

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

THE PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of
New York,

Plaintiff,

-against-

PAUL P. MARCHESE AND ROBIN S. MAYNARD,
MARCHESE & MAYNARD LLP, THE HAROLD &
HELEN GOTTLIEB FOUNDATION,

Defendants.

Index No. ~~605~~⁶⁵390/2022

Hon. Timothy S. Driscoll

**SO ORDERED
STIPULATION OF
SETTLEMENT**

This Stipulation of Settlement (“Stipulation”) is entered into by and between Plaintiff the People of the State of New York by Letitia James, Attorney General of the State of New York (“Plaintiff,” or “Attorney General” or “OAG”), and Defendants Paul M. Marchese (“Mr. Marchese”) and Robin S. Maynard (“Ms. Maynard”) (together, the “Individual Defendants”), Marchese & Maynard LLP (“Marchese & Maynard”), and The Harold & Helen Gottlieb Foundation (the “Foundation”), by their attorney, David G. Samuels of Perlman and Perlman LLP. The Attorney General and the Defendants are referred to collectively herein as the “Parties.”

WHEREAS, the Attorney General commenced the above-captioned action against the Defendants by the filing of a verified complaint on April 26, 2022; and

WHEREAS, the Attorney General and the Defendants have agreed, subject to the Court’s approval, to settle all causes of action in this proceeding and for that purpose have entered into this Stipulation; and

WHEREAS, the Parties agree to the following factual stipulations:

1. Mr. Marchese and Ms. Maynard are partners in the law firm Marchese & Maynard, a Long Island, New York law firm. Mr. Marchese and Ms. Maynard are attorneys specializing in trusts and estates and also represent individuals in real estate-related matters and other matters.
2. Helen D. Gottlieb retained Mr. Marchese's law firm (the predecessor of Marchese & Maynard) in 1998 to represent her in connection with her duties as successor trustee of the trust of her late husband, Harold Gottlieb. Harold Gottlieb died on September 7, 1997. Ms. Gottlieb's engagement of Marchese & Maynard continued to her death in 2008.
3. In 1999, as part of the firm's legal representation of Ms. Gottlieb, Mr. Marchese established The Harold and Helen Gottlieb Foundation, handling the incorporation of the Foundation and applying to the IRS for tax-exempt status. The Foundation is a tax-exempt, New York not-for-profit corporation.
4. In August 2000, Ms. Gottlieb sold her home to a third party. In November 2003, the third party sold the home to the Marchese family for an amount that was more than \$300,000 greater than the 2000 purchase price.
5. In 2005, Mr. Marchese prepared Ms. Gottlieb's Last Will and Testament, and the Living Trust of Helen D. Gottlieb ("Living Trust"). Ms. Gottlieb executed both documents on June 1, 2005.
6. Under the terms of the Living Trust, Mr. Marchese was named Successor Trustee of the Living Trust; and, upon Ms. Gottlieb's death and the payment of outstanding expenses and a \$50,000 bequest, the Successor Trustee would distribute the remaining assets of the Living Trust to the Foundation.
7. Ms. Gottlieb died on March 31, 2008, leaving assets with a value of \$2,050,378.68 in the Living Trust.

8. Mr. Marchese as Successor Trustee was required to register the Living Trust with the Attorney General and to file a copy of the Living Trust agreement with the Attorney General within six months of Ms. Gottlieb's death. Mr. Marchese did not register the Living Trust with the Attorney General or file a copy of the Living Trust.

9. Mr. Marchese was required to submit a final accounting of the Living Trust's expenditures to the Attorney General. Mr. Marchese did not provide an accounting to the Attorney General until 2019, after the OAG commenced an inquiry.

10. Mr. Marchese's accounting states that during the administration of the Living Trust, Mr. Marchese engaged his firm, Marchese & Maynard, to assist in the administration of the Living Trust. The firm charged, and the Living Trust paid, a total of \$252,707.17. The Defendants do not currently possess any contemporaneous time records, billing records, invoices, receipts, or any other records.

11. The Living Trust paid Marchese & Maynard an additional \$346,231.42 to satisfy claims that the firm asserted against Ms. Gottlieb and the Living Trust for purported unpaid legal and other services rendered to the estate of Harold Gottlieb and Ms. Gottlieb individually from 1998 through her death in 2008. The Defendants do not currently possess any time records, billing records, invoices, receipts, or any other records from 1998 to 2008 to substantiate the amount Marchese & Maynard claimed as a creditor of the Living Trust.

12. With respect to the Foundation, the by-laws of the Foundation, in accordance with the requirements of the New York Not-for-Profit Corporation Law, require that there be a minimum of three directors. From fiscal year 2002-2003 until the end of Ms. Gottlieb's life in 2008, Ms. Gottlieb and Mr. Marchese were the sole directors of the Foundation. After Ms. Gottlieb died, Mr. Marchese and Ms. Maynard were the sole directors from then until the present.

13. For more than a decade after Ms. Gottlieb's death, the Foundation paid Mr. Marchese and Ms. Maynard annual salaries of \$35,000 each for their services rendered to the Foundation in vetting charitable grantees, running charitable events, and oversee and managing the Foundation's accounts. The Defendants did not increase their salaries over the decade.

14. Mr. Marchese and Ms. Maynard fully cooperated with the investigation conducted by the Attorney General, without the need for the issuance of a subpoena.

15. Mr. Marchese and Ms. Maynard voluntarily stopped receiving compensation from the Foundation after the commencement of the Attorney General's civil action.

16. Mr. Marchese and Ms. Maynard agreed voluntarily that the Foundation should be dissolved in response to the Attorney General's civil action.

WHEREAS, the Attorney General and the Defendants have agreed to a final and complete resolution of all claims brought in this action against the Defendants, as set forth below; and

WHEREAS, Mr. Marchese commenced a proceeding in the Surrogate's Court in Nassau County for a judicial settlement of account on August 6, 2021; and

WHEREAS, the Attorney General filed objections to the accounting in the Surrogate's Court in Nassau County on October 17, 2022; and

WHEREAS, the Attorney General and the Defendants have agreed that upon execution by the Parties of this Stipulation, Mr. Marchese will withdraw from the Surrogate's Court in Nassau County his petition for a judicial settlement; and

WHEREAS, the Attorney General and the Defendants have agreed that upon execution by the Parties of this Stipulation, the Attorney General will withdraw from the Surrogate's Court in Nassau County her objections to the accounting;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, through the undersigned counsel, as follows:

A. The Defendants will pay the Foundation \$510,000 (the “Settlement Amount”) in three equal installments of \$170,000. The first installment of \$170,000 will be due within fifteen days of the Court’s entry of an order of settlement; the second installment of \$170,000 will be due on March 1, 2024; and the third installment of \$170,000 will be due on January 1, 2025.

B. Marchese & Maynard and the Individual Defendants are jointly and severally liable for the Settlement Amount.

C. The Settlement Amount will be paid by Marchese & Maynard, or, in the event of a default by Marchese & Maynard, by Mr. Marchese and/or Ms. Maynard. As used here, a default is the failure to pay any installment within 15 days of the date the installment is due.

D. The parties agree to the entry of an order by the Court in this action dissolving the Foundation pursuant to N-PCL Article 11, annulling the Foundation’s certificate of incorporation, and terminating the existence of the Foundation. The Defendants shall cooperate with the OAG in the dissolution. A proposed Order of Dissolution is annexed to this Stipulation as Exhibit 1.

E. Prior to dissolution, the Foundation will pay the Foundation’s liabilities and permissible expenses, including the cost of preparing and filing the Foundation’s final IRS Form 990-PF and final CHAR 500, all such disbursements to be subject to prior approval of the OAG. After the payment of liabilities, the Foundation will distribute the remaining funds to not-for-profit charitable organizations, all such distributions to be subject to prior approval of the OAG.

F. In the event any installments of the Settlement Amount are paid after the Foundation is dissolved, such installments will be paid to the OAG for distribution to not-for-profit organizations approved by the OAG.

G. In the event that either of the Individual Defendants serves as the fiduciary of an estate or trust holding a charitable interest, such Individual Defendant voluntarily agrees that if the instrument under which he or she serves as a fiduciary provides for specific compensation for an executor or trustee, such compensation will not exceed the commissions allowable pursuant to SCPA § 2307 or SCPA § 2309, respectively.

H. The Individual Defendants voluntarily agree that in the event that either serves as the fiduciary of a trust or estate holding a residuary charitable interest, such Individual Defendant may engage, as counsel to the trust or estate, a firm in which the Individual Defendant has a financial interest only on the condition that such law firm agrees in writing to forego any compensation for services rendered to the trust or estate. The Individual Defendants acknowledge that the fiduciary of a trust or estate holding a residuary charitable interest has an obligation, pursuant to EPTL § 8-1.4 and 13 N.Y.C.R.R. § 92, to register the trust or estate and file a copy of the trust instrument or will with the OAG within six months of the date that the charitable interest arises, and to submit a final report to the OAG in the form of an informal or judicial accounting. Any final report submitted to the OAG shall include a copy of this Stipulation.

I. The Individual Defendants voluntarily agree that for a period of three years from the Court's entry of an order of settlement, neither will serve as an officer or director, or in any other fiduciary position, of a charitable not-for-profit corporation or other charitable organization holding charitable assets in New York State or soliciting contributions within

New York State.¹

J. The Individual Defendants each voluntarily agree that within six months of the execution of the Stipulation of Settlement they will complete two hours of accredited CLE training on the duties of fiduciaries of trusts and/or estates holding a charitable interest; and a training program on service as the director of a New York not-for-profit corporation substantially similar to the training required to obtain a Certificate of Non-Profit Board Education from BoardSource (www.boardsource.org). These training programs must be approved by the Office of the Attorney General as fulfilling the requirements of this condition of the Stipulation of Settlement. The Individual Defendants must provide to the OAG proof of the successful completion of CLE training on fiduciary duties and training on serving as a director of a not-for-profit corporation.

K. By their signatures below, the undersigned counsel represent that they are duly authorized by their clients to sign this Stipulation and to make the representations and warranties contained herein.

L. This Stipulation may be executed in multiple counterparts, and facsimile or electronic signatures shall be deemed to be originals.

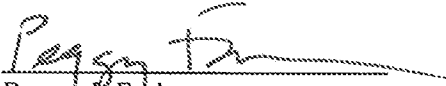
M. This Court shall retain jurisdiction over this matter for all purposes after the date of entry of this Order until the Defendants have paid the final installment of the Settlement Amount.

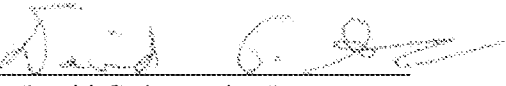
IN WITNESS WHEREOF, this Stipulation is executed by counsel for the Parties hereto on August 28, 2023.

¹ The restrictions set forth herein, in paragraphs H and I of this Stipulation, do not apply to an unrelated matter pending in another court.

LETITIA JAMES
Attorney General of the State of New York

PERLMAN & PERLMAN, LLP

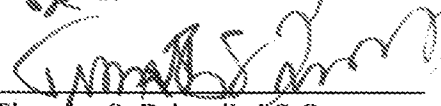
By: 
Peggy J. Farber
Assistant Attorney General
28 Liberty Street
New York, New York 10005
Tel. (212) 416-8401

By: 
David G. Samuels, Esq.
521 Fifth Avenue, 30th Floor
New York, New York 10175
Tel. (212) 889-0575

Attorney for Petitioners

Attorneys for Respondents

as to decretal paragraphs A-M on pp. 5-7 ONLY

SO ORDERED: 
Hon. Timothy S. Driscoll, J.S.C.

ENTERED

Aug 29 2023

NASSAU COUNTY
COUNTY CLERK'S OFFICE

Dated: 8-28-2023