensated Phillips as an *independent contractor* of the NRA after his retirement. CSOMF ¶ 9.

Agreements like the Consulting Agreement, which present the heightened risk of turning into the type of no-show or low-show consulting work that occurred here, are not subject to the reported compensation review process as described in Questions 15 a, b, c, and Schedule O of the IRS 990, and are not exempt from the statutory requirements applicable to related party transactions: The process for review and approval of related party transactions set forth in both the N-PCL and EPTL, and the reporting requirements on Schedule L of the IRS 990, are designed specifically to mitigate the risk of insiders engaging in non-arms-length negotiations that are not

in the best interests of the organization, since “[t]ransactions that directly or indirectly benefit officers, directors or key employees may create opportunities for self-dealing and abuse.”² Leadership Committee for Nonprofit Revitalization, *Report to Attorney General Eric T. Schneiderman*, 26 (Feb. 16, 2012), attached as Exhibit A.³ And this Court previously denied a motion to dismiss two other causes of action in the complaint premised on a related party transaction stemming from a post-employment agreement that Defendant LaPierre entered into with the NRA. *People by James v. National Rifle Association of America, Inc.*, 74 Misc.3d 998, 1027 (Sup. Ct. N.Y. Cnty. 2022), NYSCEF 609.⁴

Even if the Consulting Agreement were not a related party transaction—which it is—it would still violate N-PCL § 715, because officer compensation agreements must be approved in accordance with the NRA’s bylaws, which the Consulting Agreement was not. NPCL § 715(e); CSOMF ¶ 30–31, 33. The NRA bylaws require the Treasurer’s compensation to be set by an Officers Compensation Committee, which must make a recommendation on officer compensation

² As discussed below, NRA policy also required that the Consulting Agreement be disclosed to, reviewed by and approved by the Audit Committee, which was not done, and which constitutes a breach of Phillips’s fiduciary duties.

³ The report led to the Nonprofit Revitalization Act of 2013. *See* New York State Office of the Attorney General Charities Bureau, *The Nonprofit Revitalization Act’s New Annual Filing Requirements*, available at https://www.charitiesnys.com/nonprofit_rev_act.html (last accessed March 6, 2023).

⁴ The Consulting Agreement is just one of a number of no- or low-show agreements with NRA board members or former employees that Plaintiff alleges Phillips facilitated on the NRA’s behalf—numerous such examples are found in the Second Amended Complaint. *See, e.g.*, NYSCEF 646 at ¶¶ 354–411.

for the coming year to be adopted by the full Board at its annual fall meeting in the current year.

Id. There is no evidence that the Consulting Agreement went through that process.⁵

For these reasons, Phillips's motion for summary judgment on the Twelfth Cause of Action should be denied.

III. ISSUES OF FACT REMAIN CONCERNING PHILLIPS'S BREACHES OF HIS FIDUCIARY DUTY STEMMING FROM BOTH HIS CONSULTING AGREEMENT AND HIS ROLE WITH RESPECT TO THE NRA'S PAYMENTS TO HOMETELOS

In Plaintiff's Fourth and Eighth Cause of Action, Plaintiff alleges that Phillips breached the fiduciary duties he owed to the NRA as an officer and *ex officio* director of the NRA under the N-PCL, and as a trustee of the NRA under EPTL § 8-1.4. NYSCEF 646 at ¶¶ 654-57, 670-73. There is ample evidence that, at a minimum, raises issues of fact that Phillips breached the fiduciary duties he owed to the NRA by entering into the Consulting Agreement, and by causing the NRA to enter the HomeTelos Contract.

"The fiduciary duties of care, loyalty and obedience are the legal standards that govern the conduct of not-for-profit boards and individual directors in their day-to-day relationship to the organizations they serve." *Consumers Union of U.S., Inc. v. State*, 5 N.Y.3d 327, 370 (2005). To comply with their fiduciary duty of care under N-PCL § 717(a), not-for-profit directors, officers, and key persons must "discharge the duties of their respective positions in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances." N-PCL § 717(a); *see also Martha Graham School & Dance Foundation, Inc. v. Martha Graham*

⁵ The NRA represents in its regulatory filings that it has policies in place for determining compensation, including a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision. CSOMF ¶ 31. Despite this, there is no documentation or evidence of the same concerning Phillips's Consulting Agreement.

Center of Contemporary Dance, Inc., 224 F. Supp. 2d 567, 608 (S.D.N.Y. 2002), *aff'd in part, vacated in part*, 380 F.3d 624 (2d Cir. 2004) (citations omitted) (“It is firmly established that the directors of a corporation have the fiduciary obligation to act on behalf of the corporation in good faith and with reasonable care so as to protect and advance its interests.”),. Directors and officers also ““owe the corporation their undivided and unqualified loyalty,”” and accordingly “should not be permitted to ‘profit personally at the expense of the corporation, nor must they allow their private interests to conflict with corporate interests.’” *Higgins v. New York Stock Exchange, Inc.*, 10 Misc. 3d 257, 278, 806 N.Y.S.2d 339, 357 (Sup. Ct. N.Y. Cnty. 2005) (quoting *Foley v. D’Agostino*, 21 A.D.2d 60, 66–67 (1st Dep’t.1964)); *see also S.H. & Helen R. Scheuer Family Foundation, Inc., By & Through Scheuer v. 61 Associates*, 582 N.Y.S.2d 662, 665 (1st Dep’t 1992) (citations omitted) (“[I]t is well established that, as fiduciaries, board members bear a duty of loyalty to the corporation and may not profit improperly at the expense of their corporation.”). Furthermore, officers of not-for-profits have a fiduciary duty to follow all laws binding the organization, and to abide by the policies and procedures of the organization. *People v. National Rifle Association of America, Inc.*, 165 N.Y.S.3d 234, 253-54 (Sup. Ct. N.Y. Cnty. 2022) (denying motions to dismiss claims for breaches of fiduciary duty premised on, among other things, failure to follow and supervise implementation of the NRA’s policies and procedures); 1 New York Nonprofit Law and Practice § 6.04[2], available at <https://plus.lexis.com/api/permalink/59e3b55c-77d0-4826-b34e-c794b9a5a5bb/?context=1530671>.⁶

⁶ In its annual regulatory filings, including in the years when the HomeTelos contract was executed and active, in 2014, 2015 and 2016, the NRA represented that it had a conflict of interest policy with which it complied. CSOMF ¶ 29. Phillips signed those filings and represented them as

A. Phillips Breached His Fiduciary Duties by Entering Into the Consulting Agreement

As Treasurer and CFO of the NRA, Phillips was charged with following and ensuring compliance with the NRA's financial policies and procedures, including the policies governing conflicts of interest and the approval of large contracts. CSOMF ¶¶ 23-28. Phillips failed to do so in numerous ways with respect to the Consulting Agreement, and thus failed to adequately administer the NRA's assets and carry out his duties to the NRA in good faith and with due care.

First, as either a related party transaction or a conflict of interest transaction, the Consulting Agreement should have been, but was not, presented to the full Audit Committee for its review and approval in advance. *Id.* Since the Consulting Agreement was a related party transaction, Phillips had a statutory duty to inform the Audit Committee about the transaction due to his conflict, but failed to do so. N-PCL § 715(a); EPTL § 8-1.9(c). He likewise had a duty to inform the Audit Committee of the transaction, even if the Consulting Agreement was only a conflict of interest transaction rather than a related party transaction. *Id.*

Second, Phillips did not ensure that the Consulting Agreement met all of the requirements for large contracts set forth in the Financial Policies. As a contract worth in excess of \$100,000 in a given year, the Consulting Agreement should have had (1) a business case analysis, (2) legal

accurate to the best of his knowledge in those years. Phillips knew that the NRA had entered into the contract with HomeTelos and that conflict of interest was not disclosed so those representations were false at the time of the contract. In relevant years including 2018, the NRA represented in its IRS Form 990 that it had policies to set executive compensation and that it followed such policies. CSOMF ¶ 31. In regard to the Consulting Contract, whether conceived of—for the sake of argument—as part of Phillips's employee compensation or a related party transaction, Phillips knew that the agreement had been executed without disclosure to or approval by the Officers Compensation Committee, the Audit Committee or the full Board, in violation of NRA's policies and New York State law. The Consulting Agreement was not disclosed on the NRA's regulatory filings in any respect as required.

review, and (3) the Executive Vice President's sign-off prior to execution. *Id.* ¶ 25. It had none of these, as Phillips should have known given his role in the ordinary course of the NRA's business to ensure that contracts followed the NRA's policies and procedures. *Id.* ¶ 3, 10; *see National Rifle Association*, 165 N.Y.S.3d at 253-54.

Finally, Phillips failed to put the interests of the NRA ahead of his own when he entered into a lucrative consulting contract under which he was required to do, and in fact did, little to no work—the Consulting Agreement itself contained no actual deliverables other than the provision of vague “advisory services,” and every NRA executive tasked with “consulting” with him testified that they had no recollection of Phillips doing any consulting work on their behalf. CSOMF ¶ 8-9, 11.

Material issues of fact remain as to whether Phillips breached the fiduciary duties he owed to the NRA in connection with the Consulting Agreement, and his motion for partial summary judgment on this issue should be denied.

B. Phillips Breached his Fiduciary Duties by Causing the NRA to Enter Into the HomeTelos Contract

Phillips also seeks partial summary judgment with respect to the HomeTelos contract, but material issues of fact preclude summary judgment. Phillips failed to disclose his relationship with Ms. Richards and obtain approval of the contract in advance as required by the NRA's policies and procedures. Under New York law, Phillips owed his undivided loyalty to the NRA during his time as its Treasurer and CFO. *Consumers Union*, 5 N.Y.3d at 370 (2005). And the NRA's policies required Phillips [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. CSOMF ¶ 24; *see National Rifle Association*, 165 N.Y.S.3d at

253-54.⁷

First, numerous witnesses have testified that Phillips's personal relationship with Ms. Richards carried on into at least 2018, contradicting Phillips's testimony that his romantic relationship with Ms. Richards ended in 2010 and, at a minimum, raising an issue of fact as to when the romantic relationship ended. CSOMF ¶ 15. When questioned about his relationship with Ms. Richards during the NRA's bankruptcy proceedings, Phillips invoked his right against self-incrimination under the Fifth Amendment. *Id.*

Second, regardless of whether or not Phillips and Ms. Richards were romantically linked at the time, he was obligated to report his relationship with her to the Audit Committee, as the relationship created, at the very least, the appearance of a conflict that was required to be fully vetted by the Audit Committee. As the record reflects, however he describes it, Phillips and Richards had such a close, ongoing relationship that others within the NRA, including Charles Cotton, then chair of the Audit Committee, [REDACTED] *Id.* But he did not timely disclose the relationship for the full Audit Committee's consideration. *Id.* ¶ 40. Furthermore, the NRA did not just enter into a contract with a vendor linked to someone close to Phillips—Phillips had a central role in the transaction. He participated in negotiating that contract, was the "responsible officer" for the contract, performed the financial review of the contract, was the NRA point of contact on the contract, and signed the contract. *Id.* ¶ 16.

And there is no competent evidence that HomeTelos, a real estate technology company (CSOMF ¶ 36), was competent or best positioned to perform the work it was assigned or to explain

⁷ The HomeTelos Contract is not the only contract with friends and relations of NRA insiders that Plaintiff alleges Phillips helped to facilitate over his years as Treasurer and CFO. *See, e.g.*, NYSCEF 646 at ¶¶ 354-411.

why the request for proposal process required by NRA policy was not followed. Phillips erroneously relies on the Audit Committee resolution issued in September 2018, years after the HomeTelos Contract was executed and more than \$1 million was paid, for the proposition that the transaction was fair, reasonable, and in the NRA's best interests. However, Phillips has not laid a foundation for the admissibility of the report. *See LaGrega v. Farrell Lines, Inc.*, 156 A.D.2d 205, 205 (1st Dep't 1989) ("The moving party must sufficiently demonstrate entitlement to judgment, as a matter of law, by tender of evidentiary proof in admissible form."). The report relies on statements allegedly made by an unnamed "counsel" and then transmitted to the Audit Committee (double hearsay), which statements purport to transmit statements allegedly made by the NRA's then-Managing Director of Information Services Tony Hayes (triple hearsay). Moreover, even if the report is considered, it demonstrates on its face that the Audit Committee's consideration was lacking. As noted, there is no evidence in the report that the Audit Committee even reviewed the contract at issue. Nor does it appear to have considered alternative transactions.

For these reasons, material issues of fact remain as to whether Phillips breached his fiduciary duties by causing the NRA to enter into the HomeTelos Contract.

CONCLUSION

Plaintiff respectfully requests that the Court issue an order denying Defendant Wilson Phillips's motion for partial summary judgment in its entirety and granting such other and further relief as the Court deems just and appropriate.

Dated: March 6, 2023
New York, New York

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Attorney Certification Pursuant to Commercial Division Rule 17

I, Stephen Thompson, an attorney duly admitted to practice law before the courts of the State of New York, certify that the foregoing Memorandum of Law contains 5,725 words, excluding the parts exempted by Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)). In preparing this certification, I have relied on the word count of the word-processing system used to prepare this memorandum of law.

Dated: March 6, 2023
New York, New York

/s/ Stephen Thompson
Stephen Thompson