

DISPOSITION AGREEMENT

This disposition agreement ("Agreement") is entered into as of March 21 2017, by and between the Office of Campaign and Political Finance ("OCPF"), David Howe ("Howe"), and the J. Derenzo Companies ("Derenzo"), in which the parties mutually agree, for the purposes of this Agreement only, as follows:

I. Introduction

1. Howe is the owner and president of Derenzo. Derenzo's principal place of business is in Brockton, Massachusetts.

2. The fundraising activities of Derenzo and Howe on behalf of candidates and political committees, as described in this Agreement, are subject to the provisions of M.G.L. c. 55, the Massachusetts campaign finance law.

3. The following Committees, at all times relevant to this Agreement, were duly organized political committees subject to the provisions of M.G.L. c. 55:

Charles Baker Committee ("Baker Committee")
Michael Brady Committee ("Brady Committee")
Thomas Menino Committee ("Menino Committee")
Timothy Murray Committee ("Murray Committee")
Deval Patrick Committee ("Patrick Committee")
Karyn Polito Committee ("Polito Committee")
Warren Tolman Committee ("Tolman Committee")
Martin Walsh Committee ("Walsh Committee")
Democratic State Committee ("DSC")

4. OCPF has the power and authority to review and investigate the legality, validity, completeness and accuracy of all reports and actions required to be filed or taken by candidates, treasurers, political committees, and any other person or entity pursuant to M.G.L. c. 55 or any other laws of the Commonwealth, relative to campaign contributions and expenditures.

5. The political contributions, expenditures and other activities noted herein are subject to the provisions of M.G.L. c. 55 and the regulations promulgated thereunder.

II. Facts

1. Derenzo is comprised of four companies: J. Derenzo Co., JDC Demolition, Inc., NewRoads Environmental Services and Boston Environmental Corporation. Derenzo is a full-service construction company, which includes clearing and grading sites, performing excavation, and installing retention and foundation systems in the Greater Boston area. Derenzo employs approximately 1,000 individuals.

2. Since at least 2002, Howe has made contributions and raised funds for various candidates and committees. During the period 2006 to 2016, Howe requested that Derenzo employees support certain candidates and committees with campaign contributions. Based upon a review of campaign finance reports, OCPF initiated an examination of contributions made by Derenzo employees. During the review, OCPF learned that Derenzo utilized a petty cash account to reimburse employees for their campaign contributions. The cash was kept at the Derenzo office in Brockton and administered by Michael Midwood ("Midwood"), Derenzo's comptroller. Howe instructed Midwood to provide funds equal to the contribution amount from the petty cash account to Derenzo employees, if a request was made by the employee. Funds were also provided to employees' family members to allow them to make contributions to candidates and committees. In each of the years cited in this Agreement, funds were provided to employees by Midwood at Howe's direction.

3. Based on OCPF's review of bank records and statements given by Derenzo employees, it appears some employees never requested funds from Derenzo as reimbursement for contributions, while some contributors did not always request funding from Derenzo for their contributions.

4. During its review, OCPF learned that Derenzo reimbursed sixteen individuals for contributions made to candidates and committees, using funds provided for that purpose by Derenzo. Twelve of the sixteen people were employed by Derenzo. The other contributions were made by four

individuals, related to Derenzo employees, who contributed to candidates with Derenzo's funds. Although some contributors deposited funds received from Derenzo into their personal checking accounts either shortly before or shortly after the contributions were made, most contributors instead chose to retain or spend the funds, without first depositing the funds into a bank account.

5. When OCPF contacted Howe, he admitted to providing funds to Derenzo employees and family members to make contributions to designated candidates and committees. Howe cooperated fully with OCPF's review.

6. Based upon information learned during the review, OCPF determined that the following contributions were made using funds provided by Derenzo:

A. 2006 Transactions - \$1,000

On or about November 3, 2006, the following named contributors made contributions to the Murray Committee in the amount of \$500 each on their personal checking accounts, using Derenzo funds provided to them for that purpose:

Lin Deleon

Michael Midwood

B. 2010 Transactions - \$500

On or about August 5, 2010, Michael Midwood made a contribution to the Patrick Committee in the amount of \$500 on his personal checking account, using Derenzo funds provided to him for that purpose.

C. 2012 Transactions - \$500

On or about December 11, 2012, Michael Midwood made a contribution to the Menino Committee in the amount of \$500 on his personal checking account, using Derenzo funds provided to him for that purpose.

D. 2013 Transactions - \$3,000

(i) On or about May 31, 2013, the following named contributors made contributions to the Walsh Committee in the amount of \$500 each on their personal checking accounts, using Derenzo funds provided to them for that purpose:

Lin Deleon
Michael Midwood
Paul Francioso
Michael McCarthy
Joan Roach

(ii) On or about December 23, 2013, Paul Francioso made a contribution to the Tolman Committee in the amount of \$500 on his personal checking account, using Derenzo funds provided to him for that purpose.

E. 2014 Transactions- \$5,000

(i) On or about April 14, 2014, Lin Deleon made a contribution to the Baker Committee in the amount of \$500 on his personal checking account, using Derenzo funds provided to him for that purpose.

(ii) On or about May 30, 2014, Joan Roach made a contribution to the Tolman Committee in the amount of \$500 on her personal checking account, using Derenzo funds provided to her for that purpose. On or about June 3, 2014, Lin Deleon made a contribution to the Tolman Committee in the amount of \$500 on his personal checking account, using Derenzo funds provided to him for that purpose. On or about August 4, 2014, Michael Midwood made a contribution to the Tolman Committee in the amount of \$500 on his personal checking account, using Derenzo funds provided to him for that purpose. These contributions to the Tolman Committee totaled \$1,500.

(iii) On or about October 27, 2014, the following named contributors made contributions to the Polito Committee in the amount of \$500 each on their personal checking accounts, using Derenzo funds provided to them for that purpose:

Lin Deleon
Diana Deleon
Joan Roach
Joseph Roach
Brooke Berman
Jesse Berman

F. 2015 Transactions - \$6,000

(i) On or about June 19, 2015, Andrew Daniels made a contribution to the Polito Committee in the amount of \$1,000 on his personal checking account, using Derenzo funds provided to him for that purpose.

(ii) On or about October 28, 2015, the following named contributors made contributions to the Brady Committee in the amount of \$1,000 each on their personal checking accounts, using Derenzo funds provided to them for that purpose:

Lin Deleon
Michael Midwood
Paul Francioso
Brooke Berman
Andrew Daniels

G. 2016 Transactions - \$21,000

(i) On or about February 29, 2016, Lin Deleon made a contribution to the Baker Committee in the amount of \$1,000 on his personal checking account, using Derenzo funds provided to him for that purpose. In March 2016, the following named contributors made contributions to the

Baker Committee in the amount of \$1,000 each on their personal checking accounts, using Derenzo funds provided to them for that purpose:

Paul Francioso

Mary Francioso

Michael Midwood

(ii) On or about April 28, 2016, Paul Francioso made a contribution to the DSC in the amount of \$5,000 on his personal checking account, using Derenzo funds provided to him for that purpose.

(iii) On or about May 31, 2016, the following named contributors made contributions to the Walsh Committee in the amount of \$1,000 each on their personal checking accounts, using Derenzo funds provided to them for that purpose:

Michael Midwood

Peter Burch

Christian Graffeo

Denise Graffeo

Ashley Sarkisian

Joseph Sullivan

Katie Vatalaro

Joan Roach

(iv) On or about June 7, 2016, the following named contributors made contributions to the Walsh Committee in the amount of \$1,000 each on their personal checking accounts, using Derenzo funds provided to them for that purpose:

Andrew Daniels

Lin Deleon

Paul Francioso

Mary Francioso

7. As described above, the amount of at least \$37,000 in contributions made by individuals other than Howe were made using corporate funds. OCPF's review concluded that the named contributors made no other contributions to any Massachusetts candidates or political committees through third persons using personal funds or any other funds.

8. Neither the candidates nor their respective Committees or the DSC had any knowledge that the contributions were made with corporate funds provided by someone other than the named contributor until they were so notified during OCPF's review. The contributions were made using checks drawn on the individual checking accounts of the named contributors. It would have appeared to the recipients of the checks, absent other information, that the contributions were, in fact, from those individuals. OCPF has no reason to believe that the relevant candidates or Committees had knowledge that the named contributors did not in fact make the contributions, until they were so notified by OCPF.

9. The candidate committees that received the contributions and the DSC have voluntarily disgorged or will voluntarily disgorge by April 30, 2017, the excess amounts by payments made to charitable entities in the aggregate amounts: \$4,500 (by Baker), \$5,000 (by Brady), \$5,000 (by DSC), \$4,000 (by Polito), \$2,000 (by Tolman) and \$14,500 (by Walsh).

III. Conclusions

Based upon OCPF's review, OCPF has concluded that Derenzo and Howe violated Sections 8 and 10 of Chapter 55.

1. Corporate Contributions – M.G.L. c. 55, § 8

Section 8 states that business corporations may not "directly or indirectly" contribute to a candidate. The statute also provides that officers or agents acting on behalf of a corporation may not make such contributions using corporate money. Derenzo, in violation of Section 8, provided funds totaling at least \$37,000 to persons who each used the funds to make contributions to a candidate or party committee.

2. Contributions Made in a Manner Intended to Disguise the True Source of the Contributions – M.G.L. c. 55, § 10

Section 10 states that no person may “make a campaign contribution in any name except his own, or in any manner for the purpose of disguising the true origin of the contribution...” Howe violated this provision by arranging for persons associated with Derenzo to make multiple contributions using Derenzo funds in a manner that disguised the true origin of the funds.

IV. J. Derenzo Companies’ and David Howe’s Position

J. Derenzo Companies (“Derenzo”) and David Howe understood that corporations could lawfully expend money in support of worthy candidates, if the expenditure was done independently of the candidate. Independent expenditures do not include direct monetary contributions to candidates. Any payment of funds from their general cash account to employees ceased being corporate funds and belongs to the contributors. The contributions were made to worthy candidates without any communication to the candidates or their representatives. Hence, our position is the transactions were lawful, independent expenditures.

Reimbursing employees for contributions to worthy, qualified candidates is a fair and reasonable business practice. The reimbursements were not made to disguise the true source of the contribution but meant to be a fair recompense to employees who made such contributions at the behest of management. There was never any intent to deceive; only an effort to be fair to contributing employees.

V. Resolution

In order to resolve the matters now before OCPF the parties agree, pursuant to 970 CMR 3.07(1) and M.G.L. c. 55, § 3, for the purposes of this Agreement only, as follows:

1. Upon execution of this Agreement, unless otherwise noted:
 - (a) Derenzo will make a payment to the Commonwealth of Massachusetts in the amount of \$100,000 in the nature of a civil forfeiture. Howe will personally make a payment to the Commonwealth of Massachusetts in the amount of \$25,000 in the nature of a civil forfeiture.
 - (b) In accordance with the residual funds clause,¹ Derenzo will make a donation to a charitable organization of its choosing in the amount of \$25,000.
 - (c) Derenzo and Howe further agree not to provide or arrange to provide funds to any third person to enable that person to make a political contribution in the future.
 - (d) Howe agrees to provide an Affidavit to OCPF annually attesting to the fact that he has not provided funds to any person for purposes of making campaign contributions.
 - (e) Derenzo and Howe agree to institute and submit to OCPF new written policies regarding the use of Derenzo's petty cash. Specifically, the policy must prohibit use of petty cash for making political contributions.
2. OCPF agrees not to refer Derenzo or Howe to any other governmental agency, including without limitation, the Office of the Attorney General, for any failure to comply with the provisions of M.G.L. c. 55, cited herein, during the relevant period that is specifically referenced in this Agreement.
3. OCPF may, at any time, review compliance with this Agreement. If it believes that the provisions of this Agreement have been violated, after notice to Derenzo and Howe, OCPF may, notwithstanding the provisions of the foregoing paragraph, proceed with any action consistent with

¹ M.G.L. Chapter 55, Section 18 provides that if a committee disposes of residual funds remaining in its account to a charitable organization, the candidate, treasurer or officer of the committee may not be related by blood or marriage to any trustee, officer, principal or beneficiary of the organization at the time of the gift.

M.G.L. c. 55 or otherwise authorized by law.

4. This Agreement shall be binding upon OCPF, Derenzo and Howe and, to the extent specified above, Derenzo's officers and their successors.

5. This Agreement constitutes a complete disposition of all matters specifically referenced herein for the referenced period.

6. The parties have entered into this Agreement, knowingly and voluntarily, in an effort to resolve all matters set forth in the Agreement. Derenzo and Howe have made no admissions with respect to the facts and conclusions set forth herein and this Agreement shall not be admissible in any other proceeding except one to enforce its terms.

7. This Agreement is a public record under Section 7 of M.G.L. c. 4 and shall be subject to public inspection as required by Section 10 of M.G.L. c. 66.

J. DERENZO CO.

OFFICE OF CAMPAIGN AND
POLITICAL FINANCE

By: DoHow
David Howe
Owner and President

By: Michael J. Sullivan 3/21/17
Michael J. Sullivan
Director

By: DoHow
David Howe, Individually

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