

Financial Irregularities Discovered? Contact Authorities

10.28.16 | Linda J. Rosenthal, JD



In “[Charities and Embezzlement](#),” we relayed the direct and unequivocal advice from the California Attorney General for a charity that learns about possible embezzlement:

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Upon learning that an employee has embezzled funds from the charity, the directors have a legal duty to take reasonable steps to try to recover the funds and to refer the matter to the local District Attorney for possible criminal prosecution. The directors may have to hire a private attorney to file a civil suit for restitution against the employee. Directors must evaluate whether the prospect of recovery outweighs the probable costs of suit.

Any loss to the charity “should be reported on the [Form RRF-1](#),” the Annual Registration Renewal Fee Report” that includes 9 questions including No 2: “During this reporting period, was there any theft, embezzlement, diversion or misuse of the organization’s charitable property or funds?”

There’s a clear takeaway from this official advice: When anyone connected with a charity knows or suspects financial irregularities or illegalities, call in the authorities immediately, and then set about plugging up the problem and disclosing it to the public.

For two California charities recently confronting this distressing situation, that's exactly what they did.

Fresno Grand Opera

"When taking the helm of a nonprofit or major program, seasoned nonprofit professionals expect to uncover a few interesting "things that go bump in the night," writes Carrie Collins-Fadell in *The Nonprofit Quarterly* in June 2016. The "obstacles that bubble to the surface after a change in leadership" may include nuisances like "[a]n entrenched staff, some difficult volunteers, or a stale signature fundraiser..."

But Matthew Buckman, the new general director of the Fresno Grand Opera faced an entirely more serious challenge when he took over leadership of the 17-year-old company. "An internal review, completed following [the] change in executive leadership in December 2014 and board leadership in June 2015, uncovered potential issues that required further examination."

Assisted by a prominent tax attorney and a C.P.A., Buckman and the board conducted a more in-depth investigation. It revealed questionable practices implicating the former general director and assistant director of the Opera "in financial irregularities, conflicts of interest and improper corporate governance." More specifically, these allegations of wrongdoing include: falsification of tax forms; using improper accounting methods to misrepresent the Opera's true financial condition; fabricating false board minutes years after the actual meeting dates; and failing to disclose a conflict of interest with a for-profit company owned by these key employees.

What happened next is an example of choosing the right course of action under these circumstances. On May 16, 2016, the new team and the professional advisors "delivered a ream of documents, a scathing internal report covering 2009-14 and a list of allegations to the state attorney general's office. They also included a list of specific corrective actions they will take, including amending and refiling Form 990s for several years.

The Fresno Grand Opera also issued a press release on its website on June 16, 2016:

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The Fresno Grand Opera Board of Directors announces the Company has self-reported to the California Attorney General significant financial and accounting irregularities and governance and conflict of interest deficiencies from the period 2010-2014. The Company is working closely with the Attorney General's office to correct the issues, and has implemented proper governance and financial reporting practices to ensure future compliance with best legal and financial practices.

The written statement continues with an explanation of the rationale for the public disclosure:

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As a community organization that relies on the generosity of patrons and donors, the FGO Board of Directors feels obligated to publicly disclose the issues we’ve discovered and the corrective actions we’re taking with the Attorney General’s office. We are working actively with them to address their concerns, and look forward to moving on to the important work of securing our company’s place in the community.

This report and supporting documents are available to the general public and can be read, by appointment, at the Fresno Grand Opera office. “At every pivotal opportunity,” according to the author of The Nonprofit Quarterly article, “the Fresno Grand Opera took relatively quick action.”

The investigation continues as the Opera company works with the Attorney General’s office to take corrective action and change corporate governance practices. The Board is undecided at this point about whether to pursue civil remedies; AG officials want to be informed if that course of action is chosen.

Of course, not all of the problems have been solved; the “company is still in debt.” Nor has all the damage (with donors and others) been fully repaired. Nevertheless, “[t]his case “serves as a pretty good model for responsible board behavior in the face of apparent lapses.”

Simi Valley Community Foundation

On July 11, 2016, the Simi Valley Community Foundation released a statement:

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The Simi Valley Community Foundation has existed for more than 12 years and helped dozens of charitable organizations in our community. Recently, however, we discovered what we believe could be evidence of financial malfeasance. At the first hint that something was amiss, our Governance Committee engaged a forensic accountant to review our donations, expenses and administration of a [... particular grant program...]...After the review by the forensic accountant showed what we believe to be improprieties in spending, we turned over the evidence to the Simi Valley Police Department. The Simi Valley Police Department subsequently turned the information over to the Ventura County District Attorney’s office. We are cooperating fully with the District Attorney’s office in its investigation.

The Ventura County district attorney’s office has confirmed it is investigating the matter – which it characterized as a “possible embezzlement” and that the probe will take several months. No other details will be released until the investigation is concluded.

“This is the first time anybody has found anything that looks amiss,” said SVCF spokesperson Tim Gallagher. “When they thought they had something funky, they went right to the police.” In its statement, the SVCF board added that they are “fully cooperating with the District Attorney’s office” in its investigation:

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We enjoy a special trust from the citizens in Simi Valley and many corporate and individual donors who have trusted us with their money. We want to assure them that we are doing everything we can to address the situation and ensure that we are good stewards of their money.

According to news reports, it was first in March 2016 that foundation officials “discovered what [they] believe could be “evidence of financial malfeasance.”

The SVCF board chair, Jarrod DeGonia explained that the “foundation delayed announcing possible financial malfeasance for about five weeks after the case was turned over to prosecutors in part because [they] weren’t sure how going to the public would impact the investigation.”

The disclosure decision came because “... more and more people were being contacted by the district’s attorney’s office, plus [they] needed to notify [their] partners.” They also wanted to be sure

that the DA's office "was comfortable with" them "going public."

This disclosure decision was also influenced in part by another case in the region. There were suspicions of embezzlement of some \$26,000 in funds from the Camarillo Fiesta Association by that group's former president. The association decided not to refer the matter to the prosecutor for criminal action because of concerns that their ability to obtain restitution of the funds would be impeded. This course of action resulted in criticism by the District Attorney "and others" who went ahead and arrested and charged the man, anyway, with grand theft. "The victim of a crime does not have the legal authority to immunize the perpetrator from criminal prosecution," said the District Attorney in a news release.

Simi Valley Community Foundation's board chair added: "We probably would have gone to the DA anyway, however, it is absolutely a fair statement that we definitely learned the lessons of the Camarillo Fiesta Association." It "definitely had an input into what we decided to do."

Conclusion

These examples demonstrate the importance of getting out ahead of financial wrongdoing scandals: Disclose reasonable suspicions to authorities, avoid any semblance of a cover-up, make plans to put in place corrective safeguards, and let the public know that you are on top of the situation.