

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

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In the Matter of
The Advance Group.

Assurance No. 15-184

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ASSURANCE OF DISCONTINUANCE

WHEREAS, the Office of the Attorney General of the State of New York (“OAG”) conducted an investigation into the practices of The Advance Group (“TAG”), a strategic consulting firm, during the 2013 New York City election cycle, and specifically into whether it improperly participated in coordination by serving as both an agent for individual candidates for public office as well as for entities making independent expenditures on behalf of some or all of those candidates;

WHEREAS, TAG and OAG each believe that the obligations imposed by this agreement are prudent and appropriate, will strengthen TAG’s relationship with the State of New York, and advance their common goal of resolving this matter in a way that is mutually beneficial for the People of the State of New York and OAG; and

WHEREAS, OAG finds the financial relief and other obligations set forth in this agreement to be in the public interest, accepts the terms of this Assurance of Discontinuance (“Assurance”) in lieu of commencing a legal proceeding, and hereby discontinues all aspects of its investigation on the terms below and agrees not to take further legal action against TAG or any of TAG’s officers, directors, employees, subsidiaries, or affiliates based upon the allegations set forth herein as to any matter within the scope of OAG’s investigation.

This Assurance contains the findings of OAG’s investigation and the relief agreed to by OAG and TAG (collectively, the “Parties”).

OAG FINDINGS

Background

1. TAG served as the general consultant for several 2013 New York City-based campaigns, including for Laurie Cumbo (“Cumbo”), Mark Levine (“Levine”) and Robert Jackson (“Jackson”). TAG also performed some services for 2013 citywide candidate Scott Stringer (“Stringer”).
2. TAG also had a two-year contract, covering 2013, to perform general strategic consulting work for New Yorkers for Clean, Livable and Safe Streets, Inc. (“NYCLASS”).
3. Through an entity called Strategic Consultants, TAG performed consulting work in 2013 for the political committee of the United Federation of Teachers (“UFT”) known as United for the Future. Billings to UFT were sent from Strategic Consultants, not TAG, although the TAG logo appeared on at least one invoice to UFT.
4. TAG’s boilerplate contract with campaigns for which it served as a general consultant, included the following language:

The Advance Group will serve as the general consultant to [Candidate]’s campaign. The Advance Group will provide the overall management and direction of the campaign – inclusive of strategic planning, targeting, message development, design of creative direct mail, production of television ads, automated phone calling, live phone calling and fundraising. As part of this agreement, [Candidate] and [his/her] campaign personnel shall be entitled to unlimited phone consultation and regular weekly meetings with senior members of The Advance Group during the contractual period.

The Advance Group will work with [Candidate] and each of [his/her] key advisors to hire the day in/day out campaign

management staff and closely supervise their work over the course of the campaign.

5. In 2013, NYCLASS and UFT made expenditures on behalf of some or all of the above-named candidates for public office, while both the spenders and the candidates were TAG clients. Specifically, UFT spent more than \$40,000 on behalf of candidates Cumbo, Levine, Jackson and Stringer. NYCLASS made expenditures totaling approximately to \$20,000 on behalf of Cumbo, Levine and Stringer.
6. Pursuant to the New York City Campaign Finance Act (“Act”), the New York City Campaign Finance Board (“CFB”) enforces the laws governing campaign spending in elections for New York City public office. Candidates in such elections must abide by the requirements of the Act and CFB Rules, which include limitations on the amount of contributions a campaign may receive from any single contributor. CFB Rules also apply to expenditures made by outside parties on behalf of, or in opposition to, campaigns. Expenditures that are made without the cooperation of a campaign are referred to as “independent.” The Act defines “independent” activity as that in which a candidate or a candidate’s committee “did not authorize, request, suggest, foster or cooperate.” Admin. Code Section 3-702(8). Expenditures made with the cooperation of a campaign may not be reported as independent; such expenditures are in-kind contributions, which are subject to the contribution and expenditure limits and must be accounted for and reported by campaigns. Campaigns may not accept contributions, including in-kind contributions, from corporations. *See* N.Y.C. Charter §1052(a)(13); Admin. Code §§ 3-702(8); 3-703(1)(d), (f), (g), (l), 3-703(6)(a); Board Rules 1-02, 1-04(a), (c), (e), (g), (h), 1-08(f)(1), (3), 3-03(c), 4-01(c); CFB Advisory Op. 2009-7 (Aug. 6, 2009) (“A.O. 2009-7”).

7. When NYCLASS made expenditures on behalf of Levine and Cumbo in 2013, NYCLASS was located in the TAG office, its political director was TAG president Scott Levenson, and its communications director was then-TAG communications director Chelsea Connor. NYCLASS's independent spending disclosure account was established, and its filings submitted to the New York City Campaign Finance Board ("CFB"), by TAG's then-director of lobbying and government relations.¹
8. In August 2013, CFB staff explicitly informed the above-mentioned TAG staffer that based on TAG's relationship with NYCLASS, expenditures by NYCLASS on behalf of campaigns advised by TAG would not be considered independent. Despite this, in early September 2013, the TAG staffer filed an authorized representative form via the CFB's reporting system on behalf of NYCLASS. Five days later, the TAG staffer submitted reports with the CFB indicating that NYCLASS had made expenditures on behalf of Cumbo and Levine's campaigns.

OAG Investigation

9. On December 10, 2013, pursuant to, *inter alia*, Executive Law § 63, OAG commenced an investigation subpoenaing TAG and other entities for documents and information relating to TAG's consulting work during the 2013 election season for NYCLASS, UFT, Cumbo, Levine, Jackson and Stringer. OAG issued a second subpoena to TAG on June 23, 2014, for additional information.

¹ The CFB initiated proceedings against Cumbo, Levine, NYCLASS and The Advance Group, alleging accepting a contribution from a prohibited source (Cumbo and Levine), cooperating in expenditures reported to be independent, and material misrepresentation (NYCLASS). The CFB made determinations of violations and assessed penalties against Cumbo, Levine and NYCLASS. This Assurance of Discontinuance is contingent upon the disposition of the CFB's pending claims with The Advance Group. The procedural history of the various CFB proceedings are not summarized fully herein.

10. TAG cooperated with OAG's investigation, and OAG received and reviewed thousands of pages of documents related to TAG's consulting work for the above-named clients.
11. OAG also interviewed numerous witnesses, including several former TAG employees and TAG President Scott Levenson.

OAG Findings

12. As the CFB has determined, TAG served as an "agent" for both NYCLASS, and for Cumbo and Levine. Indeed, a TAG employee was listed as one of the Cumbo campaign's CFB liaisons, and TAG President Scott Levenson was listed as one of the Levine Campaign's liaisons. Therefore, TAG may be held liable for violations of the Act and CFB Rules committed by those campaigns.
13. TAG personnel were aware of its role as an agent of its clients. As a memo from TAG to Levine dated September 27, 2013 (regarding a letter from the CFB about possible coordination) noted, indicia to be considered in determining whether there was improper coordination includes whether there is a common vendor, and noted that, in fact, TAG was a common vendor as to Cumbo, Levine and NYCLASS.
14. The very fact that TAG created an alter ego, Strategic Consultants, to act as its public face in connection with UFT (and to be the recipient of UFT's payments) suggests that TAG understood that its dual role potentially violated the CFB's rule against coordination in expenditures reported to be independent, or might otherwise be poorly perceived, and intentionally attempted to deceive its clients, the CFB, and the public about its role with respect to UFT and its individual clients. Invoices to UFT were sent from "Strategic Consultants," which shares an address with TAG, including the same

suite number. Indeed, on one of the invoices, the TAG logo appears (it was apparently removed from all other invoices).

15. Former TAG personnel said they had never heard of Strategic Consultants until an article was published about it, indicating that it was not a real entity and that its only purpose was to create the illusion of a lack of coordination. They said the news about Strategic Consultants significantly lowered morale around the office and created a lot of discomfort. When personnel raised concerns with TAG president Scott Levenson, they were brushed off and told that everything was under control.
16. However, OAG's investigation has revealed that TAG leadership made virtually no effort to ensure that there was any separation between TAG staff who worked for individual campaigns and entities that made expenditures on behalf of those campaigns. These separations are sometimes referred to as "firewalls." One former TAG staffer referred to firewalls as "non-existent" and said that TAG president Scott Levenson "gets business, and then throws it at someone," with little regard for whether this might facilitate unlawful coordination. A former TAG staffer said it appeared that TAG just "didn't read the rules." Chelsea Connor, a TAG staffer in 2013, served as communications director for NYCLASS as well as TAG's individual candidate clients.
17. Levenson, Jonathan Yedin, who served as TAG's field director, and Katie Franger, the Chief of Staff, were actively involved and engaged in work for all TAG clients, including the entities that made expenditures on behalf of individual campaigns.
18. TAG clients were regularly in and out of its offices. NYCLASS held endorsement meetings in TAG offices. Although Levenson disputes that he physically attended those meetings, OAG's investigation reveals that he and other TAG personnel were

involved with and actively aware of NYCLASS's endorsement process. Paul Egan, a representative of UFT, regularly met with Levenson in TAG's offices. The Cumbo campaign was briefly run out of TAG's office.

19. When the CFB sent letters to certain TAG clients in September 2013, informing them of its concerns about possible coordination, a TAG staffer was ordered to draft the response to be sent on behalf of the campaigns. TAG also consulted with NYCLASS about its proposed response, although NYCLASS ultimately had an outside attorney submit it to the CFB.
20. As the CFB has stated, the relationships between the Cumbo and Levine campaigns and TAG, and between NYCLASS and TAG, meet the criteria outlined in Board Rule 1-08(f)(1)(v): the entity making the expenditure (NYCLASS) and the candidates (Levine and Cumbo) "have each retained, consulted or otherwise been in communication with the same third party" (TAG) and "the candidate knew or should have known" that the campaigns' "communications with or relationship to TAG would inform or result in expenditures made by NYCLASS to benefit their campaigns."
21. By virtue of TAG's relationships with NYCLASS, UFT and the campaigns, expenditures by NYCLASS and UFT were not and could not be independent of the campaigns. Accordingly, TAG, as an agent of its clients, cooperated in expenditures that were reported as independent.

TAG RESPONSES TO OAG FINDINGS

22. TAG neither admits nor denies OAG's findings recited in the foregoing paragraphs and denies any violation of law in this matter.

23. TAG provided consulting services in 2013 to two third party spenders, NYCLASS, and, through TAG doing business as Strategic Consultants, UFT. In addition, NYCLASS operated out of TAG's office suite. TAG believes that nothing TAG did in performing services for, or its relationship with its Campaign clients or performing services for its third party spender clients either caused its Campaign clients to know, or should have caused them to know that their communications and relationship with TAG would inform or result in a third party expenditure to benefit its Campaign clients.
24. NYCLASS, an animal advocacy organization, engaged TAG as its strategic planning consultant for a campaign to mobilize and turn out the animal protection voting bloc in 2013. Scott Levenson served as NYCLASS' political director, Chelsea Connor as its communications director, and other TAG personnel also performed services for NYCLASS.
25. In May or June of 2013, NYCLASS raised the possibility of paying for mailings supporting endorsed City Council candidates. TAG contends that Katie Franger, TAG's Chief of Staff, told NYCLASS's executive director Allison Feldman that if NYCLASS decided to make independent expenditures in support of endorsed City Council candidates, "other arrangements" might be required for Laurie Cumbo and Mark Levine, such as using a different designer or mail house, because they were TAG's clients. In late August 2013, NYCLASS independently decided to send such mail. TAG contends that different designers handled the NYCLASS mailing and Cumbo and Levine's campaign mailings.
26. NYCLASS independently selected the candidates for whom its mailings were sent. For example, NYCLASS did not send mail supporting TAG's client Robert Jackson for

Manhattan Borough President. Instead, it sent mail supporting his opponent Gale Brewer. The mailings urged voters to support the endorsed candidates -- including Cumbo and Levine -- because they supported humane treatment of animals. TAG did not share with NYCLASS the design, logo, reasons or messages it had developed for Cumbo and Levine that were being advanced by those respective campaigns. Even so, TAG made separate arrangements for the mail mentioning Cumbo and Levine.

27. TAG contends that the UFT planned from the beginning to make independent expenditures on behalf of the candidates endorsed by the United Federation of Teachers in the 2013 municipal elections. The amount and timing of such mailings were determined solely in accordance with UFT's political needs. TAG maintains that it understood the need to both avoid being a vehicle through which its Campaign clients could coordinate in UFT's third party expenditures or give its Campaign clients the impression that their communications with or relationship to TAG would inform or result in expenditures made by UFT.
28. To reinforce the separation of efforts and provide an audit trail that would make it easier to track the separate payments for, and the underlying services performed by TAG for its Campaign clients from payments for, and the underlying services performed by TAG for UFT, TAG and UFT agreed that UFT would be billed for consulting services through TAG's unincorporated affiliate "Strategic Consultants, Inc."
29. UFT paid for and mailed template mailing pieces urging voters to vote for UFT-endorsed candidates. The template was designed by TAG and featured a uniform design and message unique to UFT. TAG did not share with UFT the design, logo,

reasons or messages it had developed for, and that were being advanced by its Campaign clients.

30. Despite these efforts, TAG concedes that its efforts to establish a firewall as between the services it rendered to its Campaign clients and the services it rendered to its third party spender clients may not in all cases have been sufficient to overcome the presumptions in CFB Rule 1-08(f)(1)(v) and (vi).

31. TAG believes that it and other consultants will be engaged by Campaigns in connection with the 2017 municipal elections and subsequently by third parties who either are or thereafter become third party spenders. It agrees to seek guidance from the relevant regulatory agency on how to establish a firewall that can serve as a safe harbor when a campaign client and a third party spender engage the same consultant.

PROSPECTIVE RELIEF

IT IS HEREBY UNDERSTOOD AND AGREED by and among the parties that, in consideration of the making and execution of this Assurance:

MONETARY RELIEF

TAG, in settlement of this Investigation:

32. Shall pay the sum of \$10,800 to New York State and will provide documentation of such payment to OAG.

33. All payments due under this Assurance shall be made by wire transfer, certified check and/or bank check.

ADDITIONAL PROVISIONS

34. As a condition of this Assurance, TAG agrees to follow all relevant laws and rules, including any forthcoming agency guidance.

35. The term of this Assurance is continuing, unless modified by mutual agreement of the parties.
36. OAG has agreed to the terms of this Assurance based on, among other things, the representations TAG and its counsel made to OAG. To the extent that any material representations are later found by a court of competent jurisdiction to be inaccurate or misleading, OAG may void this Assurance.
37. TAG agrees not to raise or interpose in any way its state of incorporation or other jurisdictional objections as a defense to any cause of action, claim or argument arising from OAG's enforcement of this Assurance.
38. This Assurance constitutes the entire agreement between OAG and TAG, and it 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 any party in agreeing to this Assurance. The headings and captions in this Assurance are for convenience only and do not affect or control the meaning or construction of this Assurance.
39. No party shall take any action or make any statement denying, directly or indirectly, the propriety of this Assurance. Nothing in this paragraph affects TAG's (i) testimonial obligations, or (ii) right to take legal or factual positions in litigation to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding, and should not be construed as an admission of liability by TAG.

40. Each party represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.
41. This Assurance may not be amended, except by an instrument in writing signed on behalf of all of 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 and exchanged electronically or in hard copy.
42. This Assurance shall be binding on and inure to the benefit of all the parties hereto and their respective successors and assigns, provided that no party other than OAG may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.
43. In the event that any one or more of the provisions in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.
44. TAG shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance without the necessity for a subpoena.
45. Acceptance of this Assurance by OAG shall not be deemed approval by OAG of any of the practices or procedures referenced in OAG's findings herein, and TAG shall make no representation to the contrary.
46. Evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the Executive Law in any action or proceeding thereafter commenced by OAG. If any court of competent jurisdiction determines that TAG has breached this Assurance,

TAG shall pay to OAG the reasonable cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses and court costs.

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

If to OAG, to:

Daniel G. Cort
Public Integrity Bureau Chief
Office of the Attorney General
120 Broadway – 22nd Floor
New York, New York 10271

If to TAG, to:

Lawrence A. Mandelker
Kantor Davidoff Mandelker Twomey Gallanty & Kesten P.C.
415 Madison Avenue, 16th Floor
New York, New York 10017

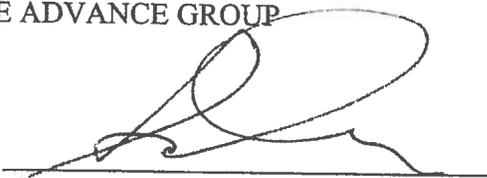
48. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
49. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

IN WITNESS THEREOF, this Assurance is executed by the parties hereto as of the date set forth below.

Dated: October 6, 2015

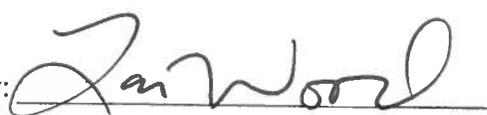
THE ADVANCE GROUP

By:

A handwritten signature in black ink, appearing to be a stylized name, written over a horizontal line.

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By:

A handwritten signature in black ink, appearing to be "Eric T. Schneiderman", written over a horizontal line.