

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ANDREW M. CUOMO,
Attorney General of the State of New York,
on behalf of the People of the State of New York,

Plaintiff,

- against -

FEED THE HUNGRY, INC., and NICHOLAS J.
CASCONO, JR.,

Defendants.

Index No.

VERIFIED COMPLAINT

Andrew M. Cuomo, Attorney General of the State of New York, on behalf of the People of the State of New York, alleges the following against Feed the Hungry, Inc., a New York not-for-profit corporation (“FTH”), and Nicholas J. Cascone, Jr., the founder of FTH (“Cascone”) (together, “Defendants”).

NATURE OF THE CASE

1. In 1993, Nicholas Cascone founded a not-for-profit that was purportedly designed to achieve a noble goal to which few New Yorkers would object – using vehicle donations to fund programs to feed the hungry.
2. However, rather than pursuing FTH’s stated purpose, Cascone elected to use the façade of legitimacy that the charity conveyed to enrich himself.
3. To induce car donations from the public, Cascone made false representations on FTH’s website, including misrepresenting the size and scope of FTH’s charitable activities by claiming credit for thousands of meals served to indigent individuals that, in fact, FTH had never funded.

4. Asked to account for FTH's charitable activities and for the amount of revenue FTH generated through accepting vehicle donations, Cascone has refused to provide information to the Office of the New York State Attorney General ("OAG"), electing to invoke his constitutional right against self-incrimination under the Fifth Amendment.

5. Asked whether he ever used FTH's charitable assets (including proceeds from the sale of vehicles donated to FTH) for his own personal benefit, Cascone again refused to answer citing his right against self-incrimination.

6. The full scope of what Cascone extracted from the charity remains unknown because he failed to maintain documents that show: (a) the vehicles donated to FTH; (b) how (and for how much) these cars were sold; and (c) what became of the cash or checks FTH received in connection with those sales. What is known is that of the more than \$430,000 deposited into FTH's bank accounts between 2002-2009, FTH donated less than \$7,850 (1.8%) to legitimate charities.

7. Cascone perpetuated his scheme by ensuring that FTH had no functioning Board to oversee his actions. According to its own filings with OAG, FTH has no directors other than Cascone since at least 2004, in violation of New York law governing not-for-profit corporations.

8. This arrangement has allowed Cascone to ignore his fiduciary duties and flout New York law with respect to the need for a charity: (a) to maintain adequate books and records; (b) to implement and maintain adequate procedures to account for revenues and expenses; and (c) to establish and exercise basic financial controls.

9. The Attorney General seeks a judgment, among other things: (a) enjoining FTH and Cascone from soliciting charitable contributions from the public; (b) enjoining Cascone (or anyone acting on behalf of Cascone) from accessing, using, or distributing FTH assets; (c) holding Cascone liable for his misappropriation and waste of FTH assets; (d) removing Cascone as an officer and director of FTH; (e) enjoining Cascone from serving as an officer or director of FTH or any other not-for-profit corporation in the future; (f) dissolving FTH; and (g) granting such other and further relief as the Court deems just and proper.

PARTIES

10. The Attorney General is responsible for overseeing the activities of New York not-for-profit corporations and the conduct of their officers and directors, in accordance with New York's Not-for-Profit Corporation Law ("N-PCL"), Estates, Powers & Trusts Law ("EPTL"), and Executive Law ("Exec. L.").

11. The Attorney General maintains offices at 120 Broadway, New York, New York.

12. Defendant FTH is incorporated in New York as a Type B (charitable), not-for-profit corporation under § 402 of the N-PCL. During the relevant period, FTH has maintained offices at 1910 Neptune Avenue, Brooklyn, NY and at 1531 Arthur Kill Road, Staten Island, NY.

13. FTH is registered with OAG's Charities Bureau. It files annual financial reports with the Charities Bureau, including the IRS Form 990 and the New York CHAR 500. FTH's certificate of incorporation states that its purposes include:

To collect food, clothing and other items to help needy individuals.

To do any other act or thing incidental to or connected with the foregoing purposes or in advance thereof, but not for the pecuniary profit or financial gain of its members, directors or officers.

14. FTH is exempt from federal income tax under § 501(c)(3) of the Internal Revenue Code. Its certificate of incorporation requires FTH to operate in a manner that would not cause it to lose that status.

15. Defendant Nicholas Cascone, Jr. resides at 31 Chatham Street, Staten Island, New York 10312-1398. Cascone is a co-founder of FTH. Cascone has served continuously as FTH's president and a member of its board of directors since FTH's incorporation in 1993.

JURISDICTION AND VENUE

16. The Attorney General brings this action on behalf of the People of the State of New York under Article 7-A of the Executive Law, § 175, N-PCL §§ 112, 706, 714 and 720, EPTL § 8.1-4, and as *parens patriae*.

17. Under Exec. L. § 175, the Attorney General is authorized to bring an action based on violations of Article 7-A of the Executive Law to enjoin the fraudulent solicitation or collection of charitable funds and for an order removing any director or other person responsible for the violations.

18. Under N-PCL §§ 720(a) and 720(b), the Attorney General is authorized to bring an action to require the directors and officers of a New York not-for-profit corporation to account for the mismanagement of corporate assets and for transfers, loss, or waste of corporate assets in violation of their fiduciary duties and to recover all resulting damages from such officers and directors.

19. Under N-PCL §§ 112(a)(4), 706(d) and 714(c), the Attorney General is authorized to seek removal of corporate officers and directors for cause, including violations of their fiduciary duties.

20. Under EPTL § 8.1-4(m), the Attorney General may institute appropriate proceedings to secure the proper administration of a not-for-profit corporation.

21. Under N-PCL § 112(a)(1), the Attorney General is authorized to bring an action to dissolve a not-for-profit corporation that has acted beyond its capacity or power, or to restrain it from carrying on unauthorized activities. Also, under N-PCL § 1101(a)(2), the Attorney General is authorized to bring an action to dissolve a corporation that has exceeded the authority conferred upon it by law, or has carried on, conducted or transacted its business in a persistently fraudulent or illegal manner.

22. Under N-PCL § 112(a)(7), the Attorney General is authorized to bring an action to enforce any right given under the N-PCL to an officer or director of a not-for-profit corporation. Accordingly, the Attorney General may bring an action for dissolution in accordance with N-PCL § 1102(a)(2)(D), which authorizes a director to petition for a judicial dissolution of a corporation where the “directors . . . in control of the corporation have looted or wasted the corporate assets, have perpetuated the corporation solely for their personal benefit or have otherwise acted in an illegal, oppressive or fraudulent manner.”

23. The Attorney General also has common law *parens patriae* authority to conserve charitable property and to protect the public from fraudulent solicitation.

24. Because the Attorney General maintains offices at 120 Broadway, New York, New York, venue is properly laid in New York County, as provided in CPLR § 503(a).

FACTS UNDERLYING ALL CAUSES OF ACTION

I. The Nature and Scope of FTH's Operations

25. Cascone created FTH over fifteen years ago and it has proved to be a lucrative business. Between 2002 and 2009, FTH's bank accounts show deposits of more than \$400,000.

26. Despite this substantial revenue, Cascone has refused to answer the most rudimentary questions about FTH's operations.

27. During his testimony with the OAG, Cascone was asked to identify the number of employees FTH employed between 2004 and 2009. He invoked his Fifth Amendment privilege.

28. Cascone also refused to answer questions about fundamental parts of FTH's car donation operation, such as:

- what phone numbers FTH used in its operations;
- how calls made to FTH were handled; and
- what, if any, arrangements had for towing cars;

29. Cascone similarly refused to provide information about where the proceeds of any donations were spent. According to FTH's most recently filed (2007) tax return, FTH did not offer any direct services, but rather identified its primary exempt purpose as existing "[t]o donate proceeds from the sale of used automobiles to support the homeless and others."

30. Although Cascone signed FTH's 2007 annual report on the charity's IRS Form 990 stating FTH's purpose, he would not disclose any information about any services FTH may have provided or donations FTH may have made. Specifically, Cascone refused to answer:

- whether FTH operated a soup kitchen or a food pantry;
- whether FTH offered any type of direct services relating to feeding hungry individuals; and
- whether FTH made donations to other charitable organizations or to identify any such organizations;

II. FTH Has Obtained Donations Under False Pretenses

31. In soliciting contributions from the public, FTH has used a website, www.feedthehungryinc.org, to solicit donations that included misleading statements about the nature and amount of FTH's charitable giving.

32. FTH's website included a representation that: "[w]ith your donations we have currently provided 83,262 meals in 2008 so far. Whether you donate an old car, SUV, or boat, your donation is greatly appreciated. Working with the New York City Rescue Mission founded in 1872 it is it the oldest mission in the U.S. [sic] Your vehicle donation can provide meals for the less fortunate we need your help now."

33. When Cascone was asked about the basis for the statement that FTH had provided 83,262 in meals in 2008, he responded "I invoke the Fifth Amendment."

34. Cascone similarly invoked his Fifth Amendment privilege when he was asked how much money FTH donated to charity in 2008 in total.

35. FTH's bank records and the New York City Rescue Mission's (the "Rescue Mission") donation records show donations totaling \$1,400 from FTH to Rescue Mission in 2008. In 2008, the Rescue Mission's average cost per meal was \$1.99.

36. FTH's bank records show no additional donations to any charitable entity in 2008.

37. FTH's donation of \$1,400 to the Rescue Mission in 2008 was insufficient to have funded more than the more than 83,000 meals that cost just under \$166,000 to prepare.

38. In 2005, FTH's website included the following language:

"Feed The Hungry, Inc. in Brooklyn, New York, is a registered non-profit organization dedicated to helping the hungry. Our rescue mission benefits the welfare of the countless hungry men, women, and families in New York Metropolitan Area. The mission served over 270,000 meals last year."

39. This statement misleadingly suggests that the rescue mission was operated by FTH. Further, it suggests that FTH was responsible for funding and/or serving over 270,000 meals in 2004 or 2005.

40. FTH donated slightly more than \$2,000 to Rescue Mission in 2004 and nothing at all in 2005. Again, FTH's donations were insufficient to support the preparation of 270,000 meals.

41. FTH's bank records show no charitable donations at all in between 2005 and 2007.

42. In total, between 2002 and 2009, a period when FTH took in deposits of more than \$400,000, FTH made under \$7,900 in charitable donations.

43. FTH made the following false and misleading statements to encourage donations:

- Telling the public that FTH had, through its donations, funded more than 83,000 meals in 2008 when it had, at best, made donations sufficient to fund less than 1% of that number of meals;
- Stating that “Your vehicle donation can provide meals for the less fortunate” when, in fact, FTH made no charitable donations in 2005, 2006, and 2007.
- Stating, in the 2005 version of FTH’s website, that “our rescue mission benefits the welfare of the countless hungry men, women, and families in New York Metropolitan Area. The mission served over 270,000 meals last year” when FTH did not operate a rescue mission and made donations in 2004 and 2005 sufficient to fund only a fraction of 270,000 meals.

III. Cascone Runs FTH Without Any Oversight or Accountability

44. Cascone serves as FTH's only director, although N-PCL § 702 requires a minimum of three directors. There are no independent directors. FTH's tax returns since 2005 list no directors other than Cascone.

45. When asked about FTH's directors and any board meetings they may have held since 2004, Cascone testified as follows:

Q: Can you tell me the Directors who served at Feed the Hungry since 2004?

A: I invoke the Fifth Amendment.

Q: Are there any outside Directors?

A: I invoke the Fifth Amendment.

Q: Is it fair to say there is no other Director besides you?

A: I invoke the Fifth Amendment.

Q: Is it fair to say that you didn't hold any board meetings from 2004 through present?

A: I invoke the Fifth Amendment.

46. In testimony before the OAG, Cascone elected to assert his Fifth Amendment right when asked about FTH's IRS Form 990—a sworn annual filing purportedly containing FTH's financial and operating information— and would not even admit that it was his signature on both the IRS Form 990 and the accompanying form FTH filed with OAG for the years 2005, 2006 and 2007. Nor would he admit any role in preparing those documents.

47. In the absence of any board oversight, Cascone has been left to his own devices, with no independent monitoring of his actions.

IV. Cascone Routinely Wastes and Misappropriate FTH Assets

48. Cascone has failed to meet his fiduciary duties as an officer and director of FTH. Specifically, Cascone has treated FTH's assets as his own.

49. Cascone repeatedly invoked his Fifth Amendment privilege when he was asked about his compensation or his use of FTII's assets for his personal benefit.

Q: Did you ever draw any compensation from Feed the Hungry?

A: I invoke the Fifth Amendment.

Q: According to [FTH's tax returns], you did not draw compensation, correct?

A: I invoke the Fifth Amendment.

Q: Did you ever use any cash obtained in exchange for cars donated to Feed the Hungry for personal use?

A: I invoke the Fifth Amendment.

50. Cascone was also unwilling to provide information about FTH's bank accounts and who controlled those accounts.

Q: Can you explain why Feed the Hungry had multiple bank accounts?

A: I invoke the Fifth Amendment.

Q: Can you tell me who had authority to deposit funds into the accounts?

A: I invoke the Fifth Amendment.

Q: Can you tell me who had the authority to withdraw funds from that account?

A: I invoke the Fifth Amendment.

51. Asked whether any funds obtained by selling cars donated to FTH were deposited into any bank accounts controlled by him, Cascone again asserted his Fifth Amendment rights. Similarly, he refused to disclose whether any such funds were deposited into any brokerage account or used to invest in real estate.

52. Cascone also invoked the Fifth Amendment when asked about expenditures on FTII's American Express card.

Q: Did you use this card [an American Express Platinum Business Card in the name of Feed the Hungry and NJ Cascone, Jr.] for personal expenses?

A: I invoke the Fifth Amendment.

53. In response to questions about FTH funds being used to pay off expenditures made on an American Express card held in the name of Cascone's wife, Roberta Troyanos, Cascone again invoked his constitutional rights.

Q: Can you tell me why Feed the Hungry would possibly pay any credit card not held in the charity's name?

A: I invoke the Fifth Amendment.

Q: Can you tell me what steps, if any, were taken for preventing Feed the Hungry funds from being spent on personal items?

A: I invoke the Fifth Amendment.

54. Cascone also refused to disclose any financial benefits he derived from entities that did business with FTH.

Q: Did you ... you personally, have financial interest in the towing operations [used by FTH]?

A: I invoke the Fifth Amendment.

55. Similarly, Cascone was asked about FTH's payments of Con Edison bills for an account belonging to a for-profit company called Two Carrier's Towing, Inc.

Q: Can you tell me why Feed the Hungry would be paying a Con Edison bill for a for profit organization?

A: I invoke the Fifth Amendment.

Q: Do you have any financial interest in Two Carrier's Towing, Inc.?

A: I invoke the Fifth Amendment.

Q: Does anyone in your family have any financial interest in Two Carrier's Towing, Inc.?

A: I invoke the Fifth Amendment.

56. Cascone has treated FTH's funds as his own, thereby breaching his fiduciary duty to the charity while wasting and misappropriating the charity's assets.

V. Cascone Failed to Maintain Adequate Books and Records to Document FTH's Revenue and Expenses

57. As FTH's sole director and officer, Cascone has not taken rudimentary steps to safeguard and properly administer FTH's charitable assets. Disposing of donated cars is frequently a cash business and FTH has no procedures to ensure that donations and other revenues are properly recorded and deposited in FTH's bank account. Nor does FTH have procedures to ensure that revenues and expenses are properly documented and reported to OAG as required by New York law.

58. When asked questions about FTH's operations, Cascone asserted his Fifth Amendment privilege and refused to answer.

Q: Did Feed the Hungry maintain any books and records?

A: I invoke the Fifth Amendment.

59. Cascone refused to answer the number of cars that had been donated to FTH in any year from 2004 to 2009, the vehicle identification numbers of donated cars, or the identity of any donors.

60. Cascone also failed to keep records relating to the tax deductions associated with donations.

Q: Did you provide donors with receipts for tax deduction purposes?

A: I invoke the Fifth Amendment.

Q: Did you maintain copies [of receipts] or of any other records with respect to donors?

A: I invoke the Fifth Amendment.

Q: How did you determine the value of the donation?

A: I invoke the Fifth Amendment.

61. Cascone refused to answer how many bank accounts FTH has used since 2004 or to disclose who had authority to make deposits and withdrawals from any FTH accounts.

62. Cascone invoked his Fifth Amendment privileges when asked about large cash deposits being made into FTH's bank accounts and the source of that cash.

63. Asked whether FTH maintained receipts or ledgers showing the source of cash that FTH received, Cascone again invoked the Fifth Amendment.

64. Asked if FTH took any steps to prevent charitable funds from being spent on personal items, Cascone again invoked the Fifth Amendment.

65. As a director and officer of FTH, Cascone has failed to provide even the most basic corporate and financial oversight required of fiduciaries. Cascone, among other things, has not:

- required any internal financial controls, including policies or procedures regarding access by Cascone and others to FTH's cash, checking accounts or other assets;
- required any reliable accounting system, including any system for accurately tracking revenues or expenses;
- adopted any policies and procedures relating to tracking and maintaining information relating to the vehicles donated to FTH including, but not limited to, (a) the name of the donor; (b) the make and model of the donated vehicle; (c) the amount and date that any charitable donation receipt was provided to any donor; (d) the means by which FTH sold or otherwise disposed of the

vehicle; and (e) the cash or other receivable received by FTH in exchange for selling or otherwise disposing of the vehicle.

FIRST CAUSE OF ACTION

Scheme to Defraud – Exec. L. §§ 172-d & 175(2) (Against All Defendants)

66. The OAG repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

67. Defendants, and those acting in concert or participation with them or under their direction and control, have violated Exec. L. § 172-d(2), in that they have engaged in a fraudulent scheme in connection with charitable solicitations, including (a) obtaining money by false pretenses and representations; and (b) soliciting charitable contributions using materially false and misleading statements about the intended use of donated funds.

68. FTH and Cascone have violated Exec. L. § 172-d(3), in that they use and intend to use materially false or misleading advertising or promotional material in connection with solicitations for charitable purposes on the FTH website.

69. FTH and Cascone violated Exec. L. § 172-d(4), in that they fail to apply contributions in a manner substantially consistent with FTH's solicitations for charitable purposes and the purposes expressed in its registration statement.

70. Accordingly, FTH and Cascone should be enjoined from the solicitation and collection of charitable funds, as authorized by Exec. L. § 175(2)(a), (c) and (e).

SECOND CAUSE OF ACTION
Breach of Fiduciary Duties – N-PCL §§ 717 & 720
(Against Cascone)

71. The OAG repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

72. Cascone has failed to discharge his duties as an officer and director of FTH with the degree of care, skill, prudence, diligence, and undivided loyalty required of them in that, among other things, he has: (a) allowed the diversion of funds from the FTH for his personal use of himself; (b) failed to establish any system for accurately tracking and accounting for FTH's revenues and expenses; (c) failed to establish any system of internal controls; (d) failed to ensure that FTH's operations adhere to the purposes set forth in its certificate of incorporation; and (e) failed to ensure the legal minimum number of directors to govern FTH.

73. By engaging in the foregoing, Cascone breached his fiduciary duties to FTH in violation of N-PCL § 717. Accordingly, Cascone is liable under N-PCL §§ 720(a)(1)(A) and (a)(1)(B) to account for his conduct in the neglect and violation of his duties in the management and disposition of corporate assets, and for his conduct in transferring FTH assets to himself and others, and causing loss and waste of FTH corporate assets, and to pay restitution and damages to FTH.

THIRD CAUSE OF ACTION
Distribution and Waste of Corporate Assets – N-PCL §§ 719(a)(1) &
720(a)(1)(B) (Against Cascone)

74. The OAG repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

75. Cascone has diverted funds obtained in exchange for vehicles donated to FTH for his personal use.

76. Accordingly, Cascone has caused loss and waste of FTH corporate assets and acquired FTH corporate assets for himself, rendering him liable to FTH under N-PCL §§ 719(a)(1) and 720(a)(1)(B) to account for his misconduct.

FOURTH CAUSE OF ACTION

Actions Contrary to Law and Certificate of Incorporation – N-PCL §§ 102 & 515 (Against All Defendants)

77. The OAG repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

78. FTH, at the direction of Cascone, has exceeded the authority conferred upon it by law, and acted beyond its capacity or power as provided by law and its certificate of incorporation, in that, among other things, FTH (a) conducts activities for pecuniary profit or financial gain, in violation of N-PCL § 102(a)(5)(1); (b) distributes income and profits, in violation of N-PCL §§ 102(a)(5)(2) and 515; and (c) engages in private inurement, in violation of N-PCL §§ 102(a)(5)(2) and FTH's certificate of incorporation.

79. Accordingly, FTH and Cascone should be enjoined pursuant to N-PCL §§ 112(a)(1) and 112(a)(3) from soliciting funds from the public and from accessing, using or distributing FTH assets.

FIFTH CAUSE OF ACTION

Conduct Necessitating Removal of Officers and Directors – N-PCL §§ 706 & 714 (Against Cascone)

80. The OAG repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

81. Cascone has, among other things, consistently and repeatedly (a) breached his fiduciary obligations as an officer and director of FTH; (b) caused loss and waste of FTH charitable assets, for his own personal gain; (c) consistently and repeatedly made, and caused to be made, solicitation statements that are materially false and misleading; (d) consistently and repeatedly failed to apply solicited funds in conformity with FTH's charitable purposes; (e) failed to ensure that FTH maintains complete and correct books and records; and (f) consistently and repeatedly caused FTH to act outside the authority granted to it by the N-PCL and its certificate of incorporation.

82. Accordingly, Cascone should be removed for cause as a director and officer of FTH, and permanently barred from re-election under N-PCL §§ 706(d) and 714(c).

SIXTH CAUSE OF ACTION

Failure to Properly Administer Charitable Assets – EPTL § 8-1.4 (Against Cascone)

83. The OAG repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

84. As a director and officer of FTH, Cascone is a trustee under EPTL § 8-1.4(a), responsible for the proper administration of FTH's charitable assets. Cascone has failed to properly administer FTH's charitable assets in that he has failed to institute and maintain procedures to account for FTH's total revenues, failed to maintain proper accounting records, failed to institute financial controls, and failed to keep accurate books and records. Cascone has failed to properly administer FTH's charitable assets in that he has misappropriated funds from the FTH for their personal use. Cascone should be

removed as trustee of FTH, and ordered to account for his failure and to provide restitution to FTH.

SEVENTH CAUSE OF ACTION

Dissolution under N-PCL §§ 112(a)(1) & 1101(a)(2) for Exceeding Authority Conferred by Law, Violating Certificate of Incorporation, and Engaging in Private Inurement (Against FTH)

85. The OAG repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

86. FTH has exceeded the authority conferred upon it by law, and acted beyond its capacity or power as provided by law and its certificate of incorporation, in that, among other things, FTH (a) conducts activities for profit or gain, in violation of N-PCL § 102(a)(5)(1); (b) distributes income and profits, in violation of N-PCL §§ 102(a)(5)(2) and 515; and (c) engages in private inurement, in violation of N-PCL § 102(a)(5)(2) and its certificate of incorporation.

87. Accordingly, the corporation should be dissolved pursuant to N-PCL §§ 112(a)(1) and 1101(a)(2) and its remaining assets and future assets, if any, applied to charitable uses consistent with FTH's mission, as authorized by N-PCL §§ 1115(a) and 1008(a)(15).

EIGHTH CAUSE OF ACTION

Dissolution under N-PCL § 1101(a)(2) – For Persistently Fraudulent Business Conduct (Against FTH)

88. The OAG repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

89. FTH has conducted its business in a persistently fraudulent and illegal manner, in that FTH has, among other things, persistently made false and misleading

solicitation statements to the public in violation of Exec. L. § 172-d(2)-(4); and (b) persistently engaged in ultra vires acts.

90. Accordingly, the corporation should be dissolved pursuant to N-PCL § 1101(a)(2) and its remaining assets and future assets, if any, applied to charitable uses consistent with FTH's mission, as authorized by N-PCL §§ 1115(a) and 1008(a)(15).

NINTH CAUSE OF ACTION

Dissolution under N-PCL §§ 112(a)(7) & 1102 – for Wasting of Corporate Assets and Perpetuation of Corporation Solely for Personal Benefit (Against All Defendants)

91. The OAG repeats and re-alleges, as though fully set forth herein, all of the preceding paragraphs.

92. Under N-PCL § 112(a)(7), the Attorney General may maintain an action to “enforce any right given under this chapter to . . . a director or an officer of a Type B . . . corporation.” Under N-PCL § 1102(a)(2)(D), any director of a not-for-profit corporation may petition the court for judicial dissolution where “the directors . . . in control of the corporation have looted or wasted the corporate assets, have perpetuated the corporation solely for their personal benefit, or have otherwise acted in an illegal, oppressive or fraudulent manner.”

93. Cascone, as the director in control of FTH, has wasted its corporate assets, perpetuated the corporation for his personal benefit and otherwise acted in an illegal, oppressive or fraudulent manner.

94. Accordingly, FTH should be dissolved in accordance with N-PCL §§ 1102(a)(2)(D) and 112(a)(7) and its remaining assets and future assets, if any, applied to

charitable uses consistent with the FTH mission pursuant to N-PCL §§ 1115(a) and 1008(a)(15).

PRAYER FOR RELIEF

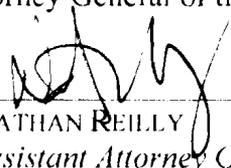
Plaintiff demands judgment against Defendants as follows:

- A. Enjoining Defendants FTH and Cascone, and all other persons acting or claiming to act on FTH's behalf or in concert or participation with it, from soliciting charitable contributions from the public;
- B. Enjoining Cascone, and all other persons acting or claiming to act on their behalf or in concert or participation with them, from accessing, using, or distributing FTH funds or other assets, including but not limited to FTH's intellectual property;
- C. Removing Cascone as an officer, director, trustee or equivalent position of FTH or any other not-for-profit corporation in the future;
- D. Holding Cascone liable for his waste and misappropriation of FTH assets, in an amount to be determined at trial;
- E. Dissolving FTH, with its remaining assets and any future assets, to be transferred to charitable uses consistent with FTH's mission; and
- F. Granting such other and further relief as is just and proper.

Dated: June 15, 2010
New York, New York

ANDREW M. CUOMO
Attorney General of the State of New York

By: _____


NATHAN REILLY
Assistant Attorney General
Office of the Attorney General
120 Broadway
New York, New York 10271
(212) 416-8860

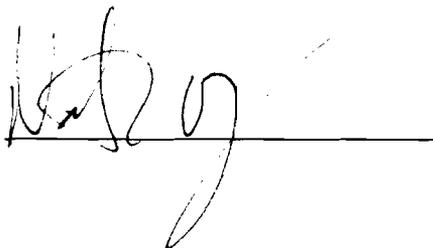
VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss:

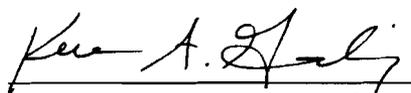
NATHAN REILLY, being duly sworn, deposes and says:

That he is an Assistant Attorney General of the State of New York, and is duly authorized to make this verification; and

That he has read the foregoing Verified Complaint and knows the contents thereof; that the same is true to the best of his own knowledge, except as to matters therein stated to be upon information and belief, and as to those matters he believes them to be true.

A handwritten signature in black ink, appearing to read "Nathan Reilly", is written over a horizontal line.

Sworn to before me this
14th day of June, 2010


Assistant Attorney General
of the State of New York