NONPROFITS: GOVERNANCE

Tainted Charity Trustees: The Dilemma

01.14.20 | Linda J. Rosenthal, JD

In October 2019, just days before the official reopening celebration for Manhattan's Museum of Modern Art (MOMA), protestors gathered near the entrance. The site had been closed all summer for a grand redesign costing $450 million. At that preliminary event, their target was Larry Fink, the CEO of BlackRock, Inc. who is a MOMA board member. They and other critics charge that BlackRock invests in "prison companies, the war machine and the destruction of the global environment."

On the big night itself, October 21st, demonstrators railed against board member Steven Tanenbaum, founder of hedge fund Golden Tree Asset Management. Critics allege his firm is engaged in "vulture capitalism": it "controls more than $2.5 billion in Puerto Rican debt" that is crushing the island. "GoldenTree didn't create Puerto Rico's debt crisis, but it may have profited when the island restructured its sales-tax bonds in February."

Elegant partygoers in formal attire were miffed at the inconvenience. But MOMA officials had a deeper cause for worry, fearing this might be the beginning of a sustained protest siege like the one that had plagued the renowned Whitney Museum from December 2018 through the summer.

In the Whitney situation, protestors were successful in hounding board vice chair Warren Kanders into resigning. Kanders is the CEO of Safariland, a firm that makes "non-lethal weapons" like tear gas and rubber bullets. "Safariland's products are known to have been used on protestors in Ferguson, Baltimore, and Standing Rock, plus migrants at the border in San Ysidro, and most recently, the people marching in Puerto Rico."

Like Tainted Donors, but on Steroids

We've posted recently about how the philanthropy world has been rocked this year by a rash of "tainted donor" crises. The villains in question – Sackler, Epstein, Weinstein, to name a few – finally became so toxic that many major charitable organizations and institutions had little choice but to step away. See *Tainted Donors in a Scandal-Prone Era* (November 19, 2019).

What "step away" means varies widely. It may range anywhere from a decision to stop taking any further donations to – (in just a few cases so far) – giving the money back or donating it to a different charitable cause. The latter choice may be shaped by the nature of the scoundrel's particular conduct and (lack of) character; for instance, donations from a sexual predator may be re-gifted over to rape crisis centers.

The protests against allegedly tainted board members pack a significant potential wallop; it's like the tainted-donor scandals but on steroids. In part, that's because the targeted trustees are invariably also major financial benefactors of those organizations.

Andrew Goldstein, editor-in-chief of *ArtNet*, was quoted in a September 2019 article about the dramatic effect of the prolonged protests against the Whitney Museum's Warren Kanders. These demonstrations, he said, "… sent the museum world reeling, posing questions that—for institutions reliant on private patronage—bordered on existential."

It's All About the Money

In *New Scrutiny of Museum Boards Takes Aim at World of Wealth and Status* (October 2, 2019), New York Times reporters observed that "… the tumult at the Whitney sent a lightning bolt through the entire museum world. If board members can be forced out because of what they do for a living, what does that mean for cultural institutions that depend on their generosity to survive?"

It's no secret that the "price of admission" to a trusteeship to a major cultural institution is "… steep, often millions to enter, and annual donations of six figures to keep a seat." And that doesn't include payment for the tables at fundraising galas and similar extras. Warren Kanders and his wife, Allison – co-chair of the board's painting and sculpture committee – had donated some $10 million to the Whitney over their 13-year-tenure.

For their generosity, these "… board members gain admission to an exclusive cultural club others year to join … and a boost in status, rare access to artists and curators as well as the public recognition that comes with giving back." It's a two-way street: these donor-trustees "… give arts organizations their cachet and connections; and provide a power base that commands the attention of public officials." And – of course – "… thanks to trustees' support, the public gets to enjoy Picassos, Rembrandts, Shakespeare in the Park."

Here's the rub: New York's MOMA – the site of the recent board-member protests – says its trustees may donate "as much as 20 percent of its $175 million budget." The Los Angeles County Museum of Art estimates that board support comprises some 30 percent of the total budget. Admissions fees and other support from the general public are woefully inadequate to keep the organizations going.

According to Brent R. Benjamin, the director of the Saint Louis Art Museum and president of the Association of Art Museum Directors: "Trustees are an important part of the finances of a museum and their financial leadership is critical for bringing in other donors." Similarly, Max Hollein, director of New York's famed Metropolitan Museum of Art – though worried enough about tainted money to have recently sworn off any further Sackler support – emphasizes that "… the museum as we know it would not exist without the board that props it up. Institutions in the U.S. are built on philanthropy…."

Dual Role of Tainted Trustees

The recent protests against tainted board members have focused most particularly on the *board-member side* of this dual trustee/donor status. And the data show that many board members of major cultural institutions have backgrounds and wealth from finance, real estate, or the fossil-fuel industry. The furor over tainted board members has more than a theoretical or academic effect on the institution's culture and its future. The bottom line is whether the tainted board member is the type of person who should have a say in a community organization. The Whitney Museum protests "… exposed the symbiotic, but potentially problematic, relationship that museums have with some trustees." An "… emboldened activist movement is holding a mirror up to this bargain, loudly questioning whether the greater good is served, even if not everyone agrees on who and what qualifies as 'good.'"

Whatever the merits of these protests, people in and around the museum world are concerned that the resulting "… increased scrutiny of the sources of major donors' wealth" could have "… a chilling effect on cultural philanthropy." Reynold Levy, philanthropy expert and former president of Lincoln Center, worries about "… a slippery slope if you get very precious about holding out a litmus test for service on a board." An inquiry like this, he writes, "… can be stretched to the point where it becomes very difficult to attract and retain board members."

Not a New Issue

We've been hearing a lot these days in our 24/7 news cycle about scandals and taint and the unfortunate connections with philanthropy. Most of us likely think the issue of tainted donors and trustees is something new.

It's not, according to David Mislin, Assistant Professor of Intellectual Heritage at Temple University. In *How a 1905 debate about 'tainted' Rockefeller money is a reminder of ethical dilemmas today* (October 2, 2019), he explains: "… [F]ew people in the early 20th century doubted that Rockefeller's company, Standard Oil, was engaged in questionable practices." But the public debate back then on whether to take the Rockefeller money proceeded – unlike today – from that consensus.

Reporter Olivia Goldhill, writing recently in *Quartz,* adds more depth and color to this long history of the debate over tainted money in charity. In *Is it ever okay to take money from people like Jeffrey Epstein?* (September 11, 2019) she points out that George Bernard Shaw's famous 1905 play, *Major Barbara,* is about "whether the Salvation Army should accept a donation from an arms dealer, presenting convincing defenses of both sides of the argument."

Conclusion

Ms. Goldhill notes as well that William Booth, the Salvation Army's founder, "was once reportedly asked about the ethics of taking money from dubious people and replied: 'The trouble with tainted money is t'aint enough of it.'"

– Linda J. Rosenthal, J.D., FPLG Information & Research Director