

Philanthropic

NEWS

A PUBLICATION OF PERLMAN & PERLMAN, LLP ATTORNEYS AT LAW

SUMMER
2004

CONTENTS

CASES

NEW YORK v.
RICHARD GRASSO

SILLA v. TANVIR

PUBLIC CITIZEN, INC. et
al. v. PINELLAS COUNTY

NEWS

NONPROFITS AND
TRADEMARKS

US DEPT OF LABOR
REGULATIONS ON
OVERTIME PAY

STATE ALERTS

NEW JERSEY

NEW YORK

NORTH DAKOTA

RHODE ISLAND

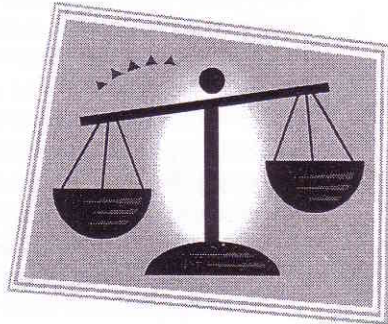
CHARITABLE
GIFT ANNUITY
REPORT

ARIZONA

CALIFORNIA

NEW JERSEY

NEW YORK



NEW YORK ATTORNEY GENERAL SUES RICHARD GRASSO FOR EXCESSIVE COMPENSATION

New York Attorney General Eliot Spitzer filed suit on May 24 against Richard Grasso, former CEO of the New York Stock Exchange ("NYSE"), citing violations of New York's Not-for-Profit Corporation Law ("NPCL") with respect to an allegedly excessive compensation package. After completing a four-month investigation, the AG's office filed a 54-page civil complaint, with voluminous exhibits, alleging that the directors of the NYSE were misled about certain aspects of a payment package of \$187.5 million awarded to Mr. Grasso. Mr. Grasso received a pay package of \$139.5 million, and had agreed to forego the payment of additional amounts allegedly owed to him. The AG's office seeks the return of over \$100 million, and Grasso has announced that he will file his own claim for over \$48 million which he asserts is still owed to him. The lawsuit also names Kenneth G. Langone, former chairman of the NYSE compensation committee, as a defendant, but no other current or former board members were sued.

We have reported previously on the "intermediate sanctions" legislation passed by Congress in 1996, which permits the IRS to impose certain excise taxes on insiders at charities (denominated "disqualified persons") who were deemed to receive excessive compensation or benefits. Such sanctions may also be imposed on individuals such as board members who approve the excess benefits. As the New

York Times reported, "the Internal Revenue Service recently announced that it would require hundreds of nonprofit organizations to justify their compensation levels." (NY Times, 6/4/04, p. A18) Accordingly, it appears that the IRS is becoming increasingly active in enforcing the intermediate sanctions law. Perlman & Perlman actively consults with and counsels nonprofits on complying with the law and regulations, including assuring that boards act properly and, when appropriate, obtain compensation surveys to assure that compensation levels are fair and reasonable and consistent with the marketplace.

The recent action by the New York AG against Grasso reflects a more aggressive posture by a state regulator, particularly in light of the fact that the NYSE is not a charitable organization. Because the NYSE is a New York nonprofit, Mr. Spitzer has relied on provisions of the New York NPCL to

(continued on page 3, column 2)

DECISION ISSUED IN PINELLAS II

On May 19th, 2004 the United States Federal Court for the Middle District of Florida issued a decision in the second of two cases brought by American Charities for Reasonable Fundraising Regulation (ACFRF), challenging the charitable solicitation ordinance enforced by Pinellas County Florida. ACFRF was joined in Pinellas II by Public Citizen, Greenpeace, and the Direct Marketing Association. Pinellas I, in which Perlman & Perlman played a lead role, was decided in favor of the charitable community, holding that Pinellas County violated the US Constitution in attempting to regulate fundraising consultants where neither they nor their clients were located in the county. In Pinellas II, the plaintiffs challenged the very existence of the Pinellas County ordinance because it (i) imposed an impermissible prior restraint on free speech; (ii) imposed an unreasonable burden on free speech; and (iii) unduly burdened interstate commerce.