

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

-----X
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.
-----X

Index No. 451625/2020

IAS Part 3

Hon. Joel M. Cohen

Motion Seq. No. 056

AFFIDAVIT OF JAMES F. REDA

JAMES F. REDA, being duly sworn, deposes and says:

1. I am the National Managing Director of the Human Resources & Compensation Consulting and the service line leader for the executive compensation consulting practice for Gallagher, a global consulting firm. I have been engaged by Defendant John Frazer in this action to give my expert opinion regarding the total compensation he received as Corporate Secretary and General Counsel of the National Rifle Association ("NRA") for the period 2015-2020. On September 16, 2022, I submitted the Expert Report of James F. Reda (the "Report"). See NYSCEF Doc. No. 1667. I submit this affidavit in opposition to the New York Attorney General's Motion to Exclude Defense Expert Opinions of Nadel, Graham, Reda, and Cunningham (the "Motion to Exclude") (NYSCEF Doc. No. 1663-79).

2. My Report demonstrated that the NRA's Officers Compensation Committee ("OCC") was provided with appropriate market analyses of Frazer's compensation,

and that they correctly found his pay components to be within the reasonable market range, with room for increases.

3. I have read the Motion to Exclude which states, among other things, that the evaluation by the OCC did not factor excess benefits received (none are alleged with respect to Frazer) nor Frazer's individual performance. In particular, the Motion to Exclude stated:

"Plaintiff does not contend that NRA executive's reported compensation is outside the median range of pay for executives in comparable positions at nonprofits of comparable size. *Untethered from executive performance* and not including any analysis of the unreported and substantial excess benefits received by several of the Individual Defendants, their opinions unnecessary [sic], not helpful to the trier of fact, and likely to be confusing to the jury."

NYSCEF Doc. No. 1677 at 6 (emphasis added).

4. The Motion to Exclude further states:

"Whether the NRA executives' reported compensation, *without reference to their performance* and their receipt of excess benefits, private travel, housing allowances, travel allowances, luxury meals, etc., was reasonable is simply not at issue."

Id. at 7 (emphasis added).

5. These comments are misleading. A compensation committee is not required to account for an executive's individual performance when setting his or her compensation.

6. The primary basis for setting compensation is a review of reasonable market compensation data by way of survey sources or peer data, typically provided by an objective third party (consultant). Most organizations follow a market compensation policy where they pay the going rate for a particular job, within a particular market based on research and salary studies. This was the case at the NRA.

7. Thus, the reasonableness of compensation is determined by benchmark data, not individual performance. While compensation committees do have discretion to consider individual performance, it is merely to determine where, within a range around the market median determined by benchmark data, to set an executive's compensation.

8. Further, New York's Non-Profit Revitalization Act of 2013 did not impose any legal or other requirements specifying that an executive's individual job performance must be factored in determining his or her compensation.

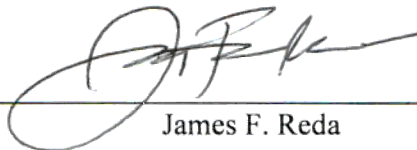
9. In sum, an executive's individual performance is a factor that can be considered (but need not be) when determining where, within the median market range, to set the compensation. Any failure to consider an executive's individual performance would have no effect on whether his or her compensation was reasonable.

10. Lastly, the Attorney General's Complaint references guidance put out by the Internal Revenue Service which sets for a three-prong test which establishes a rebuttable presumption that compensation is reasonable. *See* NYSCEF Doc. No. 646, ¶ 414. The three prongs are: (i) the compensation arrangement must be approved in advance by an authorized body of the applicable tax-exempt organization, which is composed of individuals who do not have a conflict of interest concerning the transaction; (ii) prior to making its determination, the authorized body obtained and relied upon appropriate data as to comparability; and (iii) the authorized body adequately and timely documented the basis for its determination concurrently with making that determination.


11. It bears emphasizing that a Board is not required to set compensation using the three-prong process. Compensation can be (and often is) reasonable even where those prongs

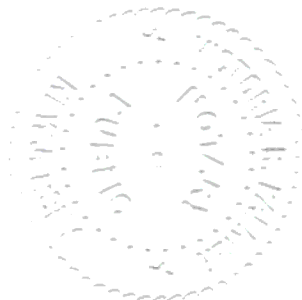
are not satisfied. The IRS guidance merely establishes a rebuttable presumption of the reasonableness of compensation where the prongs are each satisfied.

Dated: New York, New York
May 5, 2023


James F. Reda

Sworn to before me this
5th day of May, 2023


NOTARY PUBLIC



VICTORIA R. PALMER
NOTARY PUBLIC
State of New Jersey
My Commission Expires
September 3, 2026