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OFFICE OF THE COMPTROLLER

REPORT OF THE COMPTROLLER'S INVESTIGATION INTO POSSIBLE MISCONDUCT REVEALED BY THE AUDIT OF THE QUEENS BOROUGH PUBLIC LIBRARY

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INTRODUCTION

In connection with an audit of the Queens Borough Public Library (the "QBPL" or the "Library"), auditors working for the Office of the Comptroller of the City of New York (the "Comptroller's Office")[1] observed the absence of key financial controls and identified questionable expenditures and practices engaged in by the Library's senior management that put the Library's finances at risk of abuse. In light of the possibility of abuse, the Audit Bureau's Investigations staff was directed to look more closely at problem areas identified during the audit process.

In the course of their review, investigators performed a thorough analysis of fiscal year 2012-2014 credit card purchases by the QBPL's two most senior executives to determine whether their expenses and/or the Library's treatment of them may have violated applicable federal, state, or local laws. As described in detail below, the investigation determined that the Library's former Chief Executive Officer (CEO) and former Chief Operating Officer (COO), who is now serving as interim-CEO, used their QBPL credit cards for over $310,000 in prohibited expenses, including about $115,000 in purchases that appear to be taxable, undeclared income, in circumstances suggesting a significant likelihood of fraud and/or embezzlement. In addition, we found that the CEO's records of time spent performing part-time consulting services for another public employer–the Elmont Union Free School District ("Elmont")–conflict with his QBPL work schedule, suggesting the possibility that either these records were not accurate or that he performed his outside consulting work on Library time. Finally, we found that the CEO made false statements in government filings by failing to disclose additional outside businesses and a federal tax lien on his VENDEX forms, a possible violation of law and noncompliance with the CEO's employment contract with the QBPL. Accordingly, we have referred our investigatory findings to appropriate law enforcement entities and to the QBPL's Board of Trustees.

[1] Audit Report on the Financial and Operating Practices of Queens Borough Public Library FN14-099A. The scope of that audit was Fiscal Year 2008 through Fiscal Year 2013 (July 1, 2007 to June 30, 2013).

BACKGROUND

A. The Board of Directors

The QBPL is a 501(c)(3) non-profit corporation governed by a board of trustees ("the Board"), the voting members of which are appointed by the New York City Mayor and the Queens Borough President. Under New York State non-profit law, the Board and the CEO must "discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions." N.Y. NPC Law § 717(a). Furthermore, according to the Mayor's Office of Contract Services' "Capacity Building and Oversight" guidance for non-profits doing business with the City,[2] the Board should "oversee the chief staff person's [the CEO's] expense account."

B. The CEO's Employment at the QBPL

In 2005, the Library executed an employment contract with the CEO under which he assumed the position of Director of the Queens Borough Public Library. The contract provided the CEO with a five-year employment term running from July 1, 2005, to July 1, 2010; a $275,000 salary that would increase by 6.5% plus a cost-of-living adjustment annually for three years; 27 days of annual leave; $34,000 towards a car; and a "computer and other reasonable equipment to enable him to carry out his duties outside of business hours from his home." (2005 Library Contract ¶ 5).

Under the 2005 Library Contract, the Library or the CEO could terminate his employment without cause on 60 days' notice and the Library could terminate for cause immediately at any time. However, whether terminated for cause or without cause, the contract provides for payment of all accrued and unused annual leave.

For the CEO's "duties," the 2005 Library Contract provided that the CEO would work exclusively for the Library, except for continued consulting for Elmont, which the agreement indicates the CEO had performed in past years:

> [The CEO] shall faithfully, diligently and exclusively perform services on behalf of the Library to the best of his ability during the Employment Term, and shall devote his full working time, attention and energies to the business of the Library. [The CEO] may continue to provide outside consulting services as he has in his positions of Deputy Library Director and Interim Library Director, provided that such services do

[2] Available at http://www.nyc.gov/html/mocs/downloads/pdf/cbo_best_practices.pdf

> not, in the sole discretion of the Board of Trustees of the Library, interfere with [the CEO's] duties as Director of the Library or with [the CEO's] obligations under this Employment Agreement. [The CEO] represents he currently is performing consulting services only for the Elmont School District. In the event [the CEO] wishes to perform consulting services for any other entity or person, [the CEO] shall notify the President of the Board of Directors of such proposed other consulting services before they are commenced.

That portion of the agreement was reaffirmed in 2006, 2008, 2010, and 2012. It appears to state that the CEO had been performing consulting services for Elmont since 2003 (when he was most recently Deputy Library Director) and that only such outside employment could continue, absent specific additional permission.

In December 2008, the Library Contract was amended to extend the employment term to November 20, 2013. In July 2010, the Library Contract was amended to extend the term to June 17, 2015; increase the CEO's salary to $370,031 in June 2011; add back in an annual cost-of-living adjustment that had expired; and entitle the CEO to a new car every three years, once the car had been driven 100,000 miles, or in the event that the car was irreparably damaged.

Finally, in November 2012, the Library Contract was amended to extend the CEO's employment term for five years for "each day of [his] employment." In other words, on any given day of his employment thereafter, though the CEO could quit with 60 days' notice, if the Library terminated him without cause, he would be entitled to a full five years of salary in addition to pay for any unused annual leave. When asked about his employment contract at a February 5, 2014, City Council hearing, the CEO indicated his contract "renews automatically" and "expires five years from now." He did not expressly state, as was the case, that it renewed for a new five-year term each day it was in effect. As of July 1, 2013, the CEO's annual Library salary was $407,876.

According to the Library's records, the CEO's last day of work was September 11, 2014, and his last paid day was December 17, 2014. The Library paid him for administrative leave between September and December 2014 during which time he continued to accrue additional vacation days. Thus, even though he was ultimately terminated for cause, this resulted in the CEO seemingly being entitled to payment for 211 hours of unused leave and the CEO receiving a lump sum payout of $46,269.91.

C. The QBPL Credit Card Policy

The Library's Credit Card Policy, issued in February 2007 and approved by the "Library Director" (the CEO), provides, among other rules, that cardholders may only use credit cards to pay for "actual and necessary expenses incurred in the performance of work-related duties for the Library" and that cardholders must provide explicit descriptions of the business purpose for each credit card charge incurred. The Credit Card Policy also included the provisions excerpted below:

> 1- All Credit Cards/Purchasing Cards are issued in the name of the Library and the authorized employee.
> […]
>
> 5- Credit cards/Purchasing Cards are to be used for Library authorized purchases of goods and services that require a credit card and do not accept other payment methods. It may also be used as a means of expediting the acquisition of goods and services where normal purchasing procedures might result in operational delays. Personal charges are strictly prohibited.
>
> 6- All purchases must be made in accordance with the Library's Purchasing Policy, the Library's Conflict of Interest in Purchasing Policy and within budget limits.
>
> 7- The Library will ensure that the relationship between the Library and the Credit Card/Purchasing Card company is such that the Library reserves the right to refuse to pay any charge that is not authorized, violates the Library's Purchasing Policy or is not a proper Library charge.
>
> 8- Employees must safeguard the cards and the cardholder must be the person placing an order.
> […]
>
> 10-Authorized Library employees must submit detailed documentation, including itemized receipts for all charges which have been incurred in connection with Library-related business for which the Credit Card/Purchasing Card was used. Business purposes and budget codes must be written on the detailed documentation and submitted to Finance within 5 business days of the charge. Failure to submit original receipts will result in the employee being held personally liable for the undocumented charge.
> [. . .]

> 12- Purchases that are unauthorized, illegal, represent a conflict of interest, are personal in nature or violate the intent of this policy may result in credit card/purchasing card revocation and progressive discipline up to and including termination of employment.
>
> 13-Any individual who makes an unauthorized purchase with a Library credit card/purchasing card shall be required to reimburse the Library for the purchase.

In a May 27, 2014, e-mail, the Comptroller's Office asked the Chief Financial Officer (CFO) for the "Library guidelines for business meals (not out of town travel)." She responded that "[t]he Library follows IRS business meal guidelines such that employee expenses must have a business connection and employee must adequately account for the expenses within a reasonable time period." The CFO later stated that credit card holders know they have a responsibility to reimburse all personal expenses incurred on Library credit cards. The CFO said that although she reviewed and processed payments for the CEO's credit card charges, she did not "approve" the charges. The QBPL's Board, likewise, did not begin reviewing the CEO's credit card expenses until February 2014. Accordingly, during the time period discussed in this report, nobody at the Library approved any of the CEO's credit card expenses.

ABUSE OF CEO'S AND COO'S CREDIT CARDS

A. Over $115,000 in Potentially Taxable, Undeclared Expenses [3]

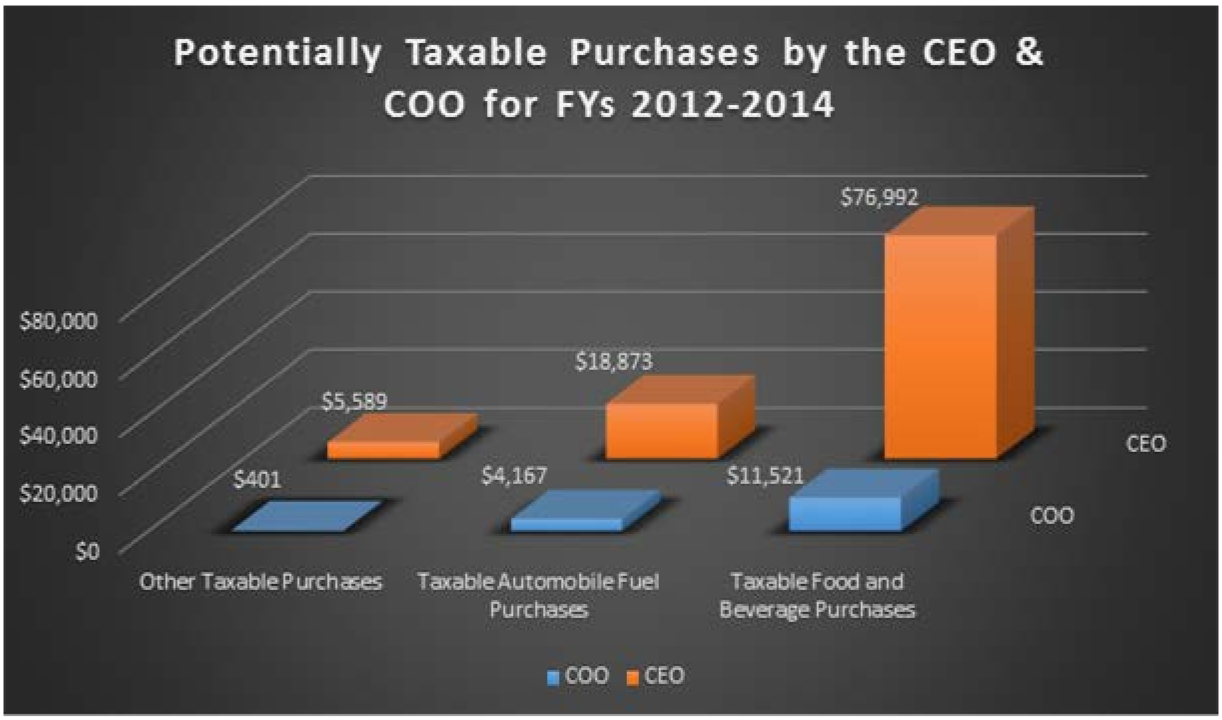
In our review of the credit card account statements and receipts on file at the Library, we determined that the CEO and the COO each used their Library-issued credit cards for prohibited personal expenses that should have been taxed as income and for other purchases that violated Library policies. Overall, the CEO and COO together incurred more than $310,000 in inappropriate expenses, roughly $260,000 of which were incurred by the CEO. Not only were these expenses of concern because the Library should have reported a significant portion of them as income and did not, but also because the entirety of these $310,000 in purchases, made by the Library's two most senior executives, directly violated one or more formal Library policies.

We relied on federal tax law to identify which credit card purchases should possibly have been reported as taxable income. In general, when an employer purchases personal items for an employee and the employee does not subsequently reimburse their employer for the cost of the purchase, the value of the purchase is taxable to the employee as income. In total, we calculated $101,453.66 in potentially taxable income on the CEO's credit cards and $16,088.79 in potentially taxable income on the COO's credit card for fiscal years 2012-2014 for which the Library never obtained reimbursement from the CEO or COO. The Library did not include the costs of any personal credit card purchases in the CEO's or the COO's 2012 or 2013 W-2s or on the Library's 990s, and included only about $2,500 of the CEO's and COO's personal expenses on 2014 W-2s after the QBPL became aware that these matters were under investigation. See 26 U.S.C. § 7206 (criminalizing willfully making or aiding the making of any false tax return).

In addition, because the Credit Card Policy states that "[p]ersonal charges are strictly prohibited," these personal charges could also constitute embezzlement, grand larceny, or related crimes. 18 U.S.C. § 666 (criminalizing the embezzlement or misapplication of organization receiving federal funds); NY Penal Law §§ 155.05, 155.40 (defining grand larceny in the second degree to include embezzlement). See also United States v. Tampas, 493 F.3d 1291, 1297 (11th Cir. 2007)

[3] The $115,000 taxable expenses dollar figure discussed here includes those expenses incurred by the CEO and COO on their QBPL credit cards from fiscal years 2012-2014 that IRS rules classify as personal income. This figure necessarily differs from the $106,000 in "questionable expenses" discussed in the Comptroller's QBPL Audit Report, which represents Fiscal Year 2013 expenses for all QBPL cardholders that either violated Library policies or, in the case of sales taxes, that the Library did not have to pay.

(upholding 18 U.S.C. § 666 conviction of YMCA official who used YMCA's credit card for "personal charges . . . including a home newspaper subscription and weekend purchases at grocery stores, bookstores, clothing and shoe stores, and restaurants," because there was no evidence that personal charges were allowed by YMCA), United States v. Espada, Cr. 10-985 (Dec. 14, 2010) (indictment of non-profit officials under 18 U.S.C.§ 666(a)(1) for, among other things, unauthorized use of non-profit's credit card for personal expenses, including meals, concert tickets, and home expenses, without identifying them to the non-profit as personal expenses).



1. Over $88,500 in Potentially Taxable Food and Beverage Purchases

Regular in-town restaurant meals with coworkers are nondeductible personal expenses – even when the employees are carrying on substantial business during the meals. See Moss v. IRS, 758 F.2d 211 (7th Cir. 1985) (daily lunch meetings of law firm at restaurant are not tax-deductible). In addition, meals can be deductible only if properly documented. 26 U.S.C. § 274(d). Accordingly, based on our review of credit card statements, receipts, and the notes written on them, we treated as potentially taxable each New York City-area restaurant expense that appeared to involve only QBPL staff or that lacked adequate documentation.

Using these criteria, we determined that the CEO and COO used their credit cards for over $88,500 in potentially taxable food and beverages expenses that were excluded from their respective W-2s and the Library's 990s;[4] about $77,000 of which was charged to the CEO's cards and $11,500 of which was charged to the COO's card. 196 charges on the CEO's cards, totaling $70,628.48, appear to be for New York City-area restaurant meals where either only QBPL staff are indicated as having been in attendance or where the CEO appears to have been unaccompanied. The COO's credit card was used 31 times for such New York City-area, staff-only meals, incurring $7,865.79. These purchases ranged from evening restaurant purchases costing several thousands of dollars per outing to mid-day lunch purchases to small coffee or beverage expenses.

Though these expenses would qualify as taxable income regardless of whether the QBPL employees in attendance provided specific descriptions of the work matters discussed during their meals, our review found that the notes that the CEO and COO wrote on receipts for these purchases frequently failed to provide any meaningful description of the work purpose of these meals. For example, the CEO's credit card records contained a 10:34 p.m. receipt for $299.87 in expenses at a Queens steakhouse, including at least $40 in alcohol charges, on which the CEO wrote a note saying only, "[CEO's name] mtg w/ [COO's name] on QL ops." In another example, the CEO charged $633 in restaurant expenses on one of his Library credit cards, where the receipt is of such poor clarity that no information can be read about the items purchased, and wrote a note on the receipt stating only, "On-the-spot brainstorming session w/ staff."

2. Over $23,000 in Non-Business Fuel Expenses

The CEO and COO charged over $23,000 in fuel for personal use on their Library credit cards. The Library provided both the CEO and the COO with vehicles for their business and personal use. Under IRS guidelines, while actual expenses associated with business use of an employer-provided car may be deductible, expenses for personal use are not. When gas is paid for by an employer for personal use of a vehicle, the value of the fuel is taxable compensation. In addition, a "taxpayer's costs of commuting to his place of business or employment are personal expenses and do not qualify as deductible expenses." 26 C.F.R. § 1.262-1.

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[4] Given the presence of other QBPL employees at the in-town restaurant meals discussed herein, some portion of the value of these meals may be taxable income of persons other than the CEO and COO.

The CEO and COO purchased gas using their Library credit cards, but used their Library vehicles primarily for personal purposes. We found that while the Library reported their personal use of the Library vehicles as income (i.e. the value to an employee of having access to a vehicle itself), it did not similarly report as income their purchases of gas for personal use.

Library policy required the CEO and the COO to maintain logs to document business trips for which they used their vehicles and the mileage driven. The Library used these mileage logs to determine the percentage of personal use of the vehicles to report the related value of the vehicles as compensation on W2s but not, as noted, to report their personal gas charges. According to the Library's records for calendar years 2012 through 2014, 90% of the mileage driven on the CEO's car and 87% of the mileage driven on the COO's car was unrelated to their work responsibilities. Using these 2012-2014 calendar year percentages as benchmarks to estimate the CEO's and the COO's respective driving habits during fiscal years 2012-2014, we estimate that the Library likely paid for approximately $18,900 in taxable fuel expenses for the CEO and approximately $4,000 in taxable fuel expense for the COO.

Notwithstanding the Library's reporting the extensive personal use of the Library-issued vehicles by the CEO and the COO as income, the QBPL failed to declare the value of any personal fuel usage on their respective 2012 and 2013 W-2s, and—only after becoming aware that these matters were under investigation—declared just a third of the value of their personal fuel usage on their 2014 W-2s.[5] Moreover, the personal fuel usage dollar figures that the Library included on the CEO's and COO's 2014 W2s understated the taxable benefit we calculated these individuals likely received. In the COO's case, there was only a small difference between the $1,198 declared by QBPL and the $1,289.77 in non-work fuel usage we estimate she benefitted from during FY 2014; but for the CEO, the Library reported $1,419 as personal income related to his purchase of fuel, which is less than a quarter of the $6,374.06 in fuel we estimate he purchased with the Library credit cards and used for non-work purposes during this time period.

[5] The Library declared a combined $2,617 for fuel on the CEO's and COO's 2014 W-2s, arriving at this figure by valuing each non-work mile driven by these individuals at 5.5 cents, which would have been the appropriate valuation method for this fuel if the fuel had been provided in-kind by the Library. IRS guidelines stipulate, however, that fuel purchased by the CEO and COO using Library funds should have been valued at the fair market value of the fuel at the time of purchase, as measured by the purchase price. Under the proper valuation method, the Library should have declared a combined $4,663.83 in non-work fuel usage on CEO's and COO's respective W-2s for 2014.

3. Over $5,900 in Other Potentially Taxable Purchases

We observed an additional $5,990 of other potentially taxable expenses incurred on the CEO's and COO's credit cards, including purchases that are inherently personal in nature and those lacking documentation required by IRS guidelines. $5,588.58 of these purchases were incurred on the CEO's credit cards. Notable examples of these inherently personal expenses by the CEO and COO include, among other things:

- **Legal penalties and citations**: The COO's credit card was used to pay a $100 parking ticket. The CEO's cards were used to pay for both a $185 penalty for his car being towed and a $27 fine for an EZ-pass violation.
- **Concert and movie tickets:** On January 2, 2013, the CEO purchased four tickets to a concert by the musical group Maroon 5, collectively costing the Library $1,962.95. Though a note on the receipt for these tickets states that they were purchased as "employee appreciation" gifts, Library staff informed the Comptroller's Office that the CEO, the General Counsel, and the Vice President of Human Resources each attended the concert, and the Library was unable to account for who used the fourth ticket. Additionally, the CEO used his Library credit card to purchase four movie tickets while traveling on Library business.
- **Theme park admission:** While traveling on Library business, the CEO purchased two admission tickets for $174 to the Disneyland theme park in Anaheim, California. This expense is discussed again below in subsection B as potentially fraudulent.
- **Smoking paraphernalia:** The CEO purchased nearly $100 in specialty ash trays and filters, including a $20 fee for expedited shipping, without writing any note on the receipt to explain the expense This expense is discussed again in subsection B below as potentially fraudulent.
- **Entertainment electronics:** The CEO purchased two $99 Apple-TV devices, which are set-top boxes that connect to television sets to provide access to streaming video via the internet, and described these items as being intended for home office use. As described on the Apple website, Apple TVs provide "access to the best 1080p HD content- including blockbuster movies, hit TV shows, live sports, your music, videos and more- right on your high-definition TV." This expense is also discussed below in subsection B as potentially fraudulent.

- **Satellite radio and news subscriptions:** the CEO used his QBPL credit cards to pay for a combined $711.83 in fees for a satellite radio subscription for his car, as well as an additional $479.24 for his recurring monthly New York Times digital subscription.[6]

B. Potentially Fraudulent Purchases by the CEO

We also identified numerous purchases by the CEO where the nature of the purchases and/or descriptions of them indicate business purposes that may not exist. These expenses included:

- **Possible fuel purchases for unknown individuals:** We found numerous instances where the frequency and volume of fuel purchases by the CEO suggest that the purchases were not made solely for the CEO's vehicle. Most notably, we identified at least seventeen instances where the CEO's credit card incurred more than one fuel charge in a single day, in some cases only minutes apart, as well as 42 instances where the CEO's credit card was used to purchase fuel on consecutive days. In one of the more extreme examples, on November 2, 2012, the CEO's credit card incurred four separate fuel expenses that resulted in the purchases of a combined total of 50.91 gallons of fuel, with three of the purchases occurring at the same gas station near the CEO's home in Wilton, Connecticut. As the automobile provided to the CEO by the Library, a 2011 Nissan model 370Z, had a maximum fuel capacity of nineteen gallons, the CEO's automobile could possibly have held either the combined 25.33 gallons purchased from 8:31-8:34 a.m. (as indicated by the sales receipts) or the 21.58 gallons purchased at 12:34 p.m. (also as indicted by the receipts). However, the associated receipts submitted by the CEO each explicitly stated that it was the CEO's car that received the gas, stating the notation "QL Nissan fuel."

  In addition to the possibility of fraud, the likelihood that the CEO used his QBPL credit card to purchase fuel for individuals other than himself is further significant insofar as it would affect the appropriate manner of calculating the CEO's total taxable income. The Comptroller's Office estimated the taxable income that the CEO received through his fuel purchases by multiplying the value of the CEO's fuel purchases by the percentage of the CEO's driving that was not work-related (as stated in QBPL records). Because the CEO reported that he used his Library-issued vehicle 90% of the time for personal use,

[6] "The purchase of general newspapers is personal and cannot be deducted." Stemkowski v. IRS, 690 F.2d 40, 47 (2d Cir. 1982).

we counted 90% of the value of his fuel charges as personal income. However, if indeed the CEO used his Library credit cards to purchase fuel for others, then the entirety of the value of any such purchases should have been taxed as income.

- **Possible concealment by CEO of meal purchase for family member:** On March 28, 2013, the CEO used one of his Library credit cards to pay for $1,482.81 in expenses at San Pietro restaurant in midtown Manhattan, writing a note on the receipt that stated, "Dinner with Sr. Manager & [Public Officials] @ [Restaurant]." However, the corresponding entry for this restaurant outing in the CEO's personal calendar stated that the CEO's son would be in attendance, with the entry "[CEO's name] & son @dinner with Chiefs, etc. with [COO's name and other QBPL employees] at [Restaurant]." The fact that the CEO's calendar entry mentions the CEO's son but the note describing the purchase does not suggests the possibility that the CEO intentionally avoided disclosing that he used Library funds to purchase a meal for one of his own family members.
- **Vacation bar charges described as a business meeting:** On the evening of Friday, April 13, 2012, a day on which the CEO used annual leave vacation time,[7] the CEO used a Library credit card to pay for $152.95 in expenses at Tir Na Nog Irish Bar and Grill in Times Square, New York. The CEO wrote a note on the receipt stating, "Mtg w/ elected official rep prior to show." While the CEO's personal calendar did include an entry for this date and time indicating that he attended a concert that evening,[8] the calendar contains no entries indicating that he had any meetings that night with an elected official or otherwise. Rather, it expressly blocked off that day as a day that the CEO would not be available to work on Library matters, stating "[CEO's name] - AL – NO APPOINTMENTS TO BE SCHEDULED." The calendar entries, the CEO use of annual leave that day, and the CEO's attendance at a concert suggest that the CEO may have improperly described over $150 in bar charges as work-related.
- **Birthday party bar charges described as business meeting:** The CEO submitted two receipts for food and alcohol purchases on August 19, 2013, a date when he was on annual leave. These purchases were ostensibly related to evening meetings with Better World

[7] In total, the CEO made about $6,500 in purchases on dates Library records indicate he was on annual leave.
[8] The CEO's calendar includes an entry at 4 p.m. that afternoon stating, "Leave for Snow Patrol," and the musical group Snow Patrol performed a concert in Manhattan later that evening.

Books, a non-profit company that buys and sells used books and with which the QBPL has a contract. According to the receipts, the first of these purchases occurred at 8:32 p.m. at Shi Restaurant in Queens, New York, where the CEO purchased two whiskeys. The receipt for this purchase bears a note reading, "[Initials] event with Staff and Better World Books." The second purchase occurred at 10:24 p.m. at The Village Pourhouse, a bar in Manhattan, where the CEO purchased additional alcohol and food. The receipt for this purchase bears a note reading, "Mtg with Better World Books on Used Books." While the CEO's personal calendar for the evening of August 9, 2013, contains an entry stating that a birthday party at Shi Restaurant, the calendar contained no entries for that evening related to meetings with Better World Books.

- **Theme Park visit described as business meeting:** As described in subsection A above, on June 23, 2012, one of the CEO's credit cards was used to purchase two passes to the Disneyland theme park in Anaheim, California, for a total of $174. The CEO wrote a note on the receipt for this purchase stating, "Event mtg w/ [two other Library employee's] at ALA," with "ALA" presumably an abbreviation for "American Library Association," which was hosting a conference in Anaheim that weekend. The CEO's personal calendar contains an entry for this date and time stating that he would be going to Disneyland with one of the two employees named in the note that the CEO wrote on the receipt for the Disneyland ticket purchase but does not describe this occasion as a meeting or contain any other meeting entries.
- **Entertainment devices described as being for CEO's home office use:** As described in subsection A above, the CEO used one of his Library credit cards to purchase two $99 Apple TV devices at a Best Buy store near his home in Norwalk, CT, purchased on a day when the CEO was on annual leave. Apple TV devices are designed to be a means to access streaming internet video and do not serve an obvious work-related purpose. The CEO wrote a note on the receipt for the Apple-TV's stating, "[the CEO's name] IT for QL work from home." The CEO provided no further explanation for how these devices might serve a work-related function, nor why he would need *two* of them for his home office use.
- **Smoking paraphernalia :** As described in subsection A above, the CEO incurred $97.68 in charges on one of his Library credit cards to purchase specialty smokeless ash trays and

filters. The CEO did not provide any note on the receipt for this purchase, and the receipt stated that the vendor that would be listed for these charges on CEO's credit card statement would be "Talon Development" rather than the actual vendor, "SmokeOutlet.com."

- **Evening and late night alcohol purchases described as being for business meetings:** Our review found that in at least two instances the CEO used his Library credit cards to make alcohol purchases, ostensibly for business meetings, in circumstances that cast doubt on the likelihood that any business meeting actually occurred. In the first instance, occurring in September 2012 while the CEO was attending a business conference in Colorado, the CEO purchased $97.40 in alcohol from a liquor store at 5:48 p.m. The CEO wrote a note on the receipt for this purchase describing it as an "after dinner meeting."

  In a second similar instance, the CEO made three separate late-night cocktail purchases at a casino bar in Niagara Falls, New York, while attending a business conference. These purchases included five alcoholic beverages at 10:34 p.m., three more shortly after midnight, and four more at 1:39 a.m. The receipts for each of these expenses generically describe the alcohol as having been purchased in connection with business meetings with other QBPL employees, including the COO.

C. Board of Trustees and Senior Managers Benefitted from Prohibited Purchases

The CEO's charges described above included numerous inappropriate purchases from which members of the Board and senior Library managers benefitted. We identified at least 52 occasions where notes on the CEO's and COO's restaurant receipts state that at least one Board member was in attendance for an improper meal purchase, a significant number of which were $1,000-plus expenses at restaurants following Board meetings, at which food had already been provided by the QBPL. For example the Library paid the bill for a $3,480 unitemized restaurant receipt bearing a note from the CEO saying only "Dinner w/ senior mgmt + Trustees after Board meeting." On another occasion the CEO charged $1,152.57 to the Library for restaurant expenses for sixteen attendees, including at least eighteen alcoholic beverages, and the CEO's note on the receipt stated only "Sr. Mgrs/Trustee mtg after Board meeting on library operations." The presence of Board members for these expenses is of particular concern because it demonstrates that Board members had personal knowledge of and took part in precisely the type of expenses that they should have prevented from occurring. All told, the restaurant expenses apparently attended by Board members cost the Library a combined $45,792.34.

Similarly, the Library's records indicate the COO participated in the CEO's misuse of his credit card. For example, at 10 p.m. on the evening of September 7, 2011, the CEO used his Library credit card to pay for $169.54 in expenses at a Queens wine bar, describing the purchase with a note stating, "mtg [COO's name] on public service." The meal included the purchase of four alcoholic beverages. On a different occasion at the same wine bar, the CEO charged $383.91 to his QBPL credit card; the CEO submitted only an unitemized receipt for this expense, and wrote a note on the receipt stating, "Mtg on ops w/ [COO and other QBPL employees]." In addition, records of the COO's purchases include a $74.78 purchase with an unitemized receipt bearing a note stating simply, "meeting w/ [CEO]," and a $65.29 expense for a mid-day restaurant meal, where the COO described the expense only with, "[COO's name] & [CEO's name] planning."

The CEO's credit card also incurred $4,669.06 in expenses that related to what was identified as an "executive retreat" near the CEO's home in Connecticut. The CEO used his credit card to pay for seventeen rooms at a hotel in Norwalk, Connecticut, on July 22, 2013, and July 23, 2013, apparently for senior managers. Those charges cost the Library $3,489.48. In addition, the CEO charged $1,179.58 in food and beverages for the retreat, including $813.41 at two Norwalk supermarkets, and $366.17 at a Norwalk liquor store.

CEO'S ELMONT CONSULTING WORK

A. Contract for Financial and Management Consulting Services is Exclusive to the CEO

The Comptroller's Office subpoenaed Elmont for records related to the CEO's consulting services for Elmont, which he engaged in at the same time that he served as Library CEO. Among other items, the Comptroller's Office received a written agreement, effective July 1, 2005 (the "2005 Elmont Contract"), for the CEO to perform "financial and management consulting services" for Elmont, "including developing the annual line-by-line budget in all areas." The agreement commenced on the same date that the CEO assumed his position as Director of the QBPL. According to payment records Elmont provided, however, Elmont made ten payments to the CEO, totaling $110,136, between January and July 2005, before the 2005 Elmont Contract took effect.

The 2005 Elmont Contract, in paragraph 8, like the subsequent consulting contracts between the CEO and Elmont, prohibits the CEO from assigning or subcontracting his responsibilities under the contract, stating:

> Assignment. Because the School District has entered into this Agreement based upon the unique talents and capabilities of Consultant, Consultant may not assign this Agreement or delegate or subcontract any of its obligations hereunder without the prior written consent of the School District. [9]

Subsequent agreements retain this restriction. Accordingly, the CEO's Elmont timesheets are supposed to represent actual hours the CEO worked.

Records obtained from Elmont indicate that the CEO spent considerable time providing consulting services to the school district separate from his full-time employment for the QBPL. Invoice documents analyzed by the Comptroller's Office show that the CEO billed Elmont for an average of slightly more than twenty hours per week for the period from December 2010 to February 2014. This was at the same time that, according to the QBPL's Form 990s, signed by the CEO, the CEO worked an average of 40 hours per week for the Library. The Form 990s for the Queens Library Foundation, a non-profit corporation organized to support the activities of the QBPL, indicate that he worked an average two hours per week as a trustee for the Foundation.

Elmont paid the CEO between approximately $150,000 and $200,000 annually, for a total compensation from Elmont of about $1.67 million between January 2005 (when he entered into his employment contract with the QBPL to serve as its Director) and June 2014. This includes $128,700 in payments to the CEO for which Elmont's records indicate Elmont did not issue an IRS Form 1099. Though the CEO's 2008 Elmont contract states that he would be paid $150 per hour beginning June 2, 2008, our analysis of Elmont's 2011, 2012, and 2013 payments to the CEO and his timesheets indicate that Elmont paid him in excess of this quoted $150 hourly rate. Specifically, based on the hours and payments reported, the CEO received $168.80 per hour in 2011, $174.85 per hour in 2012, and $187.33 per hour in 2013.

Elmont paid the CEO $203,250 in 2013, the CEO's highest-paid year according to Elmont's records. According to the *SeeThroughNY.net* website, no Elmont employee other than the school district's Superintendent ever received a salary over $200,000 from Elmont; if the CEO had been an Elmont employee, he would have been the second-highest paid employee in 2013. This level of compensation, time commitment, and responsibility appears incompatible with performing the full-

[9] Though paragraph 3 of the 2005 Elmont Contract contains a provision referring to the QBPL's Director of Risk Management as a subcontractor performing different services, it states that any services provided by him would be billed and paid separately. Subsequent Elmont contracts do not reference any subcontractor.

time duties as CEO of the Library and led us to look for specific discrepancies with Library commitments.

B. Discrepancies Between Elmont Time Sheets and QBPL Records

Elmont's records show the number of hours the CEO reportedly worked by day but do not show the actual times he worked on Elmont matters on a given day. Similarly, the Library did not have records of the hours the CEO worked. During the audit, the Comptroller's Office reviewed the "Monthly Report of Absences," on which the Library required executives, including the CEO, to manually document the dates of any absences ("Absence Reports") and observed that these Absence Reports did not provide sufficient information to allow a determination of whether managers were actually working full-time for the Library as reported on their IRS Form 990s.

According to the CEO's Elmont consulting data, he consulted for Elmont on 673 days from January 4, 2011, through February 2, 2014. Of those 673 days, he reportedly worked five hours or more for Elmont on 331 days. The Comptroller's Office compared those 331 days with the CEO's Library Outlook calendar, Library credit card purchases, out-of-town conference schedules, and his Absence Reports from the Library. We identified 100 days for which the CEO indicated that he consulted five or more hours for Elmont while also reportedly working for the QBPL. We believe these days present a risk of conflict.

We also examined days the CEO purportedly worked any hours for Elmont while traveling out of town on QBPL business, such as the CEO's May 2012 attendance at the International Federation of Library Associations and Institutions conference in Barcelona, Spain, and his November 2011 attendance at the New York Library Association conference in Saratoga Springs, New York. The CEO reportedly consulted for Elmont while traveling for the QBPL on 68 days out of his 673 total consulting dates. On 35 of those days, he reportedly consulted more than five hours for Elmont.[10] We believe these days present an additional risk of conflict.

We analyzed those 100 QBPL work days with five or more hours of purported Elmont work and the additional 35 travel/consulting days with the above mentioned records and determined that 91 days out of the 135 days examined presented a potential risk of conflict between the CEO's work for the QBPL and Elmont. For example, on June 9, 2011, a Tuesday for which the CEO used no vacation time from the Library, the CEO reportedly consulted for Elmont for 7.75 hours. Because

[10] The CEO reported consulting five hours or more on 33 days he was traveling on conference-related business for the QBPL. Those 33 days were already included in the above analysis.

his Library calendar listed him as busy with meetings from 10 a.m. – 8:30 p.m. and attending a scheduled dinner from 8:30 p.m – 10:30 p.m., he would not have been able to complete 7.75 hours of consulting for Elmont before midnight; and if he worked for 7.75 hours immediately after the Library dinner without sleeping, he would have finished his work at 6:15 a.m. the next day.

On August 3, 2012, the CEO reported on his QBPL calendar that he was using his annual leave time; however, his August 2012 Absence Report indicates he took no annual leave. On this same day, the CEO reportedly performed 12.5 hours of consulting work for Elmont. If the CEO did appear at the QBPL for work that day and stayed until 5 p.m., he would not have finished his Elmont consulting work until 5:30 a.m. the next day. If he did not, then he received QBPL pay and failed to take leave for a day he did not work.

As noted, for eleven days, from May 18, 2012, through May 29, 2012, the CEO attended an international library conference in Barcelona, Spain. The CEO reported consulting for Elmont on ten of those eleven days for a combined 65 hours, and he reported consulting for Elmont for over five hours on seven of those days. We further determined that six out of the eleven days present a potential direct conflict between the CEO's QBPL work hours and Elmont consulting hours.

These records raise the possibility that the CEO falsified records to Elmont by billing for hours that he did not work, resulting in consulting payments to which he was not entitled. On the other hand, the records also raise the possibility that he falsified records to the Library by failing to take leave from the Library while performing Elmont work.

After the CEO's dismissal, the QBPL paid the CEO $46,269.91 for his accrued annual leave, so any failure by the CEO to accurately report his days off would have resulted in the CEO obtaining funds from the Library to which he is not entitled.

THE CEO'S VENDEX QUESTIONNAIRES FAILED TO DISCLOSE OUTSIDE BUSINESSES AND FEDERAL TAX LIEN

Our investigation found that the CEO is the principal owner of three businesses, but that he failed to disclose both these businesses and a federal tax lien against him when he completed official integrity filings with the City, as required by law. Because the QBPL receives over $100,000 of City funding under contract every year, it and its principal are required by the Mayor's Office of Contract Services ("MOCS") to submit a VENDEX Questionnaire to the City every three years and whenever any information on the questionnaire changes. Since July 2009, the CEO completed and filed five

VENDEX Principal Questionnaires with the City: on August 13, 2009; May 2, 2011; June 27, 2012; February 4, 2014; and June 4, 2014.

Question 5 of the Principal Questionnaire asks "[w]ithin the past three (3) years, have you been a principal owner or officer of any entity other than the submitter vendor?" The last page of the Principal Questionnaire, titled "Certification," states that the Questionnaire must be certified by the Principal completing the Questionnaire, and that "[a] materially false statement willfully or fraudulently made in connection with this Questionnaire . . . may subject the person making the false statement to criminal charges." The certification page requires a sworn notarized statement stating, "I supplied full and complete responses to each item therein to the best of my knowledge, information and belief."

Our research indicated that the CEO is the principal of three active businesses, the first of which was incorporated on July 20, 2009. Accordingly, he should have answered "yes" to Question 5 of each VENDEX Principal Questionnaire after this date. The three companies in which the CEO has an ownership interest are:

- Timberfield Capital Partners, LLC, incorporated on July 20, 2009.
- Susan Nichole Designs, Inc., incorporated on August 17, 2009.
- Thomas W. Galante, LLC, incorporated on December 1, 2009.

Despite the CEO's ownership interest in these companies, on his August 13, 2009; May 2, 2011; June 27, 2012; and February 4, 2014, VENDEX filings the CEO answered "no" to the question, "[w]ithin the past three (3) years, have you been a principal owner or officer of any entity other than the submitter vendor?" Only on his June 4, 2014, questionnaire, after he aware that his Library records and conduct were under investigation, did the CEO report that he was a principal for all three companies and had been since the dates noted above.

Elmont paid Thomas W. Galante, LLC, for the CEO's consulting work. However, any other work the CEO performed for these businesses since 2005 would have likely violated his Library Contract, which provides that his work for the Library would be exclusive with the sole exception of continued consulting work for Elmont. This increases the concern that he may have falsified his Monthly Absence Reports by failing to take leave from the Library when he was not working on Library business.

Furthermore, a public records search revealed that a federal tax lien was filed against the CEO and his spouse in June 2013 and subsequently released in March 2014. However, the CEO failed to disclose this information in his February 4, 2014, and June 4, 2014, Principal VENDEX Questionnaires by answering "no" to the question "[w]ithin the past five (5) years, have you failed to pay any applicable federal, state or New York City taxes or other assessed New York City charges, including but not limited to water and sewer charges?"

The CEO's failure to disclose the above information may constitute offering a false instrument for filing in violation of N.Y. Penal Law §§ 175.30, 175.35.

CONCLUSION

Our investigation found that the CEO and, to a lesser extent the COO, used their QBPL credit cards to make personal, potentially taxable, and prohibited purchases, which may constitute fraud, embezzlement or larceny. From Fiscal Year 2012 through 2014, these individuals' credit cards were used for $310,000 in unauthorized purchases, including over $115,000 in purchases that appear to have been taxable under IRS guidelines, but which the Library did not include in their W2s, causing an underpayment of payroll taxes and a high risk that the CEO and COO underreported their income in their personal income tax filings. We further found that the QBPL did not report the value of these personal purchases on the Library's 990s, leaving the public and donors with a misleading view of the QBPL's executives' compensation. In addition, we found conflicts between QBPL and Elmont time records suggest the possibility of additional criminal conduct, as well as violations of the CEO's employment contract with the QBPL. Finally, we found false statements on the CEO's VENDEX forms. Accordingly, we have referred our findings to appropriate law enforcement and administrative entities and to the QBPL's Board of Trustees.