

October 21, 2008

Hon. Joel I. Klein
Chancellor
New York City Public Schools
Department of Education
52 Chambers Street, Room 314
New York, NY 10007

Re: Brooklyn Community Management, LLC.
Sumner Health Care Providers, LLC.
Gross Care, Inc.
George Lebovits
Joel Rosenshein
Mordecai Klein
Aaron Tyk

SCI Cases #: 2007-0956
2007-4819
2008-1738

Dear Chancellor Klein:

An investigation conducted by this office has substantiated that George Lebovits, the owner, operator, and chief source of financing for Brooklyn Community Management, LLC. (“BCM”), an Independent Related Service Provider (“IRSP”) that had been contracted to provide related services to students enrolled in non-New York City Department of Education (“DOE”) schools, created several other companies, including Sumner Health Care Providers, LLC. (“Sumner”) and Gross Care, Inc. (“Gross Care”) to provide similar services once BCM and Lebovits were barred from conducting any further business with the DOE. In addition, this investigation has also substantiated that Lebovits’ companies billed the DOE for services allegedly provided by two of his employees, Joel Rosenshein and Mordecai Klein, neither of whom were licensed to

provide the services for which Lebovits billed the DOE. Further, Lebovits and BCM assisted an attorney, Aaron Tyk, in falsely claiming to represent the families of numerous students who were seeking services from DOE approved providers.

In July 2007, largely based on the findings of a previous SCI investigation, BCM's contract with the DOE was allowed to expire without renewal.¹ Thereafter, Lebovits and BCM were notified, through their attorney, that BCM, any of its corporate aliases, any affiliates, and all principal owners or officers, were no longer eligible to provide services as a DOE contracted vendor, or as a provider, under Related Service Agreements ("RSA") after December 11, 2007.²

The Creation of Sumner and Gross Care to Continue BCM Business

This investigation began in December 2007, when investigators from the DOE Division of Contracts and Purchasing ("DCP") called the office of the Special Commissioner of Investigation for the New York City School District ("SCI") to report that Lebovits had begun billing the DOE for counseling services provided by two recently created companies, Sumner and Gross Care, despite the fact that he and BCM had been barred from conducting business with the DOE after December 11, 2007.

SCI investigators spoke with Jay Miller, the DCP Chief Administrator for Policy and Performance, in December 2007. Miller told investigators that, when BCM's contract with the DOE expired without renewal, Lebovits created other companies, specifically Sumner and Gross Care, to act as a "conduit" for providers to submit their payment invoices to the DOE for services they had provided to students.

Investigators initially spoke with Assistant Corporation Counsel Susan Smollens in March 2008. Smollens, who was representing the interests of New York City and those of the DOE in the ensuing civil proceeding brought by BCM, told investigators that Lebovits had stated, in his declaration to the court, that he was the manager of Gross Care and Sumner. Smollens further stated that Lebovits had declared, in September 2007, that he began referring BCM's clients to Gross Care and Sumner to provide related services for the children.

¹ See SCI case number 2006-4061 released on July 6, 2007.

² In an ensuing Article 78 proceeding, Lebovits challenged the fact that, based on the prior SCI case, BCM, and its affiliates, principals and officers, had been disqualified from conducting business with the DOE. In a decision dated September 15, 2008, Judge Jane Solomon of New York State Supreme Court, New York County, held that "SCI's investigation left no doubt that the BCM billing was inaccurate, and that BCM provided services that were not in strict compliance" with DOE requirements. In addition, the court determined that "while BCM was under investigation, [Lebovits] formed new companies to provide services to the children, essentially transferring the therapists to those companies and continuing to provide services in the same location." Ultimately, the court concluded that "the determination of the DOE that BCM and its affiliates, principal officers and related entities are not qualified as DOE vendors was rationally based and was not arbitrary or capricious."

In April 2008, during an initial conversation with SCI investigators, Lebovits admitted that he and his wife Naomi were the owners of Sumner, and that his mother-in-law, Leah Gross, was the owner of Gross Care. Lebovits further acknowledged that, in December 2007, he had been notified by the DOE that he, and any other principal owner or officer of BCM, would no longer be allowed to provide services as a contracted vendor with the DOE. Lebovits insisted, however, that any invoices that had been submitted to the DOE for payment were for services provided before the December 11, 2007, notification date, and that his companies had not submitted any invoices for related services provided after the contract termination date.

In June 2008, SCI investigators reviewed documents which had been provided by DOE Director of the Bureau of non-Public School Payables Christopher McKay. The documents, consisting primarily of billing invoices for related services performed by providers working for Sumner and Gross Care, revealed that Lebovits' companies had billed the DOE more than \$296,000 during the time period of December 11, 2007, to June 4, 2008.

SCI investigators spoke with Lebovits a second time in July 2008. Lebovits was asked to clarify the relationship between himself, BCM, Gross Care, and Sumner. Lebovits responded that "BCM is managing Gross Care and Sumner...I am laying down the money for Gross Care, Sumner, and BCM." Lebovits attempted to argue that the billing through his companies was all by IRSP who were independent contractors and, therefore, his companies were not billing the DOE. However, when asked to explain why the invoices submitted to the DOE for payment listed Sumner or Gross Care as the "provider," Lebovits responded: "I cannot answer you, I don't know, I don't know." In addition, Lebovits later reiterated that "Gross Care don't have no money, BCM don't have any more money, Sumner don't have money, I, Mr. Lebovits, is laying out money for them."

Unlicensed Providers Working for BCM / Sumner / Gross Care

In April 2008, Jay Miller informed investigators from SCI that Lebovits' companies had been submitting invoices to the DOE for an IRSP who was not actually providing the services for which the companies were billing. Miller told SCI investigators that invoices for counseling sessions had stated that Joel Rosenshein, a psychologist, was conducting the services when, in reality, a social worker named Mordecai Klein was actually providing the counseling services.

SCI investigators spoke with Joel Rosenshein in July 2008. Rosenshein told investigators that he had been a school psychologist since 1962 and currently held a New

York State license as a Supervisor of School Psychologists.³ Rosenshein also informed investigators that he was initially hired by BCM, approximately three or four years ago, to supervise their psychologist at the time. After the psychologist left BCM, approximately two years ago, Rosenshein began to supervise BCM's new social worker Mordecai Klein. Rosenshein fully admitted that his supervision was necessitated by the fact that Klein was not yet licensed to provide counseling services on his own and told investigators that Klein would "be licensed, I think, next February or March completely and won't need my supervision anymore." Rosenshein told investigators that, during the 2006-2007 school year, he would occasionally sit in on Klein's counseling sessions "because he was new," but that during the 2007-2008 school year "I don't do that anymore."⁴ SCI investigators asked Rosenshein why the invoices sent to the DOE showed Rosenshein as the provider of counseling services. Rosenshein stated that he had nothing to do with the BCM billing process, and had never even seen one of the billing invoices, but insisted that he had "never provided any direct service," and that he had merely supervised Klein. Investigators showed Rosenshein numerous BCM invoices which had been submitted for payment to the DOE. Each invoice was purportedly signed by Rosenshein and contained a certification of its authenticity. Both Rosenshein and his attorney insisted that the signature was not his, and he had no idea how it had been produced.⁵ Finally, Rosenshein was asked to review a list of counseling sessions for one date, December 12, 2007, for which BCM had billed the DOE for 10 hours and 45 minutes of student counseling by Rosenshein. Rosenshein was asked whether he had provided counseling, or had sat in with Klein during counseling, on any of the sessions for which BCM had billed the DOE under his name. Rosenshein insisted that he had not and definitively stated "I didn't sit in on any sessions this year."

Investigators spoke with George Lebovits about Rosenshein and Klein, in July 2008. Investigators asked Lebovits to explain why his employees continued to provide counseling services, and bill the DOE for those services, after the cut off date of December 11, 2007, instituted by the DOE. Lebovits claimed that both Rosenshein and Klein, and all other IRSP, were providing services independently of BCM, and that BCM was only a management company which provided facilities for the providers. Lebovits insisted that "they're getting 1099's, they're independent contractors." However, when

³ Rosenshein recalled having two conversations with DOE employees from the Office of Special Education Initiatives regarding the status of his license and whether or not he was properly licensed to provide counseling under DOE requirements. Rosenshein told investigators that, although he was told by one of the DOE employees that his Supervisor of School Psychologists license was insufficient under current DOE requirements, he had responded "I'm sorry to tell you you're wrong." Rosenshein concluded "that was the end of the conversation."

⁴ Rosenshein told investigators that on one specific occasion, a student's mother had requested that he briefly observe her child prior to "send[ing] him off to a hospital." Rosenshein stated that "other than that [one occasion], I don't sit."

⁵ Rosenshein later surmised that the signature purporting to be his may have been produced by a signature stamp. However, he insisted that he had never seen nor authorized the use of a signature stamp of his name.

asked by investigators whether Rosenshein and Klein were “employed by one of [his] businesses,” Lebovits responded “yes,” but later added “they’re getting paid by my business I own.” When asked to clarify, Lebovits stated that “Rosenshein is a supervisor and he gets paid, he gets paid by BCM.” Finally, Lebovits claimed that, as a clinical social worker, Klein was certified to provide services to students but not necessarily to bill for those services, which is why “the RSA is under Joel Rosenshein, because he’s the supervisor.”⁶

SCI investigators spoke with Ava Mopper, the Director of the DOE Office of Related and Contractual Services, in August 2008. Mopper stated that all independent service providers and contracting agencies have been notified that, as of July 2007, the DOE has required that all individuals providing the related service of counseling through either a contract agency, or as an independent provider, must possess a New York State Department of Education license, and current registration, as a Mental Health Counselor, a Clinical Social Worker, or a Psychologist.⁷ Mopper further stated that the DOE does not allow an unlicensed IRSP to provide services under the supervision of a licensed provider in the area of counseling. In addition, Mopper added that, in this case, Rosenshein himself was not licensed to provide direct counseling services to BCM students as his license, Supervisor of School Psychologists, is not one of the three licenses recognized by the DOE.

A review of IRSP invoices submitted to the DOE for payment revealed that, during the 2007-2008 school year, the DOE was billed more than \$46,000 for counseling services allegedly performed by Joel Rosenshein. According to DOE records, Mordecai Klein had never provided counseling services or submitted an invoice for payment to the DOE.

BCM and Attorney Aaron Tyk

In March 2007, SCI received an e-mail from DOE General Counsel Michael Best forwarding a letter, written by DOE Region 6 Counsel for Special Education Emily Fontana, to the New York State Bar Association’s Grievance Committee for the 2nd and 11th Judicial Districts (“Grievance Committee”). In her letter to the Grievance Committee, Fontana alleged that attorney Aaron Tyk had sent letters to the DOE, on four separate occasions, falsely claiming to represent the families of four children who were seeking Special Education support from the DOE.

⁶ SCI investigators were unable to locate Mordecai Klein who is no longer employed by BCM or residing at his former address in Brooklyn, and is believed to have relocated outside of New York City.

⁷ Mopper provided SCI with a copy of a DOE memorandum which she stated was forwarded to all current and prospective Independent Related Services Providers beginning in July 2007. The memo clearly states the licensing requirements for each related service provider position.

SCI investigators initially spoke with Fontana in March 2007. Fontana told investigators that, on four separate occasions, Aaron Tyk had sent letters to the DOE claiming to represent the families of four children. In each case, according to Fontana, the DOE had established that the parents of the four students did not know Tyk and had not retained him as their representative. Fontana told SCI investigators that investigators from her office had spoken with the parents of the four students, all of whom stated that they did not know who Tyk was and that they had not hired him as their representative.⁸ Fontana also told investigators that, after investigators from her office had spoken with the four sets of parents who had allegedly hired Tyk, they called Tyk and confronted him with the parents' statements at which time Tyk "withdrew" from representing the four children.

In April 2007, Fontana forwarded to SCI a letter which Tyk had written to the Grievance Committee in response to Fontana's original complaint letter. In the letter, Tyk claimed that a representative from BCM, which provided therapy and services to children with disabilities attending a private school in Brooklyn, Yeshiva Tehila L'Dovid School, had contacted Tyk and requested his assistance with obtaining additional services for several children. Attached to his letter, Tyk also sent copies of four letters purportedly signed by the parents of the four children in question, authorizing Tyk to represent their children.⁹

SCI investigators spoke with Educational Advocate Joan Harrington in June 2007. Harrington informed investigators that Tyk had attempted to represent several of her clients, parents of students at Yeshiva Tehila L'Dovid School, without Harrington's knowledge or consent. Harrington stated that she advised her clients to contact the DOE to clarify who they wanted as their representative.

Investigators initially spoke with Tyk in July 2007. Tyk showed SCI investigators four authorization letters, signed by the parents of the four students at Yeshiva Tehila L'Dovid School whom he claimed to represent. Tyk stated that he had received the authorization letters from the school's principal, Rabbi Gershon Kranczer. Tyk further stated, however, that shortly after receiving the letters from Kranczer, the Rabbi informed Tyk that the four students were, in fact, represented by Joan Harrington

⁸ Fontana provided SCI with sworn affidavits from the DOE employees who had spoken with the parents of the four students which detail their conversations with the parents.

⁹ SCI investigators attempted to speak to the parents of all four children. In May 2007, investigators spoke to the parents of one of the children in question. The parent told investigators that, although she knew who Tyk was, she had not authorized him to represent her child and that Joan Harrington had already been retained to represent her child. Investigators showed the parent what was purported to be her signature on the retainer letter sent by Tyk. The parent insisted that the signature was not hers and reiterated that she had never authorized Tyk to represent her child. None of the other parents would consent to speak with SCI investigators.

and did not wish Tyk to represent them.¹⁰ Tyk stated that, after confirming this information with the parents of the four students, he withdrew his letters of representation from the DOE.

SCI investigators spoke with Kranczer on two occasions; first, in July 2007, and again in May 2008. Kranczer told investigators that at the beginning of the 2006-2007 school year, Yeshiva Tehila L'Dovid School received a packet of documents from BCM with instructions to have the parents of every student at the school complete the enclosed authorization forms and have them returned to BCM. Included in the packet, was a simple "retainer form" authorizing Aaron Tyk to represent the students of Yeshiva Tehila L'Dovid School in their actions against the DOE. Kranczer stated that he had the packets distributed to all of the students in the school and, once they were returned to him, he delivered them to BCM. Although Kranczer could not recall by whom the documents were delivered or to whom he returned them, he did tell investigators that it was possible that he may have returned the forms to George Lebovits. Kranczer conceded that it was possible that some of the parents signed the authorization forms without looking at or comprehending what they were signing. Kranczer told investigators that, after he had returned the packets to BCM, he was contacted by the parents of several students who informed him that they were already represented by Joan Harrington, and did not wish to retain Aaron Tyk as their attorney. Kranczer, who insisted that he had never met Tyk and had only spoken to him on the telephone on one occasion, said that, after speaking with the parents, he telephoned both Lebovits and Tyk and told them that the parents of students at Yeshiva Tehila L'Dovid School did not want to use Aaron Tyk as their attorney.

Investigators spoke with George Lebovits about attorney Aaron Tyk in February 2008, and again during the July 2008 interview. Lebovits insisted that BCM did not give a package of documents to Yeshiva Tehila L'Dovid School for distribution to its students and that he had never seen the attorney authorization letters prior to his initial meeting with SCI investigators in February 2008. When asked for an explanation as to how the attorney authorization letters came to be sent from the BCM fax machine, including a BCM cover sheet, to Tyk's office, Lebovits suggested that perhaps, as a favor to Yeshiva Tehila L'Dovid School, the secretary at BCM allowed the school to use BCM's fax machine to send the documents. Lebovits further insisted that he did not have any contact with the parents of the four children, and stated that, although he knows Tyk, he did not refer the students from the Yeshiva Tehila L'Dovid School to the lawyer and had no other business dealings with him.

¹⁰ In November 2007, SCI investigators spoke with DOE Special Education Program & Placement Officer Helene Potash and DOE Supervisor of Psychologists Esther Gutwein, two DOE employees who had spoken with the parents of the four students. Potash and Gutwein told investigators that they had personally spoken with the parents of all four children, all of whom stated that they had already chosen Harrington as their representative and did not wish to retain Aaron Tyk as their attorney.

SCI investigators attempted to speak with Aaron Tyk again in July 2008. Tyk told investigators that he had spoken with SCI investigators in the past regarding this matter, and had nothing further to say.

Conclusion

Despite being notified, in December 2007, that he was no longer eligible to provide services as a DOE contracted vendor, George Lebovits continued to bill the DOE, through several newly created companies, in order to circumvent the ruling of the DCP, ultimately billing the DOE nearly \$300,000 after his contractual cut-off date of December 11, 2007. In addition, Lebovits employed counselors whom he knew did not hold the proper credentials to perform DOE contracted work, and was aware that certified invoices that contained false information were being submitted to the DOE for payment. Finally, Lebovits worked with Aaron Tyk to deceive the parents of special needs children, tricking them into retaining Tyk as their representative. George Lebovits has continually demonstrated that he is an unscrupulous businessman and he, his companies, and all of their principals and officers, should be barred from any DOE contracts in the future.

It continues to be the recommendation of this office that George Lebovits, BCM, and any other companies owned or operated by its principals, be found unqualified as vendors for the DOE. In addition, the DOE should conduct a thorough audit of Lebovits, BCM, Sumner, Gross Care, and any of his other related businesses, to identify, and seek reimbursement for, any improper billing both before and after the cut-off date of December 11, 2007.

Although it does not appear that Joel Rosenshein actually provided the counseling services for which the DOE was billed under his name, it is apparent that neither Rosenshein nor Klein possess the required New York State licenses to perform counseling services under the DOE guidelines. We refer this matter for your attention and appropriate action.

Aaron Tyk, in conjunction with George Lebovits and BCM, knowingly deceived the parents of several Yeshiva Tehila L'Dovid School students and falsely claimed to represent the families who were seeking special education support from the DOE. His actions, and those of George Lebovits, were improper and unethical. It is therefore the recommendation of this office that, to the extent possible, Aaron Tyk be barred from representing students in proceedings involving the DOE. In addition, we are forwarding our findings to the New York State Bar Association's Grievance Committee for the 2nd and 11th Judicial Districts for whatever action they deem appropriate.

We are sending a copy of this letter and of our report concerning this investigation to the Office of Legal Services. In addition, we also are forwarding our findings to the Kings County District Attorney's Office and the State Education Department for whatever action they may deem appropriate. Should you have any inquiries regarding the above, please contact Special Counsel Daniel Schlachet, the attorney assigned to the case. He can be reached at (212) 510-1418. Please notify Mr. Schlachet within 30 days of receipt of this letter of what, if any, action has been taken or is contemplated concerning the recommendations made here. Thank you for your attention to this matter.

Sincerely,

RICHARD J. CONDON
Special Commissioner
of Investigation for the
New York City School District

By:

Regina A. Loughran
First Deputy Commissioner

RJC:RAL:DIS:gm

c: Michael Best, Esq.
Theresa Europe, Esq.