

ATTORNEY GENERAL OF THE STATE OF NEW YORK
TAXPAYER PROTECTION BUREAU

In the Matter of

Assurance No. 20-031

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

Rochester Area Community Foundation Initiatives,
Inc.,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to (1) the New York False Claims Act, State Finance Law §§ 187 to 194, and (2) New York Executive Law § 63(12), Article 22-A of the General Business Law, into the misappropriation of state grant funds by Adam McFadden, in his capacity as the executive director of Quad A for Kids, a program of the Rochester Area Community Foundation Initiatives, Inc. (“RACFI” or “Respondent”), from 2010 to 2019. The OAG’s investigation followed a prompt self-disclosure of the misconduct from RACFI. This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and Respondent (collectively, the “Parties”).

OAG’s FINDINGS

1. RACFI is a nonprofit, charitable organization in Rochester, New York. It sponsors programs to support the local community, including Quad A for Kids.

2. Quad A for Kids, founded in 1994, provides after-school programs to urban youth at certain elementary schools in Rochester, which incorporate academics, athletics and the arts. It shares some of RACFI's administrative staff, but employs its own program staff, executive director, and executive assistant.

3. The Advantage After School Program Grant is provided by the New York State Office of Children and Family Services ("OCFS") to community-based organizations that provide quality after-school programs. OCFS awarded nearly \$2.6 million in Advantage After School Program Grant funds to RACFI from 2009 to 2019. Quad A for Kids is funded in part by these grant funds.

4. Mr. McFadden served as Executive Director of Quad A for Kids from 2006 to 2014. He was rehired as a consultant in December 2015 and resumed his full-time role as Executive Director in September 2016 until his termination in March 2019. Mr. McFadden was also a local politician, having served on the Rochester City Council from 2003 to 2019.

5. On February 22, 2019, Mr. McFadden was charged by the U.S. Attorney's Office for the Western District of New York with unrelated federal crimes associated with his role at the Rochester Housing Authority from 2014 to 2015. On March 8, 2019, RACFI terminated Mr. McFadden's employment.

6. RACFI promptly retained outside counsel, which retained an independent forensic accounting firm to support an investigation into whether Mr. McFadden had misappropriated funds allocated to Quad A for Kids during his tenure as Executive Director, and the scope of any such misappropriation. Following an investigation by counsel, RACFI determined that Mr. McFadden had, in fact, misappropriated program funds for personal use, and had also improperly allocated certain expenditures to the Advantage After School Program Grant.

7. RACFI promptly reported concerns regarding Mr. McFadden's potential misappropriation of funds, and subsequently, facts gathered through its investigation, to the OAG and other authorities.

8. On April 1, 2019, Mr. McFadden pled guilty to felony wire fraud and filing a false tax return. As a result of his guilty pleas, he was removed from office.

9. On October 9, 2019, Mr. McFadden was charged by the U.S. Attorney's Office for the Western District of New York with a new count of wire fraud for submitting false invoices and receipts to RACFI for reimbursement. On the same day, Mr. McFadden pled guilty to that count.

10. Additionally, from 2010 to his termination in 2019, Mr. McFadden, in his capacity as Executive Director of Quad A for Kids, was determined to have improperly allocated a total of \$57,598 in expenditures to the Advantage After School Program Grant.

11. Mr. McFadden's actions resulted in the submission of false statements to OCFS regarding Respondent's grant-related expenditures.

12. Respondent's actions are in violation of the New York False Claims Act and Executive Law § 63(12).

13. Respondent admits the OAG's Findings, paragraphs 1 to 12 above.

14. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of the New York False Claims Act and Executive Law § 63(12) based on the conduct described above during 2010 to 2019.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

15. General Injunction: Respondent shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to the New York False Claims Act and Executive Law § 63(12), and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 14, *supra*, in addition to any other appropriate investigation, action, or proceeding.

16. Monetary Relief

- a. *Monetary Relief Amount*: Respondent shall pay to the State of New York (the “State”) \$57,598 in restitution (the “Monetary Relief Amount”). Payment of the Monetary Relief Amount shall be made in full upon execution of this Assurance.
- b. Payment shall be made by wire transfer pursuant to instructions provided by the OAG.

Releases

17. Subject to the exceptions in the next Paragraph, in consideration of the obligations of Respondent set forth in this Assurance, conditioned upon the full payment by Respondent of the Monetary Relief Amount, the State releases Respondent, together with its predecessors, successors, parents, affiliates, subsidiaries, transferees and assigns, and its or their respective or current or former officers, directors, employees, or agents, from any civil or administrative monetary claim the State has or may have against Respondent in connection with Mr. McFadden’s misappropriation of grant funds from the Advantage After School Program Grant, and improper allocation of expenditures to the Advantage After School Program Grant, from 2009 to 2019, as described in the OAG Findings, under the New York False Claims Act, N.Y.

State Fin. Law §§ 187 *et seq.*, Executive Law § 63(12), or any other common law or equitable theories of liability, including but not limited to, overpayment, unjust enrichment, and fraud.

18. Notwithstanding any term of this Assurance, the State specifically does not release any person or entity from any of the following liabilities:

- a. Any civil, criminal, or administrative liability arising under state or municipal tax laws;
- b. Any criminal liability;
- c. Any civil liability that Respondent has or may have under any state statute, regulation, or rule not covered by this Assurance;
- d. Any liability to the State (or its agencies) for any conduct other than the OAG Findings;
- e. Any liability based upon such obligations as are created by this Assurance;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for personal injury or property damage arising from the OAG Findings;
- h. Any liability for failure to deliver goods or services due; and
- i. Any civil or administrative liability of individuals, except as provided for herein.

19. Respondent, together with its predecessors, successors, parents, affiliates, subsidiaries, transferees and assigns, and its or their respective current or former officers, directors, employees, or agents, fully and finally releases the State, its agencies, officers, employees, servants, attorneys, and agents from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Respondent has asserted,

could have asserted, or may assert in the future against the State, its agencies, officers, employees, servants, attorneys, agents and assigns, related to the OAG Findings and the State's investigation and prosecution thereof.

MISCELLANEOUS

Subsequent Proceedings.

20. Respondent expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 27, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
- d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

21. If a court of competent jurisdiction determines that the Respondent has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

Effects of Assurance:

22. This Assurance is not intended for use by any third party in any other proceeding.

23. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondent. Respondent shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

24. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

25. Any failure by the OAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

Communications:

26. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 20-031, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to the Respondent, to:

Chief Executive Officer
Rochester Area Community Foundation Initiatives
500 East Avenue
Rochester, NY 14607

and

Brian M. Feldman
Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, NY 14604-2711

If to the OAG, to:

Sujata M. Tanikella
Assistant Attorney General
Taxpayer Protection Bureau
New York State Office of the Attorney General

or in her absence, to the person holding the title of Bureau Chief, Taxpayer Protection Bureau.

Representations and Warranties:

27. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Respondent and its counsel and the OAG's own factual investigation as set forth in Findings, paragraphs 1 to 12 above. Respondent represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

28. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the Respondent in agreeing to this Assurance.

29. The Respondent represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved and execution of this Assurance is duly authorized. Respondent further represents and warrants that Respondent, by Jennifer Leonard, Vice President and Chief Executive Officer, as the signatory to this Assurance, is a duly authorized officer acting at the direction of the Board of Directors of RACFI.

General Principles:

30. Unless a term limit for compliance is otherwise specified within this Assurance, Respondent's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

31. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

32. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

33. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

34. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

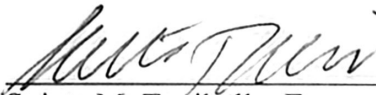
35. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

36. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

37. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

38. The effective date of this Assurance shall be June 29, 2020.

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

By: 
Sujata M. Tanikella, Esq.
Assistant Attorney General
Taxpayer Protection Bureau

ROCHESTER AREA COMMUNITY FOUNDATION
INITIATIVES, INC.

By: Jennifer Leonard
Jennifer Leonard
Vice President and Chief Executive Officer

STATE OF New York)
COUNTY OF Monroe)

ss.:

On the 29th day of June in the year 2020 before me personally came Jennifer Leonard to me known, who, being by me duly sworn, did depose and say that she resides in Rochester New York; that she is the Vice President and Chief Executive Officer of Rochester Area Community Foundation Initiatives, Inc., the corporation described in and which executed the above instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that she signed her name thereto by like authority.

Sworn to before me this
29th day of June, 2020

Teresa Sheffield
NOTARY PUBLIC

