



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES
WESTCHESTER REGIONAL OFFICE

February 9, 2022

Michael J. Raneri
Raneri, Light & O'Dell PLLC
150 Grand Street - Suite 502
White Plains, New York 10601
mjraneri@rlslawoffice.com

Dear Mr. Raneri:

This letter confirms the agreement reached between the Office of the Attorney General ("OAG") and Evening Out, Inc., doing business as Westchester Broadway Theater (hereafter referred to as "WBT") concerning payments by WBT patrons of theater tickets to upcoming shows that were to be held at WBT in the 2020-2021 season.

This Agreement results from rare events brought about by the novel coronavirus known as COVID-19, a global pandemic causing a significant health crisis and serious economic problems. As a result, Governor Andrew M. Cuomo signed the PAUSE Executive Order requiring commercial establishments such as WBT that are indoor live venue operators or promoters, theatrical producers, live performing arts organization operators to close their business due to COVID-19 health concerns. Consequently, pursuant to the Governor's order, WBT closed its business and live performances that had been booked did not take place. Live theater operators such as WBT were hit the hardest in New York by the pandemic. Partly because they were one of the last sectors permitted to reopen after the PAUSE Order was lifted.

This sector has faced the hardest road to recovery given the protracted length of the pandemic and the direct relationship between the congregation of large groups and the potential for super-spreader events. This sector's businesses have largely been supported through federal programs and grants, such as the Paycheck Protection Program and Shuttered Venue Operators Grant. This Agreement addresses the process by which WBT will make refunds to patrons who purchased tickets to performances that were cancelled because of the worldwide pandemic.

Background

WBT is a theater operator formerly located at One Broadway Plaza, Elmsford, New York 10523, providing dinner and live theater of popular musicals & concerts on an open stage. Beginning on March 13, 2020, up and through when shows were cancelled for which tickets had been sold (or deposits accepted toward sale of tickets) (the “Relevant Period”), WBT sold over 30,000 tickets.

Effective March 20, 2020, Governor Andrew Cuomo signed the PAUSE Executive Order that ordered all non-essential retailers and businesses to close, and for residents across the state to stay at home as much as possible to help stop the spread of the novel coronavirus (the “Shutdown Order”). Operators of the arts, entertainment venues and live events businesses such as WBT were deemed non-essential and therefore were required to close. The Shutdown Order was extended beyond April 29, 2020, several more times thereafter and impacted many shows and events scheduled during that time. Unlike other businesses that were permitted to open in or around May 2020, it was not until April 2, 2021, almost a full year later, that theater operators such as WBT were permitted to open and only at 33 percent capacity, with a limit of 100 people indoors or 200 people outdoors, and a requirement that all attendees wear masks and be socially distanced. Those limits would be increased — to 150 people indoors or 500 people outdoors — if all attendees test negative before entering. However, given the long period of closure, many theater operators were forced to close permanently.

Investigation

The Mediation Unit of the Attorney General’s Westchester Regional Office received several complaints against WBT by ticketholders seeking refunds of tickets purchased for which performances had been cancelled due to the Shutdown Order. The Mediation Unit made several written attempts to contact WBT owners and representatives to have them address the consumer complaints received, however, WBT did not respond. On October 26, 2020, the OAG was informed through media reports of WBT’s permanent closure and decision to not make any refunds to patrons of tickets purchased for those performances cancelled in connection with the theater’s permanent closure, in addition to those cancelled in connection to the Shutdown Order.

Instead, WBT established a ticket exchange policy with the White Plains Performing Arts Center (“WPPAC”), whereby WPPAC would honor holders of outstanding WBT tickets and gift cards/gift certificates by exchanging a WBT show ticket for a future WPPAC show ticket (the “Ticket Exchange”). No dinner or other concession was included in the Ticket Exchange. The Ticket Exchange was subject to terms, conditions and limitations established by WPPAC. WBT offered no refund option to its patrons in connection with the Ticket Exchange. Only 930 WBT ticket holders participated in the Ticket Exchange. The Ticket Exchange participants received no value for the dinner portion of their WBT ticket.

On October 27, 2020, the OAG’s commenced an investigation (the “Investigation”) and sent a

written letter to WBT requesting documents and information in connection with complaints received and its permanent closure, further making clear to WBT that patrons who seek ticket refunds from WBT must be repaid money and not forced to participate in the Ticket Exchange, and that if WBT refuses under these circumstances to make refunds, the OAG would view such action as improper and potentially a violation of New York's consumer protection laws. In response to the OAG's letter, WBT retained counsel and documents and information were eventually produced supporting WBT's claim that it was in precarious financial condition, therefore making it difficult, if not impossible, to refund ticket sales to WBT ticketholders. On November 18, 2020, WBT held an online auction of the contents of its dinner theater facility at BestBuyAuctioneers.com to raise funds to help with closure of the business. The OAG required funds derived from the auction to be used to make refunds to WBT's ticketholders. The auction, however, did not net sufficient funds to provide refunds to WBT ticketholders. In or around January 2021, the OAG was advised by WBT's counsel that WBT would seek bankruptcy protection under the CARES Act.

In response to the crippling effects the pandemic has had on small businesses particularly live theater operators, Section 324 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (Economic Aid Act) was signed into law on Dec. 27, 2020. In or around April 2021, WBT applied for the Shuttered Venue Operators Grant ("SVOG") and was approved to receive approximately \$4 million. Ultimately, WBT determined filing for bankruptcy protection would jeopardize WBT's eligibility for SVOG, so it did not. On July 27, 2021, WBT received approximately \$3.9 million in SVOG funds. Under the terms of the grant, WBT must continue to operate its live theater business and use the grant money to continue its operation. WBT will do so in compliance with the grant, but not as a dinner theater and not under the name Westchester Broadway Theater. Rather, it will operate under a new DBA (to be determined), and at a new location: 480 Bedford Road, Chappaqua, New York. Additionally, the OAG requires that SVOG funds be used to make 100% refunds to customers still holding tickets for cancelled performances; such refunds are consistent with the terms of SVOG.

WBT does not dispute that its patrons have a legal right to refund of their ticket purchase payments and does not consider those payments forfeited by triggering events such as the pandemic. The following amounts are the total amount in ticket sales for each category:

Individual ticket sales - \$355,882.63
Individual ticket sales of luxury box seats - \$20,004.25
Group sales paid in full - \$152,180.81
Group sales partial pay (deposits only) - \$245,699.47; and
Subscribers - \$352,501.44
Total amount of refunds due - **\$1,127,358.84.**

Over the course of the Investigation, WBT has cooperated with the OAG and in fact has agreed to make full refunds, even to those patrons who participated in the Ticket Exchange at the WPPAC.

This Agreement, as described below, addresses, and resolves the findings of the OAG's Investigation.

Agreement

The OAG and WBT agree as follows:

1. WBT will make refunds to all ticketholders described in Exhibit A, annexed to this letter, totaling \$1,127,358.84, which comprises the following category of ticketholders:
 - Individual ticket sales - \$355,882.63
 - Individual ticket sales of luxury box seats - \$20,004.25
 - Group sales paid in full - \$152,180.81
 - Group sales partial pay (deposits only) - \$245,699.47
 - Subscribers - \$352,501.44
2. WBT will enclose refund checks to its patrons using one of the two letters approved by the OAG. Copies of checks mailed will be provided to the OAG.
3. WBT will honor the full value of all outstanding gift certificates presented and agrees to make money refunds promptly to those who produce a receipt showing the amount paid. For those without a receipt of payment, WBT shall honor each gift certificate having the value of a "complete dinner and show" by ascribing it the value of two live shows instead. All other gift certificates that provide a stated value thereon, but for which no receipt of purchase is provided, WBT will honor up to the stated value of such certificate which may be used by the holder to purchase tickets at the new venue, seat upgrades, merchandise, etc., or any combination thereof. For the purpose of clarity, a gift certificate having a stated value of \$100.00 shall have the same value as \$100.00 cash and thus may be used to make purchases of theater tickets or other related items up to \$100.00 of value.
4. Any checks returned because they are undeliverable, or that are not cashed within ninety days of mailing will be forwarded to the Office of the State Comptroller, Bureau of Unclaimed Funds, but only after WBT has made good faith efforts to update and correct addresses and resends to ticketholders. Copies of all returned undeliverable or uncashed checks will be provided to the OAG promptly.
5. The OAG has relied upon information and figures provided by WBT concerning

payments (or deposits) by ticketholders to shows to be held in the 2020-2021 season, but that were cancelled or did not take place because of the Shutdown Order. If at any time the information or figures provided are put into question, WBT will provide all information and documentation necessary for the OAG to verify such information and figures and compliance with this Agreement including, but not limited to, a sworn statement by the owners/operators attesting to the figures and information provided, financial books and records, financial statements, tax returns filed with the Internal Revenue Service and bank statements.

6. WBT acknowledges that it has a legal obligation to refund ticket purchases of patrons who purchased tickets to performances that were cancelled or did not take place.
7. Refunds of all ticketholders shall be repaid by no later than February 14, 2022; however, if such time frame is extended, it must be for reasonable cause only and any extension of time must be made in writing to and approved by the OAG.
8. If within six months from the date of execution of this Agreement, a WBT ticketholder, not listed in Exhibit A, produces receipts or documents showing purchase of a ticket or tickets to a performance that was scheduled for after March 14, 2020, but cancelled, WBT will immediately provide such ticketholder with a refund.
9. This agreement cannot be amended except by an instrument in writing signed on behalf of all the parties to this Agreement.
10. The acceptance of this Agreement by the OAG shall not be deemed or construed as an approval by the OAG of any of the practices or procedures referenced herein except as to the requirements of this Agreement, and WBT shall make no representation to the contrary.

[Intentionally left blank]

11. WBT shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or expressing the view that this Agreement is without factual basis.

Sincerely,

Sandra Giorno-Tocco
SANDRA GIORNO-TOCCO
Assistant Attorney General
Office of the New York State Attorney General
Westchester Regional Office

ACCEPTED AND AGREED TO:

EVENING OUT, INC.,
Doing Business As, WESTCHESTER BROADWAY THEATER

BY: William B. Stutler Date: 02/11/2022
WILLIAM B. STUTLER,
[Print Name of Officer] President

BY: _____ Date: _____

[Print Name of Officer]

BY: _____ Date: _____

[Print Name of Officer]