



2024 | BOSTON
INNOVATE
JMT CONSULTING

Negotiating the Regulatory Landscape: Nonprofit Compliance Essentials (2C)

David Goldstein, ESQ

JMT
CONSULTING

THE EXPERTS IN
MISSION-DRIVEN
NONPROFIT FINANCE
©JMT Consulting. All rights reserved.



INNOVATE 2024

May 2, 2024

Certilman Balin Adler & Hyman, LLP

Nonprofit/Tax Exempt/Religious Organizations Practice Group

David Goldstein, Esq.

(516) 296-7811; dgoldstein@certilmanbalin.com

INNOVATE 2024

Nonprofit Governance and Compliance Essentials

**(including understanding fiduciary duties
of board members)**

FIDUCIARY DUTIES OF NONPROFIT DIRECTORS

Fundamental Precepts:

1-Directors of Nonprofits have Legal Duties (Fiduciary Duties).

2-There can be Personal Liability to Directors for Breaching these Legal Duties.

3 Fundamental Legal Duties of a Nonprofit Director Under New York Law:

□ Duty of Care

□ Duty of Loyalty

□ Duty of Obedience

Duty of Care:

- ❖ A director must discharge the duties of his/her position in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- NPCL § 717(a)
 - Oversight function.
 - Requires familiarity with the organization's finances and activities and regular participation in its governance.
- ✓ **Healing Arts Initiative lawsuit (April 2016)**

Healing Arts Initiative lawsuit (April 2016)

- New York State Supreme Court, New York County
- **Defendants (Board of Directors)**
 - ✓ D. Leslie Winter
 - ✓ Alan Gettner
 - ✓ Greg Libertiny
 - ✓ Laura Anne Walker
 - ✓ Jonathan Pearlroth
 - ✓ J. David Sweeny
 - ✓ Richard Gomes
 - ✓ Hospital Audiences, Inc. a/k/a Healing Arts Initiative, Inc.

Healing Arts Initiative lawsuit (April 2016)

This is an action to hold accountable the directors of Hospital Audiences, Inc. a/k/a Healing Arts Initiative, Inc. ("HAI") who, in violation of New York Not-For-Profit Corporation Law ("N-PCL") §§ 717 and 720 and other applicable statutory or common law, have neglected, failed to perform, and/or violated their duties, including but not limited to, their duty to act in good faith and with the care of an ordinarily prudent person in a like position would exercise under similar circumstances, in the management of HAI, by permitting \$750,000 to be stolen by three former employees of HAI, hiring non-independent auditors, negligently hiring employees, and otherwise breaching their duties to HAI.

Healing Arts Initiative lawsuit (April 2016)

The foregoing actions constitute, *inter alia*, breach of contract, breach of fiduciary duty, and violations of N-PCL §§ 717 and 720. Plaintiff expressly reserves the right to amend its claims in this action to include other causes of action and other parties as may be appropriate.

PLEASE TAKE FURTHER NOTICE that the relief sought in this action is damages in **an amount not less than \$750,000, believed to be foreseeably and proximately caused by Defendants' conduct** referenced above, **plus attorneys' fees and punitive damages, removal of the board of directors**, as well as any other relief the Court deems just and proper.

Duty of Care: A Roadmap:

- ✓ **Right From The Start: Responsibilities of Directors of Not-for-Profit Corporations (Charities Bureau, 2015)**
- ✓ **The Committee to Save Adelphi, et al. v. Diamandopoulos, et al. (Board of Regents, 1997)**
- ✓ **Unsecured Creditor Trustee of Dowling College v. 13 individuals being sued in their capacity as board members (trustees) of Dowling College (and also as CFO)**
- ✓ **Internal Controls**
 - ☐ **Internal Controls And Financial Accountability For Not-For-Profit Boards (Charities Bureau, 2015)**
- ✓ **Policies & Procedures**
- ✓ **Critical Role of Audit Oversight (Independence Requirement)**
 - ☐ **Audit Committee Requirements And Responsibilities Under New York's Not-For-Profit Corporation Law As Amended Through 2017 (Charities Bureau, 2018)**

Duty of Loyalty:

- ❖ A director must act in the interest of the organization.
 - Requires undivided allegiance to the organization's mission when using the power of his/her position, or information concerning the organization or its property.
 - Conflicts of interest; related party transactions.

Duty of Obedience:

- ❖ Least understood and most often neglected of the 3 primary legal duties
- ❖ Why? The other 2 primary legal duties exist in the for-profit world, but the Duty of Obedience is strictly a not-for-profit law concept

What is the Duty of Obedience?

- ❖ to ensure that the organization complies with applicable laws and regulations and its internal governance documents and policies
 - Compliance with applicable laws and regulations is even more difficult than it sounds
 - Multiple layers of laws and regulations

**Duty of Obedience - Compliance with
Laws and Regulations :**

- Not-for-Profit Corporation Law**
- Laws & Regulations – additional layers**

Not-for-Profit Corporation Law:

- Best efforts under difficult circumstances is not the compliance standard
- Law
- Mandatory requirements & procedures
- Bright lines
- Rigid
- Inflexible (cemetery pandemic example)
- Unforgiving

Duty of Obedience - Compliance with Internal Governance Documents and Policies:

- Certificate of Incorporation
- Bylaws

A Trap for the Unwary

Duty of Obedience - Compliance with Certificate of Incorporation

□ Corporate Purposes are set forth in the Certificate of Incorporation

- ✓ *A diversion from corporate purposes no matter how worthy is a breach of fiduciary duty.*
- ✓ *One of the central oversight functions of directors and officers: use of assets consistent with the purposes in the Certificate of Incorporation*

A Trap for the Unwary

continued

- Phone call during the height of the pandemic from an accountant who had a nonprofit client that had started a wonderful new program in response to the pandemic. The program addressed food insecurity and food needs in the community.
- One problem. This activity, though vitally important, fell outside of the purposes set forth in the Certificate of Incorporation.

A Trap for the Unwary *continued*

- ✓ *A diversion from corporate purposes no matter how worthy is a breach of fiduciary duty.*
- ✓ **Potential Personal Liability of Board Members for failure to strictly adhere to corporate purposes**

continued . . .

More Traps for the Unwary

- Phone call during the height of the pandemic from a concerned board member (the nonprofit is not a client);
- board chair had asked the board to vote by email on nominations;
- chair states in an email to the board that, while normally the board would have a meeting to vote on nominations, because of the pandemic, the board would vote by email instead

continued . . .

continued . . .

More Traps for the Unwary

continued

Email voting by the board of directors – another impermissible shortcut to avoid

- ✓ There are only 2 ways for the board to act under the law:
 1. At a meeting (which can be in person; by conference call; or by videoconference);
 2. By unanimous consent in lieu of a meeting (which can be email or written)
 - Must be unanimous (≠ voting)
- ✓ Effect of missteps

DOCUMENTING CORPORATE ACTION & COMPLIANCE

No dispensation for extraordinary circumstances

- ❑ Minutes, Minutes, Minutes
 - ❑ Too much detail
 - ❑ Too little detail
 - ❑ Checklist to demonstrate that the board fulfilled its fiduciary duties
- ❑ Conflicts & Related Party Transactions (annual + ongoing)
- ❑ Effect of missteps

GOVERNANCE: IT'S NOT ROCKET SCIENCE!

- ✓ Process, Process, Process
- ✓ Procedures
- ✓ Mandatory Requirements
- ✓ Board Education
- ✓ Awareness – Even Under Extraordinary Circumstances
- ✓ Discipline & Commitment to Compliance

CENTRAL ROLE OF BYLAWS

- Bylaws: contract between the organization and the board as to how the organization will operate
- Bylaws are rules by which legitimate corporate decisions are made
- *Following these rules is a roadmap to protect directors from breach of fiduciary duty allegations*

- ✓ *Always follow the roadmap that the Bylaws provide!*
- ✓ *Make sure that the Bylaws are consistent with the Not-for-Profit Corporation Law of the State of New York!*
- ✓ *Failure to strictly adhere to requirements of the Bylaws, or having Bylaws that are inconsistent with the law, is a **breach of the Duty of Obedience**. Consequences can include undermining the validity of corporate decisions and actions.*
- ✓ ***Governance mistakes in these areas are another potential trap for nonprofit directors & officers***

Risks of governance mistakes in these areas:

- **Board decisions can be challenged as illegitimate**
- **Breach of duty & personal liability**

**GOVERNANCE:
IT'S NOT ROCKET SCIENCE!**

COMMITTEES

□ Board Committees

Typical Examples: Executive; Audit; Nominating; Governance; Development; Compensation

- At least 3 directors
- Only board members can vote

□ Committees of the Corporation

- Misnomer
- **Advisory only**

□ Who is on the committee

□ Description of responsibilities:

✓ Charter, board resolution or Bylaws

ADEQUATE OVERSIGHT

- Adequate Oversight \neq trust
- Volunteers doing good
- Smart and accomplished board
 - ✓ Dowling; Adelphi

**Ostrich defense/Sergeant Schultz defense will
not work under NY NPCL**

Oversight:

- Audit Committee
- Audit Process
- Auditor

OVERKILL

- Provisions that are too demanding -- examples
 - ✓ Bylaws: frequency of meetings; quorum; responsibilities of officers &/or committees; **Audit Committee; not taking advantage of NPCL amendments**
 - ✓ Conflicts Policy: application too broad in terms of covered persons

FILE CABINET SYNDROME

- Develop, review, approve & file away
 - ✓ Live with these documents & procedures
 - ✓ Know them
 - ✓ Follow them (continuous commitment & focus)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK (May 13, 2019)

DOWLING COLLEGE

Plaintiff:

Unsecured Creditor Trustee of
Dowling College

Defendants:

13 individuals being sued in their capacity as Board members (trustees) of Dowling College (and also as CFO)

Complaint

to recover damages based upon defendants':

- waste,**
- mismanagement,**
- and breach of fiduciary duty**

Damages: in no event less than **\$50,000,000**

Key Takeaway:

Timely, reliable, & accurate information is required to support adequate & informed oversight & decision-making by the Board of Directors and officers. **(AFFIRMATIVE RESPONSIBILITY)**

Trustees Responsibilities:

- ❑ responsibility to ensure that Dowling's business was carefully managed
- ❑ responsible for devising, maintaining, and implementing proper controls with respect to Dowling's business, operations, and financial affairs, including internal financial controls and operating procedures
- ❑ responsibility to ensure business, as conducted by its employees and representatives, including day-to-day management, complied with all laws applicable to Dowling's industry and to lawful business in general
- ❑ responsible to ensure and to oversee the establishment, implementation, and maintenance of Dowling's internal financial controls and operating procedures

“It is abundantly clear from Dowling’s **Board minutes** and other documents that Dowling’s management

did not have any coherent plan

- to manage its failing enrollment (and resultant financial decline),
- to bolster its failed fundraising,
- or to pay its enormous Bond debt of \$57 million.”

Ostrich defense/Sergeant Schultz defense
will not work under NY NPCL.

Over a period of years:

- ❑ Declining enrollment
- ❑ Declining revenues
- ❑ Declining assets
- ❑ Rating agencies downgrade ratings of bonds
- ❑ No fundraising
- ❑ Continual failure to meet budgets
- ❑ Issues with accreditation
- ❑ Insufficient planning

- ❑ Software used to manage financial data was not properly updated, and the resultant data was incomplete and unreliable.
- ❑ Dowling did not have any reliable report to assess departmental and academic program financial results, and had an insufficient chart of accounts that did not enable Dowling to adequately conduct its financial reporting and analysis.
- ❑ Consequently, Dowling's Board and Dowling's administration did not have the proper tools to evaluate Dowling's financial position or to make informed decisions.

Dowling's lenders recommended an outside financial advisory firm, which, among other things, reported the following:

- ❑ the **accuracy** of the data extracted from the financial data management software was “always in question”
- ❑ management did not believe that it could “**readily access information to support decision making**”
- ❑ Dowling was “**at a significant disadvantage by not having access to critical business data to manage key aspects of operations including enrollment management, student financial assistance, budgets and cash flow.**”

Dowling ran out of money, lost its accreditation, and filed for bankruptcy protection on November 28, 2016.

Complaint alleges:

- Dowling's financial reporting under defendants' Board participation was woefully inadequate.
- Dowling's data management system did not provide **reliable or accurate information from which defendants could make informed business and financial decisions.**
- Defendants **knew** that the data management system data and financial information was unreliable and, rather than remedy the situation, **used such unreliable information** to Dowling's detriment.
- There were **glaring deficiencies in financial reporting.**

- ❑ Defendant Board members and CFO owed a **fiduciary duty** to Dowling, and had a duty to Dowling and to its creditors to **carefully manage** Dowling's business operations, and **to devise, implement and maintain proper controls** with respect to Dowling's business, operations, and financial affairs.
- ❑ Defendants **neglected and failed to perform their duties in overseeing the management** and disposition of Dowling's assets committed to their charge, and thereby wasted, mismanaged, and recklessly and negligently dissipated such corporate assets.
- ❑ As a **result** of all of the foregoing **misconduct** by defendants, Dowling suffered losses totaling at least **\$50,000,000**, leaving Dowling with **liabilities substantially in excess of its assets**, which culminated in Dowling's financial ruin and ultimate bankruptcy.

NY Attorney General v. NRA & Individual NRA Defendants

- 169-page complaint
- 666 numbered paragraphs chockfull of jarring detail
- Incredibly Egregious Behavior Alleged / Magnitude
 - Astronomical Compensation, much of it hidden (vendors pay the personal fee or expense, and then invoice the NRA for these payments disguised as a vendor charge)
 - No show jobs for insiders and relatives
 - Huge expenditures to facilitate lavish lifestyle (private flights, including for relatives; personal expenses paid)
 - Relative's wedding paid for using charitable assets

While the wrongdoing alleged in the NRA case is extreme and over-the-top, the legal underpinnings of the AG's case are incredibly relevant to every New York nonprofit because **your organization is governed by precisely the same provisions as the NRA,** and **your Board has the same responsibilities and compliance obligations as the NRA's Board.**

Put another way, when my firm is asked to become involved in internal disputes, litigation, and AG investigations involving nonprofits, **we see the same legal underpinnings at play as in the AG's complaint against the NRA.**

So, there is plenty for all of us to learn from the AG's NRA complaint.

From Par. 581 of the complaint (referring to Wayne LaPierre, Executive Vice President of the NRA, and functionally running its operations):

LaPierre breached his **fiduciary duties of loyalty, care and obedience** to the NRA by using his powers as an officer and *ex officio* director of the NRA to obtain illegal compensation and benefits, to convert NRA funds for his own benefit, and to dominate, control, and direct the NRA to obtain private benefit for himself, his family members and for certain other insiders, including Defendants Phillips and Powell in contravention of NRA bylaws, policies and procedures, and applicable laws.

Audit Committee:

The only committee with an entire section of the N-PCL dedicated to it (§ 712-a; Audit Oversight).

The Audit Committee is a central component of the governance structure under the N-PCL.

NRA: Epic failure of the Audit Committee

“The Audit Committee failed to perform its statutory, bylaw, and charter responsibilities as set forth in the preceding paragraphs. As a result, the Board was unable to exercise its responsibilities to maintain a system that was reasonably effective in identifying violations of law. In turn, **the Board displayed a sustained and systematic failure to exercise their oversight function and stood by as various laws were violated by the NRA,** including

- ❑ violations of the NRA's tax exempt status,
- ❑ false reporting on **annual filings with the IRS and the Attorney General's Charities Bureau,**
- ❑ improper expense documentation,
- ❑ improper wage reporting,
- ❑ improper income tax withholding,
- ❑ failure to make required excise tax reporting and payment,
- ❑ payments in excess of reasonable compensation to disqualified persons,
- ❑ and waste of NRA assets.” (¶ 531)

In some critical respects, the NRA lacked appropriate policies and internal controls. But in others, the **policies and controls were present on paper, but ignored in practice.**

A prime example was that the NRA had controls and a process in place for entering into significant contracts, which – if followed – could have prevented many of the missteps. These controls and policies were ignored – with disastrous consequences.

“The culture of noncompliance and disregard for the internal controls was evident within the NRA Audit Committee, which similarly failed to fulfill its obligation to oversee internal controls. This lack of oversight resulted in waste and loss of the NRA's charitable assets and contributed to the NRA reaching its currently deteriorated financial state.” (¶ 476)

Making exceptions to the requirements of the contract approval process opened the door to rampant abuses, and permitted contracts and arrangements that improperly benefitted board members, officers, their family members and their business affiliates.

File Cabinet Syndrome

- While not as headline-worthy as the NRA's missteps, in our practice we often see nonprofits fall victim to "file cabinet syndrome."
- A nonprofit goes to the trouble and expense of developing and adopting an effective policy, but then files it away, loses track of it, disregards it, and thereby creates a breach of fiduciary duty by its board members and officers.

Part of what facilitates **File Cabinet Syndrome** is that nonprofit board members and officers fall victim to the “T-Word” – which is a word that should not be uttered in the nonprofit governance and internal controls realm, because it is entirely incompatible with proper governance and adequate internal controls.

What is the “T-Word”?

TRUST

“For example, the Vice Chair of the Audit Committee testified that he did not feel the need to ask RSM [the NRA’s external auditor] for external oversight of LaPierre's expenses because he "personally [had] a great deal of trust in Wayne LaPierre" and he didn't believe that LaPierre "expends money unnecessarily.”” (¶ 527)

Another syndrome that we see afflicting nonprofit officers and board members, and that also was part of the NRA dynamics, is:

“Ostrich Syndrome”

On July 30, 2018, whistleblowers on the NRA staff were scheduled to present their concerns in detail to the Board's Audit Committee, including a report, known as the Top Concerns Memo, that laid out the egregious conduct and financial improprieties at the NRA.

“Two of the five Audit Committee members – the [Audit Committee] Chair and the interim President of the NRA – left the July 30, 2018 Audit Committee meeting before the whistleblowers gave their presentation. Also, the minutes for that meeting fail to record the fact and substance of the complaints from whistleblowers. The Committee Chair was not even provided a copy of the Top Concerns Memo by the Vice Chair after the meeting.” (¶ 543)

N-PCL: Roadmap to Compliance with Fiduciary Duties for Board Members & Officers

Examples:

- ✓ Elections
- ✓ Meetings (notice; decision-making)
- ✓ Annual Report
- ✓ Documenting Corporate Meetings & Decisions
- ✓ Filing Requirements
- ✓ Conflicts of Interest & Related Party Transactions

NRA: The Road to Disaster When the N-PCL Roadmap is Rejected or Ignored

Conflicts of Interest & Related Party Transactions

“For years, Defendant Frazer [corporate Secretary and general counsel] failed to comply with his obligation under the NRA bylaws and internal policy to collect and submit to the NRA Audit Committee the annual Financial Disclosure Questionnaires that NRA board members and officers are required to fill out. ” (¶ 540)

- “For years, the Audit Committee failed to adequately address related party transactions or conflicts of interest, in violation of both the N-PCL and the NRA's internal policy governing conflicts of interest. ” (¶ 504)
- “The NRA Audit Committee failed to comply with its obligations to diligently review and approve (and document such review and approval of) related party transactions and conflicts of interest between the NRA and NRA officers, directors, and key persons.” (¶ 538)

- “The NRA entered into numerous unlawful related party transactions in violation of N-PCL § 715 and EPTL § 8-1.9, including those detailed above. These transactions were outside of the NRA's authorized corporate purposes.” (¶ 631)
- The complaint notes the NRA’s “failure to conduct reviews of related party transactions specifically required by the N-PCL until September 2018, followed by an Audit Committee "review" and approval of all related party transactions before them, with minimal inquiry or detail.” (¶ 663)

Related Party Transaction Basics:

“Under N-PCL § 715 and EPTL § 8-1.9, the NRA is prohibited from entering into any related party transaction unless the transaction is **determined and documented** by the Board or an authorized committee of the Board to be **fair, reasonable, and in the corporation's best interest** at the time of the determination in compliance with that section.” (§ 39)

Related Party Transaction Basics:

“In addition, every director, officer, trustee, or key employee who has an interest in a related party transaction **must disclose** in good faith to the Board or an authorized committee of the Board "the material facts concerning such interest," **and the corporation must conduct a process before approving a related party transaction and document that process.**

N-PCL § 715; EPTL § 8-1.9” (¶ 40)

Related Party Transaction Basics:

“Similarly, the NRA's Board is required to **adopt, implement** and **assure compliance with** a conflict of interest policy that ensures that the NRA's trustees, directors, officers and key persons act in the corporation's best interest and comply with applicable legal requirements, including those concerning related party transactions. N-PCL § 715-a; EPTL § 8-1.9. The policy must provide for **annual** conflict of interest disclosures by trustees and directors, and **procedures** for the disclosure and determination of conflicts of interest, which must prevent the person with the conflict from influencing the determination. *Id.* **The policy also imposes recordkeeping requirements on the existence and resolution of conflicts.** *Id.*” (¶ 41)

**GOVERNANCE:
IT'S NOT ROCKET SCIENCE!**

PRIMACY OF THE IRS FORM 990

TRAPS FOR THE UNWARY

IRS Form 990 Signature Block:

□ Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

“In its Forms 990 for 2015, 2016, 2017, and 2018, the NRA falsely reported that it was not a party to business transactions with current or former officers, directors, relatives thereof or entities affiliated therewith and failed to disclose those transactions on Schedules L and/or R of its IRS Forms 990. As set forth above, the NRA has been a party to multiple business transactions with current or former officers, directors, relatives thereof or entities affiliated therewith that the NRA failed to report.”

“In its Form 990 for 2018, Defendant NRA answered "No" to the question "Did the organization become aware of a significant diversion of the organization's assets." This statement was false, since the organization did become aware of significant diversions through whistleblower reports and its own inquiries into billing by Ackerman [Ackerman McQueen, the NRA's public relations and advertising marketing firm] and McKenna [consulting firm, McKenna & Associates].”

“In its Forms 990 for the relevant time period, Defendant NRA answered "Yes" to the question "Did the organization regularly and consistently monitor enforcement with [its conflict of interest policy]." Based on the evidence gathered in the Attorney General's investigation, as set forth above, this statement was false, as Defendant NRA repeatedly permitted violations of its conflict of interest policy, including, without limitation, by Defendant LaPierre.”

“In its Forms 990 for 2015, 2016, 2017, and 2018, Defendant NRA answered "No" to the question "Did the organization engage in an excess benefit transaction with a disqualified person during the year?" In fact, Defendant NRA engaged in multiple excess benefit transactions, including without limitation the compensation paid to Defendants LaPierre and Powell, and a former President.”

“In its Forms 990 for the relevant time period, the NRA filed false and/or materially incomplete responses on Schedule J, which reports information on compensation for officers, directors, key employees, and highly compensated employees, including without limitation:

1. Failing to report that the NRA paid for travel for companions until its 2018 Form 990, when in fact the NRA repeatedly paid for travel for LaPierre's wife and other family members;
2. Failing to report that it provided a housing allowance until its 2017 Form 990, when in fact it paid for housing for certain officers.”

“In its Forms 990 for 2015, 2016, 2017, and 2018, Defendant NRA made false statements in Part VI, line 16 about its process for determining the compensation of officers and directors.”

“In its Forms 990 for the relevant time period, the NRA failed to disclose in response to question 25a in Part IV of the IRS 990 for each relevant year that it engaged in an excess benefit transaction with a disqualified person during the year, and failed to file Form 4720 reporting such transactions pursuant to Section 4958 of the Internal Revenue Code, which governs excise taxes for excess benefit transactions.”

“In its Forms 990 for at least 2014 to 2018, the NRA failed to disclose taxable personal income for LaPierre, Phillips, and Powell. For example, as set forth above, LaPierre and Phillips permitted NRA executives and personnel to use vendor credit cards, alter ego accounts, and vendor charges to disguise payments to LaPierre, on LaPierre's behalf, for LaPierre's personal benefit, and as reimbursements of LaPierre's personal and family expenses, inconsistent with the reporting requirements of Section 527 of the Internal Revenue Code.”

“In its Forms 990 for the relevant time period, Defendant NRA failed to disclose the complete amounts paid to LaPierre in the form of gifts from vendors, "out of pocket" expenses originally paid for by Ackerman [Ackerman McQueen, the NRA's public relations and advertising marketing firm] and then paid for by the NRA [reimbursing Ackerman in an effort to hide the compensation to LaPierre], and other forms of compensation.”

“VIII. The NRA's Violation of its Duties under the New York Prudent Management of Institutional Funds Act”

“Under NYPMIFA, the obligations of the NRA are also **imposed upon the governing board of directors** of the NRA.”

“In managing institutional funds, pursuant to NYPMIFA, the NRA must manage institutional funds in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.”

- “The NRA, during the period 2015 to the present, did not manage its institutional funds in good faith, or with the care and prudence an ordinarily prudent person would exercise under similar circumstances.”
- “The NRA has failed to incur only costs that are appropriate and reasonable in relation to its assets and the purposes of the NRA.”

- “The NRA has failed to make reasonable efforts to verify facts relevant to management of its institutional funds.”
- **“The NRA has failed to make reasonable efforts to keep its Board and relevant committees of the Board apprised** of the financial status, risks, and commitments of institutional funds.”

- ❑ “The NRA has permitted its **Audit Committee** to fail to evaluate or report on the requirements of NYPMIFA, and the NRA's compliance with those requirements.”

- ❑ “The NRA has permitted its **auditor** to fail to evaluate or report on the requirements of NYPMIFA, and the NRA's compliance with those requirements.”

- ❑ “The NRA has **failed to assure that institutional funds are not subject to waste or misappropriation.**”
- ❑ “The NRA has engaged "faithless fiduciaries" including Defendants LaPierre, Powell, and Phillips, who were given authority to manage and invest institutional funds, but failed to do so prudently.”

- “The NRA has committed the NRA to undertake **undisclosed future obligations to senior executives**, including a **ten-year post-employment obligation to Defendant LaPierre at an amount per year in excess of \$1 million**, a **no-show consulting contract** with Defendant Phillips, and a no-show consulting contract with the former Executive Director of General Operations.”

**GOVERNANCE:
IT'S NOT ROCKET SCIENCE!**

Traps for the Unwary

Annual Financial Report:

- Mandated by §519 and §513 of the N-PCL
- Specific information required by law

Annual Financial Report Timing Trap

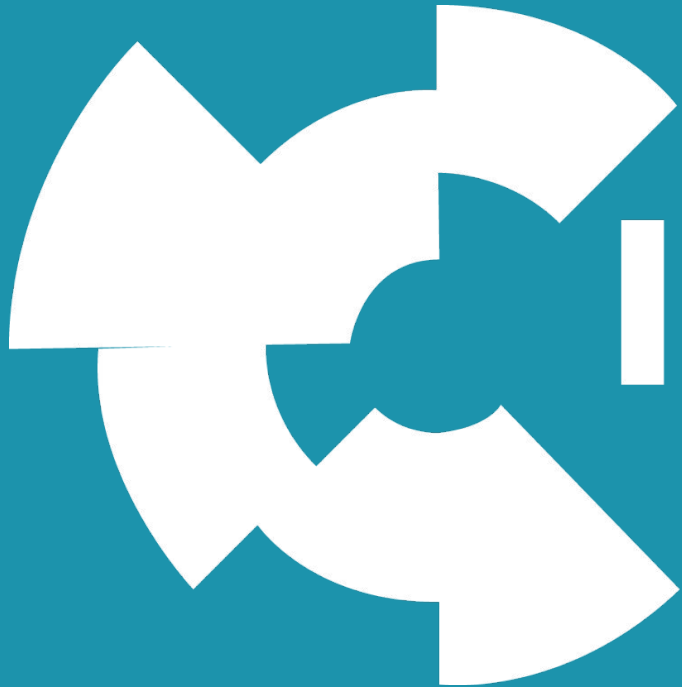
- The annual financial report requirement mandates that the financial information presented be for a twelve-month fiscal period **terminating not more than six months prior to the meeting**
- So, if your fiscal year is the calendar year, then for your financial information **not to be stale**, you need to have your annual meeting, and present the annual financial report, before the end of June

GOVERNANCE: IT'S NOT ROCKET SCIENCE!



CERTILMAN BALIN
ATTORNEYS

David Goldstein, Esq.
Certilman Balin Adler & Hyman, LLP



2024

INNOVATE

JMT CONSULTING

BOSTON