

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

**PEOPLE OF THE STATE OF NEW YORK,
BY ERIC T. SCHNEIDERMAN,
ATTORNEY GENERAL OF THE STATE
OF NEW YORK,**

Plaintiff,

v.

**McENERNEY, BRADY & COMPANY, LLC
and EDMOND BRADY,**

Defendants.

Index No.

Summons

**Date Index No. Purchased:
May 7, 2018**

TO THE ABOVE NAMED DEFENDANTS:

McENERNEY, BRADY & COMPANY, LLC


EDMOND BRADY

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is that Plaintiff the Attorney General of the State of New York, a public authority, has a principal office in New York County.

Dated: New York, New York
May 7, 2018

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
Attorney for Plaintiff

By: 
Yael Fuchs
Assistant Attorney General
Charities Bureau
28 Liberty Street
New York, New York 10005
(212) 416-8391

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by
ERIC T. SCHNEIDERMAN, Attorney General of the State of
New York,

Index No.

Plaintiff,

COMPLAINT

-against-

McENERNEY, BRADY, & COMPANY, LLC, and EDMOND
BRADY,

Defendants.

Plaintiff, People of the State of New York, by Eric T. Schneiderman, Attorney General of the State of New York (“Attorney General,” “OAG”), allege the following against McEnerney, Brady & Company, LLC (“MBC”) and Edmond Brady (“Brady”) (together, “Defendants”):

PRELIMINARY STATEMENT

1. This action arises out of Defendants’ role in perpetuating the existence of a sham charity, the Breast Cancer Survivors Foundation (“BCSF”). Defendants, the McEnerney, Brady & Company accounting firm and founding member Edmond Brady, facilitated a multi-year scheme of fraudulent not-for-profit conduct by falsifying BCSF’s financial statements by inflating the value of BCSF’s charitable services by over 300%, failing to report significant internal control failures, and issuing audit reports that falsely gave BCSF an unqualified audit opinion. Defendants’ acts and conduct deceived donors to BCSF and hindered the Attorney General’s ability to assure compliance with New York not-for-profit law.

2. BCSF was forced to close in 2017 after the Attorney General found that it was a shell corporation, created and operated by, and for the benefit of its outside professional

fundraiser.¹ During its six years of existence, BCSF solicited and received over \$18 million in contributions, including approximately \$1 million from New Yorkers.

3. From 2011 to 2016, MBC, with a team led by Edmond Brady, provided accounting and auditing services to BCSF. Defendants prepared BCSF's IRS Forms 990 "return of organization exempt from income tax" for BCSF's fiscal years ("FY") 2010 to 2015, and prepared BCSF's financial statements and audit reports for FY 2010 through 2014.

4. For FY 2010 through 2014, the MBC team conducted wholly inadequate audits and furnished BCSF with audit reports containing unmodified (i.e. "clean") opinions, stating that BCSF's financial statements were presented fairly, in all material respects, in conformity with generally accepted accounting principles ("GAAP"). As described herein, these statements were false. Defendants knew that BCSF did not merit an unmodified opinion but needed such an opinion to solicit charitable contributions in New York. In this way, Defendants played an integral role in helping BCSF defraud New York donors.

5. At the heart of Defendants' fraud was their knowledge that BCSF was run by and for the benefit of BCSF's outside professional fundraiser, Mark Gelvan. Gelvan was a tax client of the firm and the source of multiple referrals.

6. In 2010, Gelvan orchestrated the creation of BCSF to take advantage of the popularity of breast cancer as a charitable cause.

7. In order to operate BCSF as a charity, and to solicit contributions in the majority of states, including New York, Gelvan needed to obtain an independent audit for BCSF by a licensed certified public accountant ("CPA") each year. However, Gelvan faced a series of

¹ *In the Matter of the Investigation by Eric T. Schneiderman, Attorney General of the State of New York, of the Breach Cancer Survivors Foundation, Inc. aka Women's Breast Cancer Relief Association, and Yulius Poplyansky, Defendants*, Assurance No. 17-105 (May 26, 2017), available at https://ag.ny.gov/sites/default/files/bcsf_final_assurance.pdf.

hurdles in obtaining an independent audit for BCSF. First was his own reputation – Gelvan had been sanctioned by a number of states for his fundraising practices. If Gelvan were identified as involved in management, that fact would raise “issues with management integrity,” a key element in the efficacy of an audit conducted in accordance with Generally Accepted Auditing Standards (“GAAS”). That might in turn affect the auditor’s willingness to enter into or continue the engagement. Second, he needed an auditor who would deal with him directly as the representative of the organization, despite his lack of a formal management role and his role as BCSF’s primary vendor. Third, he needed an auditor who would agree to an accounting scheme to inflate BCSF’s revenue and expenditures. Lastly, he needed an auditor who would accept and provide a clean opinion while ignoring GAAP and GAAS, audit red flags, concerns raised by team members, and information inconsistent with the desired opinion. Gelvan found that auditor in Edmond Brady and the McEnerney, Brady firm.

8. Defendants also prepared the IRS Forms 990 for the years 2010 to 2015, and certified under penalty of perjury that “this return” is “to the best of my knowledge, true, correct, and complete.” In truth and in fact, as Defendant Brady well knew, the IRS 990 returns contained specific false statements. For example, Part VI question 3 asks, “Did the organization delegate control over management duties customarily performed by or under the direct control or supervision of officers or directors . . . to a management company or other person?” Brady entered “no” as the answer, when he knew that Gelvan performed virtually all management duties.

9. Defendants were aware that BCSF’s audit reports and Defendants’ expressions of professional audit opinion were incorporated into annual filings submitted by BCSF to the OAG’s Charities Bureau. The Attorney General requires charities to file annual financial

statements that include an unqualified audit opinion if the charities want to solicit charitable donations in New York. Thus, as part of New York's compliance regime for not-for-profits, the Attorney General relies on auditors to conduct audits in accordance with professional standards.

10. Defendants knew or should have known that the audit reports and their expressions of the professional audit opinion that BCSF's financial statements were presented in conformity with GAAP were false because, as detailed herein, the financial statements contained significant departures from such accounting principles.

11. Further, Defendants knowingly disregarded GAAS.² In conducting the audits, Defendants willfully overlooked indicators of fraudulent activity and failures of internal controls that any auditor should have flagged and reported to its client's board of directors. They failed to conduct the appropriate procedures and obtain the required audit documentation, also referred to as "work papers," relating to these indicators. For example, the audit team failed to conduct appropriate procedures in relating to the following red flags: BCSF's board of directors never met; the primary vendor – Gelvan – claimed to be "acting on behalf of the president;" BCSF had no physical office, much the less a medical facility, and yet reported hundreds of thousands of dollars worth of donated mammograms; and BCSF claimed to hold conferences for breast cancer survivors, but there was no evidence of any such events.

12. Brady had specific notice of these failures but knowingly failed to take action to address or to advise BCSF to correct them. Each year, Brady reviewed and signed off on BCSF's work papers, despite blatant red flags. Further, during the course of Brady's engagement, two accountants on Defendants' audit team asked to be removed from the BCSF

² GAAS are sets of standards against which the quality of audits are performed and may be judged. In the United States, the standards are promulgated by the Auditing Standards Board, a division of the American Institute of Certified Public Accountants, and are prefaced by the notation "AU-C," which stands for "U.S. Auditing Standards – Clarified."

engagement because they were uncomfortable with Gelvan's role and the lack of meaningful charitable activities by the charity. After nothing changed, in July 2014 these accountants wrote a five-point document, provided to Brady's deputy on the audit team, which clearly detailed their concerns. They summed up their concerns in a blunt statement that the "professional fundraiser 'consultant' [Gelvan] appears to be running the Organization which has no other income source outside of the professional fundraising contributions."

13. Despite these issues, Defendants continued to communicate primarily with Gelvan in connection with their audits of BCSF.

14. Defendants' fraud in the preparation of BCSF's financial statements and audit reports resulted in: (a) the filing with and acceptance by the Attorney General of annual filings containing material misstatements; (b) continued solicitation in New York by a charity that was not in fact in compliance with New York law reporting requirements; (c) improper inflation of BCSF's revenues and expenses through false reporting of the purported value of mammograms conducted by BCSF's grantees as gifts-in-kind; (d) under-reporting of the amounts paid to the fundraiser; (e) the failure to report material related party transactions between BCSF and the fundraiser; and (f) the failure to identify and report to management significant internal control failures related to the fundraiser's control of the operations of BCSF.

THE PARTIES

15. Plaintiff the Attorney General is responsible for overseeing the activities of New York not-for-profit corporations and the conduct of their officers and directors through a system of mandatory financial disclosures and reporting, and for ensuring that charitable assets are properly administered, in accordance with the Not-for-Profit Corporation Law ("N-PCL"), the

Estates, Powers and Trusts Law (“EPTL”), the Executive Law, and his common law *parens patriae* authority.

16. Defendant McEnerney, Brady, & Company, LLC is a certified public accounting firm based in Livingston, New Jersey and licensed by the State of New Jersey. MBC had an office in Manhattan. On or about May 4, 2015, MBC entered into a business combination agreement with a successor accounting and auditing firm with offices throughout New York State (the “Successor Firm”).

17. Defendant Edmond Brady is an accountant and CPA residing in New Jersey. Brady has been licensed as a CPA in New York since 1985, and is also licensed in New Jersey and Massachusetts. Brady was a founding member of Defendant MBC, and became a partner of the Successor Firm upon the business combination in 2015. Brady’s professional profile on LinkedIn states that, at MBC, he was “[r]esponsible for all police & fire organizations, unions & not-for-profits clients of the firm” and that he works in both Livingston, New Jersey, and Manhattan, New York City. Brady is a member of the American Institute of Certified Public Accountants and the New York Society of Certified Public Accountants (NYSCPA).

OTHER RELEVANT ENTITIES

18. BCSF is a not-for-profit corporation established in 2010 as a Delaware Corporation. BCSF reported that it was headquartered in New Jersey, and then in Florida. The Florida office was a “virtual office.” On May 26, 2017, BCSF entered into an Assurance of Discontinuance with the Attorney General under which it agreed to dissolve.

19. Auditor1 and Auditor2 are accountants who were employed by MBC and, upon information and belief, are currently employed by the Successor Firm. Both were junior

members of the MBC team that conducted audits of BCSF, and both were supervised by Defendant Brady.

20. QC Partner was the Quality Control Partner on the MBC team that conducted audits of BCSF. QC Partner was employed by MBC and was supervised by Defendant Brady. QC Partner's employment was terminated following MBC's business combination with the Successor Firm.

21. Mark Gelvan ("Gelvan") is a professional fundraiser and fundraising consultant based in New Jersey who has been repeatedly sanctioned for unlawful charitable solicitation. For over two decades, Gelvan has been creating and controlling a succession of professional fundraising companies that solicit charitable donations by telephone and direct mail on behalf of client charities. Gelvan is the owner of Outsource3000, a fundraising consulting company. The OAG investigation found that Gelvan controls Outreach Calling, a fundraising company, and Mail Response Services, Inc. ("MRS"), a company that purports to help charities process donations. Gelvan is permanently barred from fundraising in New York State or from deriving any financial benefit from fundraising by third parties, such as subcontractors, operating in New York.

JURISDICTION AND APPLICABLE LAW

22. The Attorney General brings this action on behalf of the People of the State of New York under the Executive Law, the N-PCL, and under his *parens patriae* authority.

23. Charitable organizations soliciting contributions in New York must register and file annual reports under Article 7-A of the Executive Law. The annual reports filed pursuant to the Executive Law (called CHAR500s) must include copies of an organization's annual IRS filings (called a "Form 990 Return of Organization Exempt from Income Tax" or "Form 990").

24. Under Executive Law section 172-b, organizations such as BCSF, which file under the Executive Law and meet certain monetary thresholds, must file:

an annual financial statement which includes an independent certified public accountant's audit report containing an opinion that the financial statements are presented fairly in all material respects and in conformity with generally accepted accounting principles, including compliance with all pronouncements of the financial accounting standards board and the American Institute of Certified Public Accountants that establish accounting principles relevant to not-for-profit organizations.

Certified public accountants are the only third party professionals that New York law requires not-for-profits to engage.

25. Registration and annual reporting with the Charities Bureau enable the Attorney General to exercise statutory oversight of charities that conduct activities and/or solicit charitable contributions in New York and to ensure that funds and other property entrusted to those organizations are administered properly. The registration and annual reports are made available to the public through the Charities Bureau's online registry, which serves as an important source of information for watchdog organizations, media and independent reporters, and members of the public concerning not-for-profit organizations. The failure of an organization to file accurate reports impedes the Attorney General's exercise of his statutory authority to oversee charitable organizations and deprives New Yorkers of access to reliable information concerning charities operating in this State.

26. Under Executive Law section 63(12), the Attorney General is authorized to take enforcement action against "persistent fraud or illegality in the carrying on, conducting, or transaction of business."

27. Under Executive Law section 175(2), the Attorney General is authorized to bring a special proceeding against a charitable organization or any other persons acting for it or in its behalf, in relevant part: "for an order awarding restitution and damages and costs ... and to seek

other relief which the court may deem proper whenever the Attorney General shall have reason to believe that the charitable organization or other person... has violated [Article 7-A]”, including by, pursuant to section 175(d), making “a material false statement in an application, registration or statement required to be filed pursuant to this article.”

28. The Attorney General also has common law *parens patriae* authority to conserve charitable property and to protect the public from fraudulent solicitation, and to protect the integrity of the not-for-profit sector.

29. Venue is properly laid in New York County, as provided in New York Civil Practice Law and Rule (“CPLR”) section 505, because the Attorney General maintains offices in New York County, and the Charities Bureau of the OAG has its principal office in New York County.

30. This Court may exercise personal jurisdiction over Defendants pursuant to section 302 of the CPLR because they transact business within the state and committed tortious acts within the state.

STATEMENT OF FACTS

I. The Attorney General’s Investigation Reveals BCSF as a Sham Charity

31. The Attorney General began an investigation of BCSF in 2016. That investigation concluded with an Assurance of Discontinuance entered into by the charity and its nominal president, Dr. Yulius Poplyansky, on May 26, 2017. As set forth in the Assurance, the investigation found that Mark Gelvan, a professional fundraiser and a long-time family friend of Dr. Poplyansky, convinced Dr. Poplyansky to create BCSF and immediately enter into contracts for telemarketing campaigns. Under these contracts, a fundraising company controlled by

Gelvan would retain 90% of the donations collected on behalf of BCSF, and a “processing” company controlled by Gelvan would retain an additional 2% of the gross donations.

32. The Investigation further found that Poplyansky and other supposed board members abdicated their responsibility as directors and permitted Gelvan to control BCSF’s operations. Gelvan controlled the organization’s finances, controlled all interactions with MBC, arranged for its lease of its “virtual” office space, hired and oversaw personnel, and chose, hired, and dominated all interactions with third-party vendors, including his companies and other fundraisers with whom he subcontracted.

33. As part of his control, Gelvan created and disseminated fundraising appeals that falsely represented that BCSF had a facility where it treated breast cancer patients, that it provided direct breast cancer screening services, and that it held public conferences on breast cancer. None of those claims were true.

34. Dr. Poplyansky admitted all of the factual findings in the Assurance and issued a public letter of apology.

II. The BCSF Investigation Reveals Misconduct by MBC and Brady

35. The BCSF Investigation also revealed wrongdoing by Brady and MBC, as BCSF’s auditors. As part of the BCSF Investigation, the OAG obtained copies of the work papers from Defendants’ audits of BCSF for FY 2010 through 2014. Those work papers revealed that Defendants communicated almost exclusively with Gelvan in the course of the BCSF audits, not with BCSF’s board of directors or management.

36. Further investigation, including additional document collection and examinations under oath of every member of Defendants’ audit team for BCSF, revealed that Gelvan controlled BCSF’s financial reporting and BCSF’s interaction with Defendants. Defendants

accepted, without any documentation, Gelvan's representation that he was authorized to act on behalf of BCSF's president. Defendants relied on Gelvan to provide BCSF's financial information; permitted him to comment on BCSF's financial statements before finalizing those statements; and participated in an accounting scheme developed by Gelvan to hide BCSF's high cost of fundraising.

37. The investigation also revealed that junior members of the audit team alerted senior team members, including Defendant Brady, of their concerns about Gelvan's control, but, as discussed in further detail below, the only action that Defendants took was to remove those junior members from the team.

A. Defendants' Knew that Gelvan Controls BCSF, Only Communicated with Gelvan

38. Defendants' professional relationship with Gelvan dates back over a decade. In or around 2006, Defendant Brady met Gelvan at various conventions for police and firefighter organizations, where both were seeking potential clients. In or around 2007, MBC began providing accounting services to Gelvan and his family members.

39. Over the years, MBC also provided accounting services to no fewer than nine companies controlled by Gelvan, most of which were in or connected to the charity fundraising business. MBC's files show that MBC partners were aware that Gelvan shut down certain corporations after being sanctioned by regulators, and then resumed the identical activities through new corporate entities, sometimes with friends and family members as the nominal owners. In 2014, MBC provided Gelvan with accounting advice in connection with a penalty Gelvan paid to the Attorney General after the Attorney General discovered that Gelvan had brokered fundraising contracts in New York, violating his court-ordered ban on fundraising in New York.

40. Gelvan also referred several charity clients to MBC for audit services. Several of these organizations have encountered serious trouble over the years, including Woman to Woman Breast Cancer Foundation, which shut down in 2012 due to mismanagement and regulatory scrutiny. Gelvan was the primary fundraiser for that organization.

41. In 2011, as the time approached for BCSF to file its first financial statements with regulators, Gelvan turned to Brady to provide the necessary services. Brady was the Engagement Partner on the team, and he assigned QC Partner and Auditor1 to join him.

42. Brady instructed Auditor1 that Gelvan was to be the primary contact for BCSF. At the time, Brady knew that Gelvan was not an officer or director of BCSF, but was BCSF's primary outside fundraiser.

43. GAAS requires an auditor to "obtain sufficient appropriate audit evidence . . . on which to base the auditor's opinion" (AU-C § 500.04)³ to "design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence." (AU-C § 500.06).

44. GAAS also requires auditors to exercise appropriate professional judgment and professional skepticism. (AU-C § 200.08).⁴ Professional skepticism is defined as "an attitude that includes a questioning mind and a critical assessment of audit evidence." (AU-C § 200.14.) In addition, AU-C section 200.17 requires auditors to "plan and perform an audit with professional skepticism, recognizing that circumstances may exist that cause the financial statements to be materially misstated."

³ AU-C § 500 became effective for audits of fiscal years ending on or after December 15, 2012, superseding, but not changing in any significant respect, AU § 326.

⁴ AU-C § 200 became effective for audits of fiscal years ending on or after December 15, 2012, superseding, but not substantially changing in any significant respect, AU § 230.

45. Defendants willfully ignored these basic professional standards. As detailed below, during their audits of BCSF, they communicated almost exclusively with Gelvan, relying on information he provided, reporting only to him, and even permitting him to make changes to BCSF's financials.

46. From the first audit – conducted in 2011 for BCSF's FY 2010 – and for each of the subsequent audits, Defendants' work papers clearly reflected that Brady's team communicated exclusively with Gelvan.

47. The work papers also showed that the audit team regarded Gelvan as both "key client staff" and one of the "key outside contacts."

- a. Beginning with the work papers for FY 2010, Auditor1 made a notation in a chart titled "Key Outside Contact Information," listing Gelvan (referred to as "Mark"), through his companies Community Support, Inc. (a professional fundraiser and the predecessor to Outreach Calling), MRS ("Mail Response Services," an entity controlled by Gelvan and used to manage the flow of funds from donors to charities and the fundraisers), and Outsource3000 (Gelvan's consulting company):

9 – Key Outside Contact Information:

<u>Contact Name / Role at Company</u>	<u>Address</u>	<u>Phone #</u>	<u>Fax #</u>	<u>E-Mail Address</u>
Banker:	N/A			
Attorney: [redacted]				
Professional F/R: Community Support, Inc.		973-[redacted] MRS 973-[redacted] Mark's Cell	973-[redacted]	[redacted]@ outsourse3000.com

- b. The very next entry, titled “Key Client Staff During Audit” reported Gelvan as “key client staff” and “acting on behalf of President”:

10 – Key Client Staff During Audit:

<u><i>Title or Relationship</i></u>	<u><i>Individual Name or n/a if not applicable</i></u>	<u><i>Responsible for Governance of Financial Reporting</i></u> (X)
Bookkeeper		
Accounts Receivable Manager		
Accounts Payable Manager		
Controller		
President	Yulius Poplyansky	X
Chief Financial Officer		
Director of Fundraiser	Mark Gelvan (acting on behalf of President)	
Board of Director Members		
Other (describe)		

- c. Defendants carried over a notation about Gelvan “acting on behalf of President” in the work papers for each of the BCSF audits.

48. Defendants never asked Gelvan or any other representative of BCSF for documentation that Gelvan was authorized to act “on behalf of” the President. Brady failed to instruct his staff to seek such documentation. In fact, no such documentation existed.

49. The red flags continued. Beginning with the 2012 work papers and repeated each year thereafter, the section titled “Understanding the Entity and Its Environment” stated that the “Foundation’s primary phone number is Mark Gelvan’s contact information”:

General:

The Foundation is located at 18851 NE 29th Avenue Suite 700, Aventura, FL 33180. There are no other locations maintained by the Foundation.

The Foundation’s primary phone number is Mark Gelvan’s contact information [REDACTED] and his cell phone number is [REDACTED] and the fax number is [REDACTED].

50. In the 2012 work papers, a form titled “Financial Statements Processing Instructions” which was initialed by Defendant Brady, states that the “client email address” is that of Gelvan.

51. Over the course of the audits, Defendants communicated almost exclusively with Gelvan about BCSF matters. As the work papers indicate, the “Initial Discussions and Interviews” with “Management” were conducted with Gelvan:

<u>Management - Initial Discussions and Interviews</u>		Breast Cancer Survivors Foundation, Inc.
Information Below Based on a Discussion With (Name):	Mark Gelvan	
Title of Person:	Professional Fundraiser Director	
Date of Discussion:	10-May-11	

52. The “Understanding the Entity and its Environment” section of the work papers for the FY 2012-2014 audits also report that audit planning meetings were held with Gelvan as the client representative, including as follows:

a. The FY 2012 work papers contain the following notation:

<u>Industry, Regulatory, and Other External Factors:</u>
During our planning meeting with Mark Gelvan on January 29, 2013, MBC and he discussed risks related to the business environment, the economy and any new laws affecting the Foundation and its industry during 2012. The President is aware of the following risks:

b. The FY 2013 work papers contain the same notation:

<u>Industry, Regulatory, and Other External Factors:</u>
During our planning meeting with Mark Gelvan on April 23, 2013, MBC and he discussed risks related to the business environment, the economy and any new laws affecting the Foundation and its industry during 2012. The President is aware of the following risks:

c. The FY 2014 work papers contain the same notation:

<u>Industry, Regulatory, and Other External Factors:</u>
During our planning meeting with Mark Gelvan on April 21, 2015, MBC and he discussed risks related to the business environment, the economy and any new laws affecting the Foundation and its industry during 2014. The President is aware of the following risks:

53. Defendants knew or should have known that it was improper for the organization's professional fundraiser to be "acting on behalf of the president" and that they should be communicating with individuals charged with governance of the BCSF.

54. Defendants also provided Gelvan with a draft version of BCSF's financials for his review and comment. On March 21, 2013, QC Partner sent Gelvan "a draft of the financial statements for the Breast Cancer Survivors Foundation for review." QC Partner also told Gelvan that he (QC Partner) would send Gelvan a draft of required communications "for any comments you may have prior to sending [to the board]." Defendant Brady was copied on this communication and allowed his team to let a third party comment on his client's financial statements.

55. When confronted with the March 2013 email, Brady testified under oath that it was wrong to have provided the financials to Gelvan for comment, and conceded that Gelvan had "undue influence."

B. Failure to Report Weaknesses in BCSF's Internal Controls

56. Over the course of five years of audit work, Defendants repeatedly confronted evidence that BCSF, while raising millions of dollars, had no internal controls. In some instances, the audit team noted internal control problems in the work papers, but in violation of GAAS, failed to conduct the appropriate audit procedures in response. In other instances, work papers contain misrepresentations about BCSF's internal controls. Brady was responsible for the final review and approval of the work papers.

57. GAAS states that an auditor should perform risk assessment procedures, defined as "audit procedures performed to obtain an understanding of the entity and its environment, including the entity's internal controls, to identify and assess the risks of material misstatement,

whether due to fraud or error....” (AU-C § 315.04). Defendants chose not to conduct any risk assessment procedures that would have further documented Gelvan’s control over BCSF and related risks.

58. GAAS also requires that an auditor must “appropriately communicate to those charged with governance and management deficiencies and material weaknesses in internal control that the auditor has identified in an audit of financial statements.” (AU-C § 265).

Defendants failed to communicate deficiencies to those charged with governance.

59. For example, for audit years 2010-2014, Defendants’ audit work papers for BCSF repeatedly observe that BCSF’s board of directors did not meet at all.

60. Defendants knew, as Brady acknowledged in his testimony, that the lack of board meetings raised a serious internal control issue. Nevertheless, Defendants never communicated this fact to the organization in a management letter, a communication to the organization that identifies deficiencies and weaknesses in a company’s internal controls.

61. The work papers from FY 2010-2012 contained a chart titled “Entity Level Control Risk Assessment.” In a section called “Control Environment,” the chart contained an entry that states, “the finance staff consists of the president who is actively involved in operations (all activity is initiated & recorded by fund raiser [*sic*].” Auditor1, who drafted the entry, testified that he knew that the nominal president was not actively involved and that the statement was untrue. Defendants also failed to take any action in response to the fact, documented in this entry, that the fundraiser was controlling operations.

62. Brady admitted under oath that the fundraiser’s control was improper. The OAG asked Brady about entries in the 2011 work papers section titled “Understanding the Control Environment.” One of the factors listed as influencing the control environment is “Commitment

to Competence.” Under that heading, the work papers states: “the Foundation relies on the professional fundraiser to make sure they have the appropriate knowledge and skills to effectively perform their job tasks.” Brady testified that he had not noticed the entry during the course of the engagement, and that his reaction upon reviewing the entry was that it was “not good.” Assuming arguendo that Brady actually did not see the entry, the OAG asked what impact the entry would have had on the audit had he noticed it at the time. Brady conceded that it would have raised a red flag and led to further questions, testifying that: “Well, first of all, I would have said to them: Why are you even talking about the professional fundraiser? What does he have to do with the organization?”

63. In the same 2011 work papers, another paragraph titled “Board of Directors/Trustees Participation” states: “The board of trustees are actively involved in the operations of the foundation and overall successes of the mission.” This statement was blatantly untrue, and Brady admitted that the work papers lacked the necessary support for this assertion. Brady testified that he would expect to see documentation in the work papers including “[d]etails in the work papers. Who they spoke to, some e-mails that they’re sending out to the board, to the management showing their involvement.”

64. In fact, no such evidence existed. To the contrary, year after year, the work papers showed that the board was not involved in the operations of the organization – the board did not meet, there were no meeting minutes, and there were no communications demonstrating board involvement of any sort.

65. Another checklist entry states: “Management has the expertise to identify and address changes and gaps.” Auditor1 admitted under oath that this statement was not true.

66. The 2014 work papers record an internal planning meeting during which the inability to communicate with the board was noted explicitly, yet Defendants still chose not to raise this fact in a management letter or otherwise:

Audit Considerations:

1. Difficulties in prior year audit, findings

Inability to communicate with the board of the organization. Sole contact is the "consultant" (owner of the professional fundraiser company).

C. Misstatements of Program Activities in the Financial Reports

67. For each year, the financial statements prepared by Defendants stated in a description of BCSF's activities that, "The foundation will also hold meetings and conferences for the public at large." BCSF never held such meetings or conferences. The Defendants knew or should have known that BCSF did not conduct these activities because the audit work papers contain no evidence – invoices, bills, programs – that any such events were held.

D. Failure to Identify a Material Related Party Transaction

68. Defendants also willfully overlooked and failed to report in BCSF's financial statements and IRS Forms 990 a related party transaction at the heart of BCSF's existence, namely, Gelvan's simultaneous control of BCSF and the professional fundraiser and escrow agent that together were contractually entitled to 92% of BCSF's revenue.

69. GAAS sets out the procedures auditors should use for identifying and addressing related party transactions, and explains the importance of these procedures, stating that:

The auditor has a responsibility to perform audit procedures to identify, assess, and respond to the risks of material misstatement arising from the entity's failure to appropriately account for or disclose related party relationships, transactions, or balances. In addition, an understanding of the entity's related party relationships and transactions is relevant to the auditor's evaluation of whether one or more fraud risk factors are present ... because fraud may be more easily committed through related parties. (AU-C §§ 550.04-05.)

Defendants knowingly and repeatedly failed to comply with this requirement. According to sworn testimony from members of the audit team and Defendant's own work papers, Defendants only spoke with Gelvan – the interested party – about potential related party transactions and did not speak to management.

70. QC Partner admitted under oath that the auditors “asked the person with the most at stake in the related party transactions if a related party transaction existed” and admitted “[w]e asked the wrong person. You can't ask the robber, the person who had the transgression, if they didn't [commit it].”

71. In his sworn testimony, Defendant Brady also acknowledged that a related party transaction inquiry should have been conducted. Brady had no explanation for why no such inquiry was completed.

E. Failure to Report and Properly Document Additional Fundraising Fees

72. Defendants' audit reports also failed to properly report that BCSF, in addition to having contracted to pay its fundraisers 90% of its revenue, entered into a contract with another Gelvan-controlled company, Mail Response Services (“MRS”), pursuant to which MRS retained yet another 2% of BCSF's gross donations for purported “escrow” services. Gelvan caused BCSF to enter into this contract despite the fact that BCSF's contract with Outreach Calling provided that Outreach would cover all of the costs of the fundraising campaigns out of its 90% share of revenue.

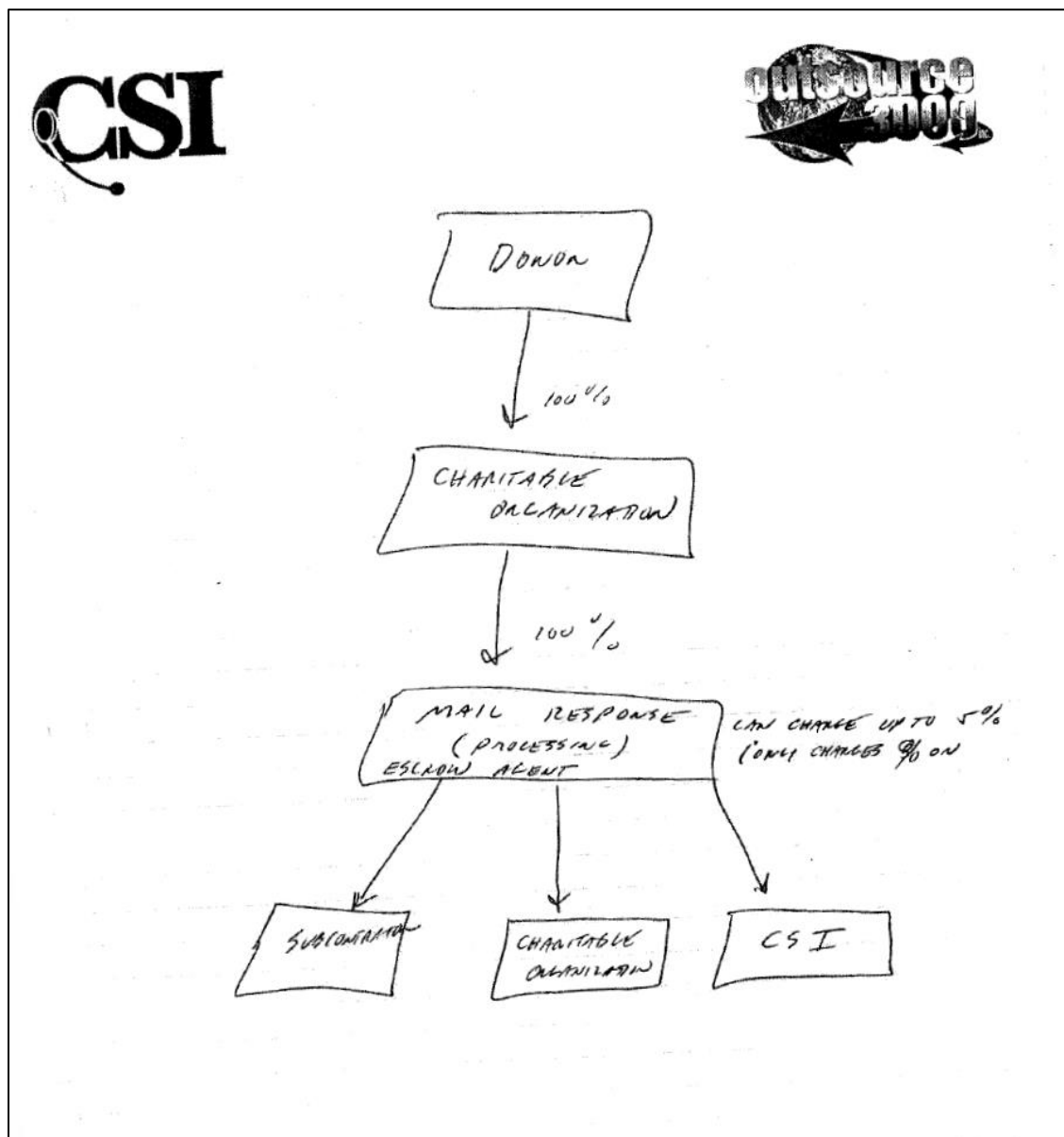
73. Defendants were fully aware of every part of this scheme – that MRS kept an additional 2% of BCSF's gross revenues, that the terms of the fundraising agreement provided that Outreach Calling should have covered any escrow costs, and that Gelvan controlled each of Outreach, MRS and the charity.

74. Nevertheless, Defendants failed to conduct the appropriate audit procedures. In fact, Defendants' work papers, starting with FY 2011, describe a mathematically impossible arrangement under which Outreach Calling received 90% of gross donations, BCSF received 10% of gross donations, and MRS received 2%.

75. Defendants knew at all relevant times that Gelvan controlled MRS, as reflected in the BCSF work papers. Further, MBC was also the accountant for MRS, among other companies controlled by Gelvan. Gelvan's primary accountant testified under oath that MRS was part of a "global picture" of the companies controlled by Gelvan. As the accountant explained, MRS collected the gross revenue from the various solicitation campaigns, and then distributed the funds among the various parties.

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76. The accountant depicted the flow of funds in the illustration below, which was maintained in MBC's file for MRS:



The illustration is written on the letterhead for “CSI” and “Outsource3000” – two companies controlled by Gelvan, and shows how money travels from a donor, through MRS, which, as the illustration says “can charge up to 5%,” and then gets divvied up between a “subcontractor” – other fundraising companies with whom Gelvan caused BCSF to contract, the “charitable organization” (in this case BCSF), and CSI (or its successor, Outreach Calling).

77. MBC further knew that the companies were all run out of the same office space, which Gelvan owned and where Gelvan worked on a regular basis, and that the general ledgers for the companies were all maintained on the same computer.

78. Brady had specific knowledge of Gelvan's control over MRS and MRS's function. For example, emails produced by MBC demonstrate that in September 2009, Gelvan and Brady discussed how fees paid by another client charity to MRS could be allocated on that charity's financial statements.

79. From 2011 to 2014, as the Defendants well knew, MRS kept nearly \$200,000 of charitable funds solicited on behalf of BCSF, money that should have gone for charitable purposes. Defendants helped Gelvan conceal these payments in BCSF's financial statements and audit reports by failing to report MRS as a related party, and by removing references to "processing fees" starting with the 2013 Form 990. Defendants also failed to conduct any additional audit procedures relating to this problematic arrangement.

80. As a result, the financial statements prepared by Defendants did not reflect, as the Defendants well knew, that in fact BCSF received only 8% of the donations raised on its behalf after adjusting for the fees paid to MRS. Nor did the work papers or financial statements reflect that companies owned or controlled by Gelvan in fact received up to 92% of BCSF's donations.

F. Improper Accounting to Hide Fundraising Expenses

81. In 2011, Gelvan introduced Brady to an accounting scheme under which Defendants would double-report BCSF's charitable activities. The purpose of this scheme, of which Brady was well aware, was to create the false impression that BCSF was conducting more charitable activities than it was in fact. This, in turn, would help Gelvan hide BCSF's outrageous fundraising costs. Brady agreed to this scheme and Defendants used it in BCSF's financial

statements for 2011 through 2014, inflating the value of BCSF's charitable program services by over 300% in each of those years.

82. The scheme went as follows: Gelvan arranged for BCSF to make cash grants to clinics for those clinics to perform mammograms. Defendants reported those grants once on BCSF's financials correctly – as “Grants to organizations in the U.S.” using their actual cash value. (See BCSF's IRS Forms 990, 2011-2014, Part IX, line 1.) Then, Defendants reported the grants again, this time as “donated services” at a value that Defendants calculated using a bogus formula. (See BCSF's IRS Forms 990, 2011-2014, Part IX, line 24.) This reporting materially inflated BCSF's program service expenses: by \$91,100 (FY 2011), \$440,000 (FY 2012), in 2013, \$996,521 (FY 2013), and \$822,635 (FY 2014).

83. Defendants' reporting of the inflated value of mammograms as “donated services” was a material departure from GAAP. Defendant Brady admitted in his sworn testimony that “in-kind donations were calculated incorrectly on the [BCSF] financial statements in the past.”⁵

84. Gelvan proposed this fraudulent methodology to Defendant Brady in or around April 2012, in connection with the audit for FY 2011. On April 16, 2012, Gelvan sent Defendant Brady an email stating: “I am following up on the BCSF tax return. Were you able to adjust the numbers based on the discounted price on mammograms the organization received?” Defendant's work papers for FYE 2011 contain a letter from the following day, April 17, 2012, from Gelvan to Brady, providing an estimated number of mammograms provided by organizations to which BCSF gave grants, and the purported national average cost of a

⁵ The terms “gifts-in-kind” or “in kind” donations refer to noncash donations. “Donated services” can be a type of “gift-in-kind” donation that charities report. Those donations can be goods, such as furniture, equipment, clothing, pharmaceuticals, and supplies, or services, i.e. personal time donated by volunteers. See generally AICPA Audit & Accounting Guide for Not for Profit Entities, 5.112, *et seq.*, 5.123, *et seq.*

mammogram. Defendant MBC's billing records reflect that on April 23, 2012, Auditor1 "updated the work papers and financial statements for in-kind contributions for the year ending 12/31/11." On April 26, 2012, Brady reported to Gelvan that Defendants had made the changes and, thanks to the gifts in kind, "We did increase revenue by almost 100,000." Defendant Brady was also copied on an email exchange dated March 20, 2013, in which Gelvan pushed for the BCSF audit to be completed, and QC Partner explained that the audit team was planning to revise the gifts-in-kind figures.

85. Gelvan suggested and pushed for the gifts in kind scheme because it would hide the astronomical percentage of its revenue BCSF spent on fundraising. As Gelvan wrote to Defendants, directing them to recognize the purported gifts in kind in the financial statements: "This money or this dollar figure should be reflected (added) into the gross proceeds in order to take advantage of the gift-in-kind to lower the percentage of fundraising fees to gross ratio. Please consult with Ed Brady. I discussed this with him." In other words, Gelvan was instructing the accountants to inflate BCSF's gross proceeds and expenses, so that the amount spent on fundraising – which was approximately 90% of all expenses – would appear to be a smaller percentage of the total expenses.

G. Failure to Respond to Issues Raised by the Audit Team

86. In 2012, Auditor1 asked to be removed from the BCSF engagement. Auditor1 testified that he told Defendant Brady and QC Partner that he was not comfortable with the audit and was not comfortable "with the way the organization [BCSF] was run." He explained to Brady and QC Partner that he "was unable to deal with the doctor [Poplyansky] directly and [he] did not feel that they were being charitable." Auditor1 also testified that he pointed out to Brady

and QC Partner that the fundraising costs were very high, especially compared to the program costs, which were very low.

87. Defendant Brady refused to take any action in response to Auditor1's concerns, other than permitting Auditor1 to leave the BCSF audit team.

88. On July 23, 2014, Auditor1 and Auditor2 sent an email to QC Partner attaching a list of five concerns about BCSF, including their belief that Gelvan was running the organization:

**Breast Cancer Survivors Foundation
Management Recommendation Memo
Year Ending December 31, 2013**

1. When asked for the average price of a mammogram to calculate the in-kind contribution for 2013 the Program Director directed us to the Professional Fundraiser "consultant" for the estimated cost. Management is unable to provide an estimate.
2. Bookkeeper has informed us that the Professional Fundraiser "consultant" has requested that board minutes go through him and are reviewed by legal council to make revisions before going final.
3. Professional fundraiser "consultant" has requested that communications/document requests go through him to speed up the audit process. Auditor has had NO communications from the President (Doctor) or any other board member of the Organization either via phone conversation or email since 2010 (first audit year). We were originally informed by the Professional Fundraiser "consultant" that the doctor speaks very little English.
4. Professional fundraiser "consultant" appears to be running the Organization which has no other income source outside of the professional fundraising contributions (\$3.6 million gross for 2013)
5. All checks are signed by Board Member Marjorie Velasco (I believe I recall Debbie saying that this is the Doctor's wife).

89. Auditor1, who drafted the email, testified that he put the word "consultant" in quotation marks to draw attention to the fact that while Gelvan referred to himself as a "consultant" to BCSF, in reality he was far more.

90. Defendants refused to respond to this email, except that Auditor2 was removed from the engagement. Defendants did not modify their audit approach in any significant way. Defendants did not have the mandatory communications with those charged with governance, and did not communicate any of the concerns to BCSF.

H. Knowledge of Regulatory Actions Against Gelvan

91. Defendants were aware of the multiple regulatory actions against Gelvan, and thus should have exercised particular caution in relying on Gelvan to act on behalf of an organization and provide information for the organization's financial statements.

92. Defendants were providing Gelvan with accounting services in 2009, when regulators in thirty-two states took joint action against Community Support, Inc., another fundraising company controlled by Gelvan.

93. Defendants were also providing Gelvan with accounting services in 2014, when the New York OAG investigated Gelvan for violations of the 2004 ban. In the course of negotiating the settlement with the OAG, Gelvan asked Defendants to provide certain tax advice. As a result of these communications, Defendants knew or should have known that Gelvan had been subject to sanctions by New York, and specifically was barred from fundraising in New York.

94. The Successor Firm that took over MBC has disengaged from all Gelvan-related clients and any charities that Gelvan referred to MBC.

CLAIMS

FIRST CAUSE OF ACTION

Persistent Fraud or Illegality – Executive Law § 63(12)

95. The Attorney General repeats and re-alleges, as if fully set forth herein, all of the preceding paragraphs of the Complaint.

96. The acts and practices alleged herein constitute conduct proscribed by § 63(12) of the Executive Law, in that Defendants engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud or illegality in the carrying on, conducting or transaction of business.

SECOND CAUSE OF ACTION
Scheme to Defraud – Executive Law §§ 172-d(2), 175(2)(a), (c)

97. The Attorney General repeats and re-alleges, as if fully set forth herein, all of the preceding paragraphs of the Complaint.

98. By engaging in the conduct described above, Defendants violated Executive Law sections 172-d(2) and 175(2)(a) and (c) in that they engaged in a fraudulent scheme in connection with the reporting and disclosure provisions of Executive Law Article 7-A, by participating in the creation and operation of a sham charity by its fundraiser including without limitation by: (1) intentionally preparing IRS Forms 990 and financial statements to be filed with the Attorney General that included material misstatements and omissions; and (2) intentionally providing audit opinions based on audits that did not conform with GAAS and that falsely stated that the charity's financial statements were presented fairly in all material respects and in conformity with generally accepted accounting principles.

THIRD CAUSE OF ACTION
False Filing – Executive Law §§ 172-d(1), 175(2)(a), (d)

99. The Attorney General repeats and re-alleges, as if fully set forth herein, all of the preceding paragraphs of the Complaint.

100. By engaging in the conduct described above, Defendants violated Executive Law sections 172-d(1) and 175(2)(a) and (d) in that they made material misstatements in reports filed with the OAG, including without limitation: (1) the false inflation of gifts-in-kind revenue and expenditures in BCSF's IRS Forms 990 and financial statements; (2) the failure to report material related party transactions in BCSF's IRS Forms 990 and financial statements; and (3) falsely providing the opinions that the financial statements of BCSF were presented fairly in all material respects and in conformity with generally accepted accounting principles, including

compliance with all pronouncements of the financial accounting standards board and the American Institute of Certified Public Accountants that establish accounting principles relevant to not-for-profit corporations.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Directing that Defendants, pursuant to §§ 63(12) and 175(2) of the Executive Law, pay restitution and damages caused, directly and indirectly, by the fraudulent and deceptive acts and persistent illegality complained of herein plus applicable pre-judgment interest;
- B. Directing that Defendants pay Plaintiff's costs, including attorneys fees;
- C. Imposing on Defendants civil penalties in the amount of \$1000 for each violation of Executive Law Article 7-A;
- D. Enjoining Defendants from engaging in any future violations of New York law;
- E. Directing such other equitable relief as may be necessary to redress Defendants' violations of New York law; and
- F. Granting such other and further relief as may be just and proper.

Dated: May 7, 2018

ERIC T. SCHNEIDERMAN

Attorney General of the State of New York
28 Liberty Street
New York, New York 10005

By: 

James Sheehan
Bureau Chief, Charities Bureau

By: 

Yael Fuchs
Assistant Attorney General
Co-Chief, Enforcement Section,
Charities Bureau

28 Liberty Street
New York, New York 10005
(212) 416-8391
Counsel for Plaintiff