

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
WESTCHESTER REGIONAL OFFICE

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In the Matter of the

investigation by ELIOT SPITZER,  
Attorney General of the State of  
New York, of

ASSOCIATION OF RETIRED FIREFIGHTERS  
a/k/a DISABLED AND RETIRED FIREFIGHTERS  
and S&E MARKETING, LTD.

**ASSURANCE OF  
DISCONTINUANCE  
PURSUANT TO  
EXECUTIVE LAW  
SECTION 63(15)**

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WHEREAS, ELIOT SPITZER, Attorney General of the State of New York, pursuant to his authority under the New York Executive Law Articles 5 and 7-A, Estates, Powers and Trusts Law, and the Not-for-Profit Corporation Law, and under the common law, has conducted an investigation into certain practices of Association of Retired Firefighters a/k/a Disabled and Retired Fighters (“ARF”), S&E Marketing, Ltd. (“S&E”), New Age Services, Ltd. (“New Age”), and Whiterock Marketing Group, Inc. (“Whiterock”);

WHEREAS, ARF is a not-for-profit corporation organized and existing under the laws of the State of Illinois and is registered with the New York State Department of Law as a charitable organization pursuant to Executive Law Article 7-A;

WHEREAS, S&E is a for-profit corporation organized and existing under the laws of the State of New Jersey and is registered as a professional fund raiser with the New York Attorney General pursuant to Executive Law Article 7-A;

WHEREAS, New Age is a for-profit corporation organized and existing under the laws of the State of New York, is authorized to do business in New York State, and is registered as a

professional fund raiser with the New York Attorney General pursuant to Executive Law Article 7-A;

WHEREAS, New Age was previously known as Whiterock, a for-profit corporation organized and existing under the laws of the State of New York, authorized to do business in New York State, and registered as a professional fund raiser with the New York Attorney General pursuant to Executive Law Article 7-A;

WHEREAS, by contracts dated July 16, 1999 and June 6, 2000, ARF contracted with S&E to solicit funds on behalf of ARF from New York residents;

WHEREAS, by “sub agency agreements” dated July 5, 2000 and January 2, 2001, S&E contracted with Whiterock to solicit funds on behalf of ARF from New York residents;

WHEREAS, by letter dated August 8, 2000, ARF authorized Whiterock to solicit on its behalf in New York through the contracts with S&E;

WHEREAS, by letter dated December 14, 2001, ARF authorized New Age to solicit on its behalf in New York through the contracts with S&E;

WHEREAS, ARF, by and through S&E and Whiterock/New Age, has solicited funds from New York residents through telephone and mail solicitations;

WHEREAS, in the course of soliciting funds from New York residents, ARF did not disclose to prospective donors that it is based in Illinois;

WHEREAS, in the course of soliciting funds from New York residents, ARF stated or implied that it is a New York-based organization and that contributions would be used for the benefit of New York State residents, including disabled and retired New York firefighters;

WHEREAS, in the course of soliciting funds from New York residents, ARF did not

disclose to prospective donors that funds contributed to ARF would not be used for the benefit of New York State residents, including disabled and retired New York firefighters;

WHEREAS, in the course of soliciting funds from New York residents, ARF mailed certain promotional literature, including brochures and pledge forms, which bore a White Plains, New York address and return address;

WHEREAS, the White Plains, New York address utilized by ARF is a “mail drop,” and ARF does not maintain or staff an office at that address or anywhere in New York;

WHEREAS, ARF falsely stated or implied that it conducts activities in New York and/or provides benefits to New York State residents;

WHEREAS, ARF is not exempt from federal income taxation under Internal Revenue Code (“IRC”) § 501(c)(3), it having been determined by the Internal Revenue Service that ARF is exempt from federal income taxation under IRC § 501(c)(4);

WHEREAS, contributions to ARF are not tax deductible by donors as charitable contributions under IRC § 170;

WHEREAS, IRC § 6113 requires ARF to disclose conspicuously to prospective donors that contributions to ARF are not tax deductible by donors as charitable contributions under IRC § 170;

WHEREAS, ARF failed to disclose to prospective donors, conspicuously or otherwise, that contributions to ARF are not tax deductible by donors as charitable contributions under IRC § 170;

WHEREAS, ARF has, in the past, been delinquent in filing its financial reports as required by Executive Law Article 7A;

WHEREAS, the Attorney General alleges, by reason of the foregoing, that ARF and S&E violated Executive Law § 172-d(2), which prohibits fraudulent solicitations of funds for charitable purposes, and Executive Law § 172-d(3), which prohibits the use of false or materially misleading advertising or promotional material;

WHEREAS, the Attorney General alleges, by reason of the foregoing, that ARF and S&E violated Executive Law § 175(2)(e), which requires that funds be applied in a manner substantially consistent with the charitable purpose for which they were solicited from the public;

WHEREAS, the Attorney General alleges, by reason of the foregoing, that ARF and S&E engaged in deceptive acts and practices in violation of General Business Law (“GBL”) § 349;

WHEREAS, the Attorney General alleges, by reason of the foregoing, that ARF and S&E engaged in repeated fraudulent and illegal conduct in violation of Executive Law § 63(12);

WHEREAS, ARF and S&E have consented to enter into this Assurance of Discontinuance (“Assurance”) without admitting to the Attorney General’s findings or to any violation of law;

WHEREAS, the Attorney General is willing to accept this Assurance pursuant to Executive Law § 63(15) in lieu of commencing a civil action or proceeding against ARF & S&E;

WHEREAS, the Attorney General accepts this Assurance by ARF and S&E without prejudice to any legal claims which could be asserted by the Attorney General against New Age, Whiterock and/or any other professional fund raiser which solicited in New York on behalf of ARF;

NOW, THEREFORE IT IS HEREBY STIPULATED AND AGREED, by and between Eliot Spitzer, Attorney General of the State of New York, by Gary Brown, Assistant Attorney

General, ARF, and S&E, as follows:

1. For a period of three years following execution of this Assurance, ARF, under any name, or through any professional fund raiser, either directly or indirectly, shall not solicit contributions, as those terms are defined in Executive Law § § 171-a(10) and 171-a(2), from any resident of the State of New York, in any manner or through any fund raising mechanism, except pursuant to solicitation materials submitted to the Attorney General at least twelve business days prior to use in New York.

2. ARF and S&E shall not conduct any solicitation in New York in violation of Executive Law Article 7-A, GBL § 349, Executive Law § 63(12), or IRC § 6113, including without limitation (i) any solicitation which utilizes any fraudulent or illegal act, device, scheme, artifice to defraud, or false pretense; (ii) any solicitation which utilizes false or misleading advertising or promotional material; (iii) any solicitation which uses a New York state address, including a New York state return address, unless the charitable organization maintains and staffs an office at that address, or unless, immediately proximate to the New York address, the solicitation discloses both the address of the charitable organization's actual headquarters and the fact that the New York address is a "mail drop", using this or a substantially similar term that clearly conveys the message that the New York address is that of a mail handling facility; (iv) any solicitation that states or implies that a charitable organization conducts any activities in New York and/or benefits New York residents unless it conducts such activities and/or provides such benefits; or (v) any solicitation which fails to disclose conspicuously to prospective donors that contributions are not tax deductible by donors as charitable contributions under IRC § 170, if such is the case;

3. As set forth below, ARF shall reimburse any New York donor who claimed a tax deduction for contributing to ARF from January 1, 2001 to date and who is thereafter required by the Internal Revenue Service and/or the New York State Department of Taxation and Finance to pay any additional federal or state tax, penalty and/or interest because the contribution to ARF was not tax deductible as a charitable contribution under IRC § 170. The reimbursement made by ARF shall be equal to the amount of any additional tax, penalty and/or interest paid by the contributor. Any payment required by ARF pursuant to this provision shall be made within ten business days of receipt by ARF of a written complaint from a New York donor, either directly from the donor or forwarded by the Attorney General. ARF shall provide the Attorney General, within five business days of receipt, with a copy of any such written complaint received directly by ARF.

4. The Attorney General shall be the final arbiter of any dispute as to a donor's entitlement to reimbursement under this Assurance and the amount of the payment.

5. Six months after execution of this Assurance, and every twelve months thereafter for a period of three years, ARF shall provide to the Attorney General c/o Assistant Attorney General Gary Brown, at 101 East Post Road, White Plains, New York 10601, or such other person as the Attorney General may designate:

- (i) copies of all written complaints or demands for reimbursement made by New York donors;
- (ii) copies of all checks sent to New York donors who made complaints or demands for reimbursement; and
- (iii) a sworn affidavit from an officer of ARF indicating (a) the total of payments paid, (b) the name and address of each New York donor provided with reimbursement, the date the reimbursement check was sent and the amount of the check.

6. Within twenty (20) days after execution of this Assurance, ARF shall pay to the Attorney General a sum equal to the amount it received pursuant to the fund raising contracts with S&E from July 1, 1999 to date, less any contributions made by ARF to recipients in New York during that time, but not less than \$21,000, together with an accounting of all funds raised from New York residents. The Attorney General shall pay these funds to a charitable beneficiary or beneficiaries, identified by the Attorney General, which solicit on behalf of firefighters and/or disabled and retired firefighters, without further notice to respondents.

7. Upon ARF's default in payment of the \$21,000 described in paragraph 6 above, the sum of \$50,000 shall immediately become due and owing. In the event of such default, ARF consents to the entry by the Attorney General, without further notice to any party to this Assurance, of a money judgment in the amount of \$50,000 less any amount already paid, payable to the State of New York Department of Law, and the Attorney General shall be entitled to execution thereon.

8. Within twenty (20) days after execution of this Assurance, S&E shall pay to the Attorney General a sum equal to the amount it received pursuant to the fund raising contracts with ARF from July 1, 1999 to date, but not less than \$5,000, together with an accounting of all funds raised by New York residents. The Attorney General shall pay these funds to a charitable beneficiary or beneficiaries, identified by the Attorney General, which solicit on behalf of firefighters and/or disabled and retired firefighters, without further notice to respondents.

9. Upon S&E's default in payment of the \$5,000 described in paragraph 8 above, the sum of \$10,000 shall immediately become due and owing. In the event of such default, S&E consents to the entry by the Attorney General, without further notice to any party to this

Assurance, of a money judgment in the amount of \$10,000 less any amount already paid, payable to the State of New York Department of Law, and the Attorney General shall be entitled to execution thereon.

10. The above payments shall be made in the form of a cashier's check, payable to the State of New York Department of Law, addressed to: Office of the Attorney General, Westchester Regional Office, 101 East Post Road, White Plains, New York 10601, attention: Gary Brown, Assistant Attorney General.

11. This Assurance shall be binding on ARF, S&E and their respective successors, assigns, employees, agents, corporate successors and any other individuals or entities through whom they may act, including any professional fund raiser or solicitor not named herein. As used in this Assurance, "assigns" and "corporate successors" include all entities engaged in charitable solicitation on behalf of firefighters, and/or disabled or retired firefighters, that have as an officer, director, partner, majority shareholder, creator or incorporator any person who previously served as an officer, director, partner, shareholder, creator or incorporator of ARF or S&E;

12. This Assurance constitutes the entire agreement among the parties hereto. This Assurance cannot be changed or modified except by a writing duly executed by the parties.

13. In the event of a breach by ARF of any of the terms of paragraphs "1" through "5" above, provided any such breach occurs within three years of the execution of this Assurance and provided such breach is determined by a court of competent jurisdiction, the Attorney General shall be entitled to entry in such court of an order permanently enjoining ARF from soliciting contributions from any resident of the State of New York.

14. In the event of a breach of this Assurance by ARF or S&E, such parties shall indemnify the Attorney General for the cost, including legal fees, of enforcing this Assurance.

15. Pursuant to Executive Law § 63(15), violation of this Assurance shall constitute prima facie proof of a violation of the applicable law in any civil action or proceeding hereafter commenced by the Attorney General.

IT IS FURTHER UNDERSTOOD AND AGREED that the acceptance of this Assurance by the Attorney General shall not be deemed or construed as approval by the Attorney General of any activities of respondents and respondents shall not make any representation to the contrary.

NOTHING HEREIN shall be construed to deprive any person or entity of any private right under the law.

WHEREFORE, the following signatures are affixed this        day of May, 2003.

ELIOT SPITZER  
Attorney General of the  
State of New York  
Westchester Regional Office  
101 East Post Road  
White Plains, NY 10601

By: \_\_\_\_\_  
GARY BROWN  
Assistant Attorney General

Association of Retired Firefighters  
a/k/a Disabled and Retired Firefighters  
2804 West Sheffield Drive  
Peoria, IL 61604

By: \_\_\_\_\_  
Louis Montalvo  
President

S&E Marketing, Ltd.  
861 Chelsea Terrace  
Union, NJ 07083

By: \_\_\_\_\_  
Robert Raskin  
President

CORPORATE ACKNOWLEDGMENT

STATE OF ILLINOIS    )  
COUNTY OF            )ss.:

Louis Montalvo, being duly sworn, deposes and says:

I am the President of Association of Retired Firefighters a/k/a Disabled and Retired Firefighters, a respondent described herein, and which executed the foregoing Assurance of Discontinuance. I have executed the foregoing instrument with the consent and authority of Association of Retired Firefighters a/k/a Disabled and Retired Firefighters and those responsible for the acts of said entity duly acknowledge the same.

\_\_\_\_\_  
Louis Montalvo

Sworn to before me this    day  
of May, 2003.

\_\_\_\_\_  
Notary Public

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CORPORATE ACKNOWLEDGMENT

STATE OF NEW JERSEY    )  
COUNTY OF                )ss.:

Robert Raskin , being duly sworn, deposes and says:

I am the President of S&E Marketing, Ltd., a respondent described herein, and which executed the foregoing Assurance of Discontinuance. I have executed the foregoing instrument with the consent and authority of S&E Marketing, Ltd. and those responsible for the acts of said entity duly acknowledge the same.

\_\_\_\_\_  
Robert Raskin

Sworn to before me this    day  
of May, 2003.

\_\_\_\_\_  
Notary Public

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