

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

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In the Matter of the :
: :
Investigation by Eric T. Schneiderman, : Assurance No. 12-121
Attorney General of the State of New York, of :
: :
Educational Housing Services, Inc. :
: :
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ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (the "OAG") has commenced an investigation, pursuant to Section 63(12) of the New York State Executive Law (Exec. L.), Section 112 of the Not-for-Profit Corporations Law (N-PCL), and Section 8-1.4 of the Estates, Powers, and Trusts Law (EPTL), to determine whether a proceeding or action should be instituted against Educational Housing Services, Inc. (together with its subsidiaries and affiliates, "EHS"), its former President, George Scott ("Scott"), and the one former and four current members of its Board of Directors who are signatories hereto ("the Directors" and, together with EHS and Scott, the "EHS Parties"), for violations of the N-PCL and EPTL with respect to interested-party transactions involving Scott, EHS and an entity controlled by Scott known as Student Services, Inc. ("SSI"), as well as with respect to the compensation of Scott and the Directors (the "Investigation").

This Assurance of Discontinuance (the "Assurance") contains certain findings of the Investigation, and it also contains the relief agreed to by the OAG, the EHS Parties, SSI and Yun Suk Scott ("Ms. Scott").

FINDINGS

The OAG finds as follows:

1. Until his removal from the office on November 13, 2012, Scott was the President of EHS, a not-for-profit entity he founded in 1987. EHS's stated mission is to provide, at the lowest possible cost, housing to students, faculty and others who study and work in institutions of higher education in New York. Scott also is the founder and controlling principal of Student Services Inc. ("SSI"), a for-profit entity that began providing cable television, internet and telephone (collectively, "telecom") services to EHS in 2003.
2. James Barnes ("Barnes") was a director of EHS from October 2000 until his resignation in June 2012. Barnes served as Chair of the Board of EHS from approximately 2002 to May 2006. Barnes also served on the EHS Compensation Committee. Until 2009, Barnes was the Vice President of Business Affairs of a university in Ohio.
3. Joan Cear ("Cear") has been a director of EHS since December 2001. Cear is a marketing and public relations professional. During most of her tenure as a Director of EHS, Cear was a Managing Director at G.S. Schwartz & Co., Inc., a New York City public relations agency.
4. Charles Lee ("Lee") has been a director of EHS since February 2004. Lee is a human resources consultant and has served as Chair of EHS's Human Resources and Compensation Committee from 2005 to the present. Lee currently is president of his own firm, CML Associates, and formerly was a consultant with Towers Perrin, specializing in corporate compensation and diversity.
5. Michael Lerner ("Lerner") has been a director of EHS since 1998. Lerner is the Chair of EHS's Board, a position he has held since January 2010. Until 2005, Lerner was Chairman of

the Board and CEO of a publicly owned apparel company.

6. John Sheehan (“Sheehan”) has been a director of EHS since February 2002. Sheehan served as Chair of the Board of EHS from May 2006 until December 2009. Sheehan is a Certified Public Accountant and currently a managing member of his own firm, John Sheehan CPA, PLLC.

7. SSI is a corporation formed in or about 2002 under the laws of New York. Another corporation, also called Student Services, Inc., was formed by Scott in or about 2003 under the laws of Colorado. As used herein, “SSI” refers to both the New York and Colorado corporations bearing the name Student Services, Inc. At all relevant times, SSI has been wholly owned by Scott and/or his wife, Ms. Scott.

8. Scott created SSI as a vehicle to realize for himself and his wife income and other benefits from EHS that exceeded the reasonable value of Scott’s services to EHS. SSI served as a middleman between EHS and third-party telecom providers, including TimeWarner Cable and RCN. SSI purchased telecom services from the third-party telecom providers, aggregated those services and then sold those services to EHS at a substantial mark-up over and above SSI’s costs. SSI’s profits accrued to Scott and his wife.

9. From 2003 to 2009, SSI and EHS entered into a series of interested-party transactions pursuant to which SSI provided telecom services to EHS at above-market rates. These transactions were entered into, in part, on the basis of materially misleading and incomplete representations that Scott made to the Directors concerning, among other things, the ownership and composition of SSI, the costs and feasibility of EHS acquiring telecom services directly, without the use of a middleman such as SSI, and the profits and benefits that the EHS-SSI relationship generated for Scott and his wife.

10. Notwithstanding Scott's conduct, the Directors knew that Scott and/or his wife had an interest in SSI and stood to benefit from any agreement between SSI and EHS. The Directors further understood that the proposed transactions with SSI were interested-party transactions that required careful scrutiny on their part, including their independent, good faith evaluation whether the proposed transactions with SSI were fair to EHS, in EHS's best interest, and did not produce an excessive or unreasonable benefit for Scott.

11. The Directors failed to carry out their responsibilities in a manner that would have avoided harm to EHS. In breach of their fiduciary duties, the Directors approved the EHS-SSI transactions without meaningful evaluation, without independently determining the relevant facts and circumstances, and purporting to rely on the advice of certain third party advisors when that reliance was neither warranted nor in good faith. Among other things, the Directors delegated to Scott, the conflicted party in these transactions, the responsibility for obtaining legal advice concerning the board's responsibilities as well as a fairness opinion and competitive bids that were supposed to provide the indicia of fair value on which the board would rely. Even though Scott was on both sides of the transactions, the Directors permitted Scott to control the information provided to the board's third party advisors, failed to ensure that the information furnished by Scott was independently verified, and failed to determine what benefits Scott had obtained and would obtain from the transactions.

12. In December 2008, and again without fulfilling their fiduciary duties to carefully evaluate the proposed interested-party transaction, the Directors approved the awarding of a multi-residence contract to SSI for the provision of telecom services to all of EHS's residences. The resulting Mutual Services and Agency Agreement, dated January 1, 2009 (the "2009 EHS-SSI Agreement"), requires EHS to pay unreasonably high rates to SSI until the Agreement's

scheduled expiration on December 31, 2013.

13. In addition to the unreasonable EHS-SSI transactions, in breach of their fiduciary duties to EHS, Scott sought, and the Directors approved, compensation and benefits to Scott that exceeded the reasonable value of his services. In addition to Scott's salary, bonus and deferred compensation, the benefits Scott received from EHS included luxury housing, car and travel allowances, and the payment of premiums on whole life insurance policies that did not benefit EHS.

14. The Directors also awarded to themselves unreasonably high compensation simply for serving as directors. Two of the Directors, Lee and Barnes, also received unreasonable consulting fees from EHS for providing services of little value to EHS.

15. The conduct described above breached the duties of loyalty and care that Scott and the Directors owed to EHS, and resulted in the substantial waste of EHS's assets.

PROSPECTIVE RELIEF

WHEREAS, the EHS Parties, SSI and Ms. Scott neither admit nor deny the OAG's Findings (8)-(15) above;

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to New York Exec. L. § 63(15) and to discontinue its Investigation; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

16. In consideration of the making and execution of this Assurance, Scott, SSI and the Directors shall pay damages, make restitution, disgorge unreasonable payments, and pay costs to the OAG, in the aggregate sum of **\$5,500,000**, as further set forth below. All cash payments set

forth below shall be made by wire transfers, certified checks and/or bank checks made payable to the New York State Department of Law:

(a) In restitution to EHS, **Scott** shall pay the aggregate amount of **\$2,500,000**, as follows:

(i) upon the effective date of this Assurance, Scott waives any claim and agrees that he has no rights to \$1,274,074.51 in payments that are claimed to have been wrongfully received, consisting of deferred compensation of \$671,340.31 held in an EHS account as well as retirement compensation of \$602,734.20 currently held in American Funds account #75849137 in the name of EHS;

(ii) within ten (10) days of the effective date of this Assurance, Scott will repay an additional \$400,925.49; and

(iii) Scott will repay an additional \$825,000 in four equal quarterly installments of \$206,250 on or before March 15, 2013, June 15, 2013, September 15, 2013 and December 15, 2013, it being agreed by Scott that failure to deliver any such quarterly payment installment to the OAG by the specified date will accelerate and make all of the remaining quarterly installments immediately due and payable.

(b) Scott and SSI waive any claim to all remaining financial benefits accruing to them under the EHS-SSI Agreement, which have an estimated value to them of not less than **\$2,000,000**, and SSI and EHS agree that the EHS-SSI Agreement shall be rescinded as of the effective date of this Assurance. EHS agrees to accept assignment of SSI's contracts with third parties necessary to maintain delivery of telecom services to EHS's residences, and Scott and SSI will cooperate in all matters reasonably required by EHS to assign to EHS all of SSI's rights and obligations under any of SSI's contracts with third parties. SSI agrees to convey to EHS title to all equipment, televisions, and other property installed by SSI in buildings leased by EHS, in

return for which EHS shall pay SSI an amount to be determined between EHS and SSI not to exceed \$100,000. Except as set forth in the preceding sentence, EHS shall make no further payment to SSI or on SSI's behalf.

(c) *The Directors* shall pay and cause to be paid the aggregate amount of **\$1,000,000**, as follows:

(i) within thirty (30) days of the effective date of this Assurance, the Directors will pay or cause to be paid \$850,000 in damages for the breach of their fiduciary duties to EHS;

(ii) within thirty (30) days of the effective date of this Assurance, each of the Directors individually will pay an additional \$25,000 to disgorge unreasonable payments received from EHS; and

(iii) on or before March 29, 2013, Barnes will pay an additional \$25,000.

17. Except as provided in the last sentence of this paragraph, the net aggregate value of the payments, waiver, rescission, disgorgement and rescissionary benefits described in paragraph 16 above, which in total is not less than \$5,300,000, will be applied by EHS for the benefit of EHS's student residents in the form of rent rebates, reduced rent fees and/or capital expenditures to upgrade the rooms and amenities EHS provides to its student residents. EHS will apply these proceeds for such purposes pursuant to guidelines and procedures and in such amounts and percentages as shall be approved by the OAG. Of the payments provided in paragraph 16 above, \$200,000 shall be retained by the OAG to defray the costs incurred by the Attorney General in the Investigation.

18. The Employment Agreement between Scott and EHS dated January 1, 2008 ("2008 Employment Agreement") is terminated and of no further force or effect. EHS will make no further payments to Scott or on his behalf, and Scott relinquishes and releases any claim under

the 2008 Employment Agreement. By December 15, 2013, EHS will terminate any leases for apartments and cars occupied or used by SSI, Scott or any family member of Scott's and recover any property of EHS in the possession of any of them. EHS shall not enter into any future agreement with Scott, any member of Scott's family, or SSI.

19. EHS will make no further payments of any kind to the Directors other than reimbursement for reasonable out-of-pocket expenses incurred in connection with attendance at EHS Board meetings.

20. Subject only to the terms of paragraph 21 below, Scott, Barnes, Cear, Lee, Lerner and Sheehan each is permanently barred from serving as an officer, director, trustee or fiduciary of any not-for-profit or charitable organization incorporated, registered, operating or soliciting contributions in New York.

21. EHS will promptly conduct a search for replacement directors of EHS. No later than February 15, 2013, EHS will propose to the OAG not fewer than five new directors to be nominated to the EHS Board for OAG review and approval. Any proposed directors approved by the OAG will be nominated to the EHS Board, and as and when any new director is elected to the Board and becomes a member of EHS, Sheehan, Lee, Cear and Lerner, in that order, each will resign as a director and member of EHS.

22. No later than April 1, 2013, the EHS Board shall adopt and amend its by-laws to include new policies, acceptable to the OAG, concerning (a) conflicts of interest, (b) interested-party transactions, (c) the structure and composition of the Board and committees thereof, and (d) executive compensation. The new policy on executive compensation shall set forth procedures for the independent and objective review by the board of directors of compensation of EHS executives and the steps required to be taken to ensure that such compensation is fair,

reasonable and commensurate with the services provided by the executives to EHS.

23. Each of Scott, Barnes, Cear, Lee, Lerner, Sheehan, SSI and Ms. Scott hereby relinquishes and releases all claims against EHS concerning the subject matter hereof that may have accrued as of the effective date hereof. EHS hereby relinquishes and releases all claims against Scott, Barnes, Cear, Lee, Lerner, Sheehan, SSI and Ms. Scott concerning the subject matter hereof that may have accrued as of the effective date hereof. Each of the EHS Parties, SSI and Ms. Scott hereby relinquishes and releases all claims against the OAG that may have accrued as of the effective date hereof.

Miscellaneous

24. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the EHS Parties, SSI, Ms. Scott and their counsel and the OAG's own factual investigation as set forth in Findings (1) - (15) above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

25. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and the EHS Parties, SSI and Ms. Scott shall make no representation to the contrary.

26. This Assurance constitutes the entire agreement among the OAG and the EHS parties, SSI and Ms. Scott, and supersedes all prior agreements and understandings, written or oral, among the parties with respect to the subject matter of this Assurance. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the EHS Parties, SSI or Ms. Scott in agreeing to this Assurance. The EHS Parties, SSI and Ms. Scott hereby acknowledge that each of them has been duly

represented by counsel in agreeing to this Assurance.

27. None of the EHS Parties, SSI and Ms. Scott shall take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing any view that this Assurance is without a factual basis. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by any of the EHS Parties, SSI or Ms. Scott.

28. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

29. In the event that one or more provisions contained in this Assurance shall for any reason be held invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, on unenforceability shall not affect any other provisions of this Assurance.

30. To the extent not already provided in this Assurance, each of the EHS Parties, SSI and Ms. Scott shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.

31. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to EHS, Cear, Lee, Lerner, and/or Sheehan:

Patrick J. Smith
DLA Piper LLP
1251 Avenue of the Americas
New York, New York 10020-1104

If to Scott:

Robert Wolf
Moses & Singer LLP
The Chrysler Building
405 Lexington Avenue, 12th Floor
New York, New York 10174-1299

If to Barnes:

Tai H. Park
Park & Jensen LLP
630 Third Avenue (7th Floor)
New York, New York 10017

If to SSI or Ms. Scott:

Alan R. Kaufman
Kelley Drye & Warren LLP
101 Park Avenue
New York, New York 10178

If to the OAG:

Office of the Attorney General of the State of New York
Charities Bureau -- 3rd Floor
120 Broadway
New York, New York 12071
Attn: David E. Nachman

32. All correspondence and payments related to this Assurance must reference Assurance No. 12-121.

33. Pursuant to New York Executive Law Section 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

34. If a court of competent jurisdiction determines that any of the EHS Parties, SSI or Ms. Scott has breached this Assurance, such EHS Party, SSI or Ms. Scott shall pay to the OAG the

cost, if any, of such determination and of enforcing this Assurance including, without limitation, legal fees, expenses, and court costs.

35. The OAG finds this relief and the agreements contained in this Assurance appropriate and in the public interest. Accordingly, the OAG accepts this Assurance pursuant to Exec. L. Section 63(15), in lieu of commencing a statutory proceeding and agrees to discontinue its Investigation of the EHS Parties, SSI and Ms. Scott. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

36. Except as set forth above, the parties hereto agree to bear their own fees, costs and expenses of this matter.

37. Nothing contained herein shall be construed to deprive any person of any private right under the law.

38. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance. This Assurance may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on the dates set forth below.

Dated: December 3, 2012



GEORGE SCOTT

Dated: December __, 2012

JAMES BARNES

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Dated: December , 2012

GEORGE SCOTT

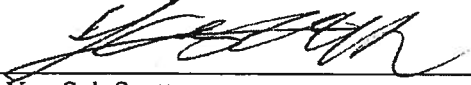
Dated: December 5 , 2012



JAMES BARNES

STUDENT SERVICES, INC.

Dated: December 5, 2012

BY: 
Yun Suk Scott

Dated: December 5, 2012


YUN SUK SCOTT

EDUCATIONAL HOUSING SERVICES, INC.

Dated: December 5, 2012

BY: _____
Patrick Smith, Attorney for EHS and the individual
Directors signing below

Dated: December 5, 2012

JOAN CEAR

Dated: December 5, 2012

CHARLES LEE

Dated: December 5, 2012

MICHAEL LERNER

Dated: December 5, 2012

JOHN SHEEHAN

Dated: December 5, 2012

ERIC. T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, New York 10271

BY: _____
Jason R. Lilien
Bureau Chief, Charities Bureau

STUDENT SERVICES, INC.

Dated: December __, 2012

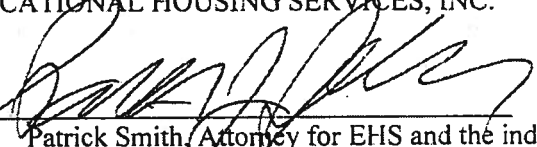
BY: _____
Yun Suk Scott

Dated: December __, 2012

YUN SUK SCOTT

EDUCATIONAL HOUSING SERVICES, INC.

Dated: December 4, 2012

BY:  _____
Patrick Smith, Attorney for EHS and the individual
Directors signing below

Dated: December __, 2012

JOAN CEAR

Dated: December __, 2012

CHARLES LEE

Dated: December __, 2012

MICHAEL LERNER

Dated: December __, 2012

JOHN SHEEHAN

Dated: December __, 2012

ERIC. T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, New York 10271

BY: _____
Jason R. Lilien
Bureau Chief, Charities Bureau

STUDENT SERVICES, INC.

Dated: December __, 2012

BY: _____
Yun Suk Scott

Dated: December __, 2012


YUN SUK SCOTT

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Dated: December __, 2012

BY: _____
Patrick Smith, Attorney for EHS and the individual
Directors signing below

Dated: December 5, 2012



JOAN CEAR

Dated: December __, 2012

CHARLES LEE

Dated: December __, 2012

MICHAEL LERNER

Dated: December __, 2012

JOHN SHEEHAN

Dated: December __, 2012

ERIC. T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, New York 10271

BY: _____
Jason R. Lilien
Bureau Chief, Charities Bureau

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Dated: December __, 2012

YUN SUK SCOTT

EDUCATIONAL HOUSING SERVICES, INC.

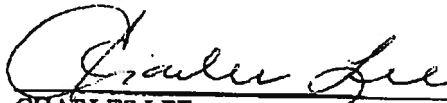
Dated: December __, 2012

BY: _____
Patrick Smith, Attorney for EHS and the individual
Directors signing below

Dated: December __, 2012

JOAN CEAR

Dated: December __, 2012



CHARLES LEE

Dated: December __, 2012

MICHAEL LERNER

Dated: December __, 2012



JOHN SHEEHAN

Dated: December __, 2012

ERIC. T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, New York 10271

By: _____
Jason R. Liffen
Bureau Chief, Charities Bureau

STUDENT SERVICES, INC.

Dated: December __, 2012

BY: _____
Yun Suk Scott

Dated: December __, 2012

YUN SUK SCOTT

EDUCATIONAL HOUSING SERVICES, INC.

Dated: December __, 2012

BY: _____
Patrick Smith, Attorney for EHS and the individual
Directors signing below

Dated: December __, 2012

JOAN CEAR

Dated: December __, 2012

CHARLES LEE

Dated: December __, 2012



MICHAEL LERNER

Dated: December __, 2012

JOHN SHEEHAN

Dated: December __, 2012

ERIC. T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, New York 10271

BY: _____
Jason R. Lilien
Bureau Chief, Charities Bureau

STUDENT SERVICES, INC.

Dated: December __, 2012

BY: _____
Yun Suk Scott

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Dated: December __, 2012

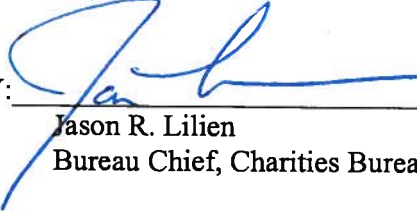
MICHAEL LERNER

Dated: December __, 2012

JOHN SHEEHAN

Dated: December 9, 2012

ERIC. T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, New York 10271

BY: 

Jason R. Lilien
Bureau Chief, Charities Bureau