NONPROFITS: GOVERNANCE

Daring Charity Regulators to Notice You

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Sadly, you don't have to look very hard to find examples of illegal, improper, and unethical behavior in the nonprofit sector. There's no need to create outrageous hypotheticals as instructional aids or "don't do this" tutorials.

There are more than enough true stories of wrongdoing so brazen and obvious that they can fairly be described as daring charity regulators to come after the perpetrators. And government offices like the Charitable Trusts section of the California Attorney General's office are filled to the brim with them.

Earlier Examples

In blog posts of years past, we've selected a few cases tohighlight. A truly tasty tale was *A Recipe for How to Get Noticed by the California Attorney General* (May 1, 2015). The malefactors in Northern California responsible for this foul feast eventually got their just desserts.

And *A Third Way to Get Noticed by the CA Attorney General* (June 20, 2017), illustrates the truth that "[i]t's never a good thing to get noticed by an attorney general from anywhere, like it's never a good thing if a 60 Minutes reporter shoves a microphone in your face." There, a supposed support group for wounded warriors in Central California was a hoax, a front to generate revenue to pay the extravagant personal expenses of one extended family.

"Typically," we explained there, charity regulators "… have no sense of humor about charity fraud, particularly when the cunning fraudster and family and friends pretend to be simple bumpkins who don't know any better." The family patriarch claimed that he "… never intended to break any law, and never used a CPA, or any attorney….This has just been a family winging it, the way it should be." His

lame lame mea culpa didn't fly at all.

In both of these cases, the egregious wrongdoing, almost daring authorities to "come get us," was a costly error.

A new lawsuit in Southern California filed by the California Attorney General's office in late December 2022 is another good example of this "in-your-face" behavior that will likely turn out badly for the perpetrators. See *People of the State of California v. California Equine Retirement Foundation, et al*, Superior Court of Riverside County, Case No. CVR 2205326.

Laundry List of Violations

The California Equine Retirement Foundation (CERF), a "charity once focused on the care of retired race and performance horses," was steered away from any legitimate activities and operations by its executive director, Carrie Ard.

She is alleged to have committed "… multiple violations of state charity laws stemming from longstanding mismanagement of the now-defunct organization and self-dealing …." See Civil Complaint as well as *Attorney General Bonta Announces Lawsuit Against California Equine Retirement Foundation for Mismanagement and Self-Dealing* (December 20, 2022), Press Release, California Attorney General's Office.

The civil complaint includes five causes of action describing a laundry list of wrongdoing:

- Involuntary Dissolution: The executive director "knowingly and persistently mismanaged CERF, causing the revocation of its tax-exempt status and charity registration"
- Breach of Charitable Trust: She "continuously used CERF assets" including certain real property in San Jacinto "for her own benefit and attempted to sell" the property "for over $2.7 million after the organization's charitable status was revoked without notifying the Attorney General"
- Breach of Fiduciary Duty: She "had a fiduciary duty to act in good faith and in CERF's and its donors' best interest in her position as Executive Director of the charity"
- Unjust Enrichment: She "used CERF assets for her own benefit, including living rent-free on the San Jacinto property" and
- Unlawful Solicitation: CERF and its executive director "unlawfully solicited donations while CERF was not in good standing with the Registry of Charitable Trusts and the IRS."

The government, in its usual well-written and easy to read Complaint, describes the details prompting resort to the courts. It also asks for a wide-ranging bundle of relief, seeking a full accounting and damages as well as civil penalties under the California Supervision of Trustees and Fundraisers for Charitable Purposes Act (Gov. Code sections 12580 et seq.)

The government also demands punitive damages, attorney's fees and actual costs, as well as a permanent injunction forbidding Carrie Ard from ever again breathing in the direction of this organization or any other California nonprofit public benefit corporation.

Conclusion

We'll follow developments in this interesting California action as well as in other tantalizing recent litigation by attorneys general around the United States.

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