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MEMORANDUM

TO: Sonia Sanchez
FROM: Applicant
DATE: July 30, 2013
RE: In re SIA; advice to Ms. Barber

This memorandum is intended to provide you with background information regarding the actions available to the Attorney General (AG), and remedies that the AG can seek against Sensory Integration Alliance, Inc. (SIA). Below I have detailed the remedies, the relevant statutes, and whether the AG can successfully impose the remedy based on past actions taken by SIA. Each act will be discussed separately, based on the information that Ms. Barber provided to us in your interview with her earlier today. I conclude with a statement about whether the AG can successfully seek a receivership or dissolution of SIA.

I. REMEDIES FOR SIA'S ACTIONS

1. Cancelled or Unscheduled Seminars

A) The AG Can Seek Equitable Remedies, Exemplary Damages, and Civil Penalties Against Vernon Ellis for the Payments for the Unscheduled or Cancelled Seminars

The AG has three avenues in which it can seek remedies, equitable remedies to reimburse the seminar attendees, exemplary damages, and/or a civil penalty against Vernon Ellis ("Ellis") for scheduling without intending to actual book seminars. The AG, however, cannot seek a civil penalty against Ms. Barber

because under the appropriate statute, she still has an opportunity to correct the violation within 30 days.

B) Ellis has violated § 5233 of Corporations Code by engaging in "self dealing transactions" and he has also violated § 126 of the Uniform Act by intending to deceive and defraud a charity and individuals.

1. Section 5233 of the Corporations Code prohibits a director from engaging in self-dealing transactions.

As described to us by Ms. Barber, Ellis engaged in self-dealing transactions as described under this section because entered into a "transaction to which the corporation is a party and in which [he had] a martial financial interest" in. § 5233 (a). When seminars were cancelled, Ellis refunded checks in the name of the attendee, but instead of sending those checks out, he fraudulently endorsed those checks and deposited those checks in an account in his own name. His fraudulent activity further continued and become more elaborate over time. Ms. Barber stated that after a period of time, Elis did not book any rooms, which suggests that he scheduled seminars and book seminars, with the intent to later cancel those seminars in order to keep those seminar fees himself.

Ellis does not meet any of the exceptions under this Section and the AG will have the power to bring an action in suprioeer court to seek equitable remedies under § 5233(e). Most likely, the AG will seek an accounting of the profits an reques the court to order SIA to pay return those finds, with interest, to the people who attempted to attend SIA's seminars. Also under this section, the AG may request that the court seek exemplary damages if it finds that Ellis acted with fraud or malice in violating this section. § 5233(e)(3).

It should also be noted that Ms. Barber will not be held liable under § 5233 because she will not be considered an "interested party."

2. Section 126 of the Charitable Purpose Act ("the Uniform Act") prohibits a person from defrauding a charity.

According to Ms. Barber, the rest of the board were not aware of Ellis's actions moving refunded money to his own personal account. If possible, the AG may seek a civil penalty under § 126(a) of the Uniform Act because Ellis defrauded a charity. The AG may seek civil damages not exceeding \$10,000. These civil damages do not include any equitable damages discussed above, and if the AG seeks to impose these civil penalties, it will most likely seek the \$10,000 from Mr. Ellis's estate.

3. Section 127 of the Uniform Act gives the AG the power to revoke or suspend the registration of a charitable corporation.

C) Facts to Support the AG's Effort to Impose the Remedies

Any accounting information that Ms. Barber found in Ellis's locked drawer can be used in supporting the AG efforts to impose remedies. Ms. Barber stated that she found bank records in Ellis's name, these will be necessary in SIA's accounting of money. Ellis also wrote out checks to his sister, which will probably be evidenced by the Balfour Bank records. If Ms. Barber was able to establish a pattern with Ellis depositing refund checks into his account and forwarding some money to his sister, the AG will probably find such a pattern. These facts will be enough for the AG to seek an equitable remedy and civil penalty. If the pattern of fraudulent activity is pronounced, the AG will also have enough facts to support the remedy of exemplary damages.

2. Payments for Klene Up Kroo

A) The AG Can Seek Equitable Remedies, Exemplary Damages, and Civil

Penalties Against Vernon Ellis and Alan Zackler.

The AG will probable seek equitable remedies that are fair, to reimburse the SIA and it may also request a court for exemplary damages if it finds that Ellis and Alan Zacker ("Zackler") acted with fraud and malice in their self-dealing transactions. The AG may also seek civil penalties against Ellis and Zackler.

B)

1. Section 5233 of the Corporations Code prohibits a director from engaging in self-dealing transactions.

Discussed Above.

2. Section 126 of the Charitable Purpose Act ("the Uniform Act") prohibits a person from defrauding a charity.

Discussed Above.

C) Facts to Support the AG's Effort to Impose the Remedies

Ms. Barber thought that records relating to the Klene Up Kroo were "scarier", probably because it also involved Zackler and a much more elaborate scheme than forwarding checks to a personal account like above. The AG will probably rely on the facts that Ms. Barber found, but there may not be enough evidence to support any of the AG's request for the remedies under Section 5233 of the Corporations Code and §126 of the Uniform Act.

Checks totally over \$22,000 were made to Howard Klene, but Ms. Barber does not seem to know who that person is. She was most likely taken aback by the fact withdrawals were made from the Klene account to both Ellis and Zackler on a regular basis. Ms. Barber is probably under the sense that these funds were being embezzled from SIA, directly to Ellis and Zacklers personal account.

Nevertheless, the AG may still need more information. Ms. Barber stated to that

SIA paid over \$22,000 to Klene, but Klene only paid in total \$8,000 to both Ellis and Zackler. This may support a finding that The Klene Up Kroo is a legitimate business because there were other instances where funds were being taken out of the Klene account. Instead of diverting funds to Ellis and Zackler, Mr. Klene may have been paying them a referral fee of some sort. The AG may or may not have enough information to seek these remedies. We should ask Ms. Barber if there is anymore records in her new office (The late Mr. Ellis's former office) or we can ask her why she believes the invoices concerning The Klene Up Kroo were "scarier."

3. Unfiled Form 990s

A) The AG can seek to impose a monetary remedy of \$25 for each month that SIA fails to file or Form 990 or it may revoke or suspend its registration as a charitable corporation.

The AG has two options for remedies, it can impose a fine for \$25 for each month that SIA failed to file its Form 990 or it can revoke or suspend SIA's charitable corporation registration

B) Statutes include § 125 and § 127 of the Uniform Act

1. Failing to File From 990 under § 125

Every charitable corporation is responsible for filing the Form 990 with the AG and with the IRS. Under subdivision (c), for each month that a charitable corporation fails to file this, it will be liable for \$25.

2. Violating The Uniform Act under §127

If the AG finds that the charitable corporation has failed to comply with the

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Uniform Act then it may choose to revoke or suspend its registration.

C) The AG has all the information it needs because there is an absence of Form 990 filings with the AG's office.

4. Expense Account Reimbursements

A) The AG will seek equitable remedies from Ellis's estate, if any.

B) The AG will have powers under Section 5233 to seek equitable remedies and also

1. Section 5233 of the Corporations Code prohibits a director from engaging in self-dealing transactions.

Discussed Above.

2. Section 5233 of the Corporations Code will protect the rest of the directors from liability

The rest of the board members who relied on the advice and assurances of Zackler for Ellis's reimbursements will not be held liable for Ellis's self-dealing transactions. So long as the board members performed their duties under §5231, they will have no liability under subdivision (c), which states that "a person who performs the duties of a director ... will have no liability based upon any alleged failure to discharge the person's obligations as a director... including actions or omissions which exceed or defeat a public or charitable purpose."

C) Facts to Support the AG's Effort to Impose the Remedies

Ms. Barber has provided us with sufficient facts that the AG would use in imposing any remedies. There do not seem to be any facts to indicate that the rest of the board will be liable for Ellis's reimbursement of his personal expenses

because the board, as evidence in the minutes, relied on Zackler's assurances. Even though a board member has voiced his skepticism on those expenses, it will most likely find that the rest of the board was reasonable in believing Zacker.

5. Cruise Taken by Board Members

A) The AG will seek equitable remedies to reimburse SIA

B) § 5233 prohibits self-dealing, the remedies for which are equitable remedies

C) The \$70,000 check and minutes may be enough to support the AG's finding that the cruise was not to be reimbursed by the charity. Even though the board and their wives intended to do long-range planning, the AG might find that this was "self-dealing".

II. THE ATTORNEY GENERAL CAN SUCCESSFULLY SEEK A RECEIVERSHIP OR SUPERVISOR

In a Supreme Court case in 1994, two directors dominated a charitable organization and diverted funds. Even though there was a good faith effort by the rest of the board to comply with the requirements of the Attorney General. Sidley Memorial Hospital (1994). The Supreme Court found that dissolving the charitable corporation was too harsh and any equitable remedy taken against the charitable corporation should be to remedy improper conduct, and not merely to punish. The AG also has broad powers under §6511 and it will seek available remedies either through constructive trusts or ultimately dissolution. Orange County Charitable Services (1998). The court will balance the remedies and look at the actions taken by a corporation after an 30-day notices are given.

Here it seems that Ms. Barber is making good faith efforts to comply with the Attorney General's request for information regarding the missed refund. We should advise Ms. Barber to respond to the AG's request no later than 30 days from the date of that letter and she should respectfully request an extension to respond because she has only just begun investigating the status of SIA. Further, she should explain to the AG that the previous executive director has passed away and that she has only taken his position. We should advise SIA and Ms. Barber to respond to the AG and make a good faith effort to disclose all information, even if the information will be detrimental to SIA. As long as we make that good faith effort, the AG will probably not seek to dissolve SIA and a court will not impose such a request.

In all likelihood, the AG will probably have requested that someone will monitor SIA's day-to-day business in the meantime until it deems that such supervision will not be needed. SIA should welcome such supervision because it will show the corporation's good faith effort to correct past mistakes and to move forward in its charitable obligations.