

STATE OF NEW YORK
COMMISSION ON PUBLIC INTEGRITY

IN THE MATTER OF AN INVESTIGATION INTO
SUSAN BRUNO'S WORK STATUS FOR THE STATE
UNIVERSITY OF NEW YORK RESEARCH FOUNDATION

**NOTICE OF
REASONABLE CAUSE**

JOHN J. O'CONNOR, PRESIDENT,

Respondent

INTRODUCTION

Pursuant to Executive Law § 94(12)(a), which authorizes the Commission on Public Integrity ("Commission") to investigate a possible violation of Public Officers Law §74 on "its own initiative," the Commission commenced an investigation in an effort to determine whether there is reasonable cause to believe that John J. O'Connor violated several provisions of the State Code of Ethics set forth in Public Officers Law § 74(3)(d), (f) and (h). Specifically, the Commission sought to determine whether Mr. O'Connor unlawfully used his position as President of the Research Foundation of the State University of New York ("RF") to have the RF continue to employ Susan Bruno, daughter of then Senate Majority Leader Joseph L. Bruno, in a position for which she was not qualified, in which she performed little or no work and in which she rarely, if ever, came to the office in violation of the RF's telecommunicating policy and its practice with respect to other employees. The Commission commenced its investigation soon after the Times Union ("TU") published an article on January 4, 2009 entitled "Foundation under scrutiny." The article questioned whether Ms. Bruno was qualified for the position when she was hired in 2003 and whether Ms. Bruno received benefits, such as a telecommuting arrangement, that were not conferred upon other RF employees.

There is reasonable cause to believe, based on the record evidence, that Mr. O'Connor knowingly and intentionally violated Public Officers Law §§ 74(3)(d), (f) and (h).

JURISDICTION OF THE COMMISSION

The Commission is authorized by Executive Law §94(12)(a) to commence an investigation based on a sworn complaint alleging one or more violations of Public Officers Law §§73, 73-a or 74, or it may determine on its own initiative to investigate a possible violation. The Commission may conduct any investigation necessary to carry out the cited provisions of the

Public Officers Law and has the power, pursuant to Executive Law §94(13), to assess civil penalties for knowing and intentional violations of certain provisions of §§73, 73-a, or 74.

Prior the effective date of the Public Employee Ethics Reform Act (“PEERA”) (L. 2007, ch. 14), the RF was not a State agency as defined by Public Officers Law § 74(1). Therefore, at that time, employees of the RF were not subject to Public Officers Law §74(3) or the Commission’s jurisdiction. PEERA amended the definition of “state agency” contained in Public Officers Law § 74(1) to include “corporations closely affiliated with specific state agencies as defined by” State Finance Law § 53-a(5)(d). State Finance Law § 53-a(5)(d) specifically identifies the Research Foundation of the State University of New York as a State agency. Therefore, as of April 25, 2007, the effective date of this amendment of §74(1), officers and employees of the RF have been officers and employees of a State agency who are required to comply with the provisions of the State Code of Ethics set forth in Public Officers Law §74 and who are subject to the penalties set forth in §74(4) that Executive Law §94(13) authorizes the Commission to impose upon a State officer or employee it finds to have violated the State Code of Ethics.

STATUTORY BACKGROUND

Public Officers Law §74(3)(d) states in pertinent part:

No officer or employee of a state agency, . . . should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

Public Officers Law §74(3)(f) states in pertinent part:

An officer or employee of a state agency, . . . should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

Public Officers Law §74(3)(h) states in pertinent part:

An officer or employee of a state agency, . . . should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

Public Officers Law §74(4) states in pertinent part:

In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and

intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.

THE RESEARCH FOUNDATION

The RF is a non-profit educational corporation governed by a board of directors to assist in the development of State University facilities by encouraging gifts, contributions and donations for the benefit of the State University of New York system; receiving, holding and administering gifts or grants; and to finance the conduct of studies and research in all academic disciplines.

Mr. O'Connor was hired to be the RF President in or about March 2000. *See* Exhibit 3. As President, Mr. O'Connor serves as the "chief executive officer and [is] responsible for the supervision and operation of the corporation...." *See* RF Bylaw Art. 11, § 2.

INVESTIGATION

A. Procedural Background

The Commission commenced its investigation of Mr. O'Connor on January 29, 2009 by sending him a "15-day letter" pursuant to and in accordance with Executive Law §94(12)(a) to which Mr. O'Connor submitted a written response. *See* Exhibits 1 through 3.¹ The Commission also sought and obtained documents from various sources, including unsuccessful efforts to have Mr. O'Connor produce documents voluntarily.² *See* Exhibits 4 through 14. After the Commission subpoenaed documents from the RF, Mr. O'Connor made vigorous, but ultimately unsuccessful efforts, to halt the Commission's investigation. Finally, the Commission afforded Mr. O'Connor multiple

¹ The Commission subsequently sent Mr. O'Connor a second 15-day letter to which he also submitted a written response. *See* Exhibits 8 and 12.

² The RF produced voluminous documents in response to a Commission subpoena. Commission staff also interviewed twelve current and former RF employees, including Ms. Bruno, who asserted her Fifth Amendment privilege against self-incrimination in response to virtually of the Commission's questions.

opportunities to be interviewed and be heard by the Commission, which he waived. See Exhibits 16-20.

B. Documentary and Testimonial Evidence

In his response to the 15-day letter, Mr. O'Connor identified projects in which Ms. Bruno participated. These projects included two recognition dinners for SUNY researchers in 2005 and 2006, "coordinating events for dignitaries, participating in cooperative ventures between British and American community colleges,"³ and representing the RF at numerous functions." In order to confirm Mr. O'Connor's statement, the Commission subpoenaed RF documents constituting Ms. Bruno's work product. Of the over 1,200 documents produced by the RF, only a small fraction of the documents can be fairly characterized as work product and of those documents, there is no evidence that the work product provided is that of Ms. Bruno.

Since Ms. Bruno's title was Special Assistant to the President, Commission staff inquired whether Ms. Bruno's responsibilities did not require the creation of work product. All of the witnesses, including her former direct supervisor Matthew Behrmann, were asked about their knowledge of the duties Ms. Bruno performed on behalf of the RF. Some of the witnesses were not in the position to have knowledge of whether Ms. Bruno performed any duties for the RF. Other witnesses stated that she "really didn't do anything" (*see* Kazsluga Tr. 13) or that her responsibilities amounted to nothing more than a few telephone conversations (*see* Murphy Tr. 18-19, 22; Kazsluga Tr. 9).

Specifically, one witness, Cathy Kazsluga testified that she was part of the team along with Ms. Bruno and three other RF employees to organize the recognition dinners in 2005 and 2006. *See* Kazsluga Tr. 8. Ms. Kazsluga was able to describe her role in organizing the dinners and was able to describe in detail the role of the other three RF employees (*see* Kazsluga Tr. 9-10); however, when Ms. Kazsluga was asked to describe Ms. Bruno's involvement, she could not provide any specifics and could only vaguely recall that she may have obtained some money from sponsors. *See* Kazsluga Tr. 9.

Ms. Kazsluga was also asked about the RF's 2009 Innovations Project, which she coordinated at the request of Mr. O'Connor. As the coordinator, Ms. Kazsluga assigned Ms. Bruno to meet with two individuals who would have the information necessary to carry out the project. Ms. Bruno failed to meet with the two individuals. When Commission staff stated to Ms. Kazsluga that it sounds as if "[Ms. Bruno] didn't really do anything on this project" Ms. Kazsluga agreed. *See* Kazsluga Tr. 12-13. Ms. Kazsluga's testimony is supported by

³ In June 2001, pursuant to 19 NYCRR §932.4, Mr. O'Connor sought permission from the New York State Ethics Commission (one of the two predecessor agencies of this Commission) to engage in the outside activity of Executive Director of The American Ditchley Foundation. *See* Exhibit 21. In his request, Mr. O'Connor stated that he had been serving as either the Director or the Executive Director of the Ditchley Foundation prior to his appointment as Vice Chancellor and Secretary of the State University of New York in June 1997. *See id.* Mr. O'Connor's and Ms. Bruno's activities with respect to the "cooperative ventures between British and American community colleges", was on behalf of the Ditchley Foundation. *See* Murphy Tr. 18. As such, it cannot serve as the basis for establishing duties Ms. Bruno performed on behalf of the RF.

contemporaneous emails, copies of which were provided to the Commission pursuant to subpoena. *See Exhibit 22.*

Similarly, other witnesses stated that Ms. Bruno's assignments on projects amounted to nothing more than a few telephone calls. Witnesses stated that Ms. Bruno would use her father's connections to obtain small donations of money or airline tickets or that Ms. Bruno's name was helpful to the RF to obtain access to an organization or legislator but otherwise, Ms. Bruno did not possess the "skills" necessary to be an asset to the RF. Murphy Tr. 19-20. When the then-Executive Vice President Timothy Murphy raised these concerns to Mr. O'Connor, Mr. O'Connor told "don't worry about it ... I'm aware of it, and I'm fine with it." Murphy Tr. 20-21.

The lack of any documents or testimony evidencing Ms. Bruno's duties on behalf of the RF coupled with the statements of the witnesses who all almost universally stated that they rarely ever saw Ms. Bruno at the office supports a determination that there is reasonable cause to believe that Ms. Bruno was afforded what amounted to a "no-show job." Mr. O'Connor attempts to refute this evidence by stating that since approximately May 2006, he decided to permit Ms. Bruno to telecommute. He further stated that he based this decision on the fact that Ms. Bruno's father was the subject of an investigation by a Grand Jury that was meeting directly across the street from the RF's offices and because Ms. Bruno's mother was suffering from Alzheimer's disease. As discussed below, the evidence establishes reasonable cause to believe Mr. O'Connor's statements are nothing more than a pretext for securing and continuing to secure a "no-show job" for Ms. Bruno, that is, a job in which Ms. Bruno was required to do and, in fact, did virtually no work.

First, while RF policy permits RF employees to telecommute, the policy specifically states: "Telecommuting is not intended to serve as a substitute for child or adult care. If children or adults in need of primary care are in the alternate work [sic] location during employee's work hours, another individual must be present to provide the care." *See Exhibit 23.* Thus, Ms. Bruno's mother's illness could not serve as the basis for granting Ms. Bruno a telecommuting arrangement. Additionally, RF policy requires an employee who has been granted a telecommuting arrangement to execute a telecommuting agreement that is placed in the employee's personnel file. Despite repeated requests of the RF for Ms. Bruno's telecommuting arrangement, the RF stated that there was no such document in Ms. Bruno's personnel file.

Second, there is ample evidence that Ms. Bruno failed to regularly come to work long before May 2006, the time Mr. O'Connor identifies as when Ms. Bruno began to telecommute. There is also evidence that she continually failed to report to work for approximately one year after her mother succumbed to her illness. Her former supervisor, Matthew Behrmann, stated that, as early as June 2003, a month after Ms. Bruno started working at the RF, she would regularly fail to report to work. *See Behrmann Tr. 14.* As her supervisor, he discussed with Ms. Bruno the requirement that she report to the office. Ms. Bruno informed Mr. Behrmann that her mother was ill and that Mr. O'Connor told her that the RF could be flexible with her schedule. *See Behrmann Tr. 14-16, 24-25.* Mr. Behrmann confirmed this arrangement with Mr. O'Connor. *See Behrmann Tr. 22, 24-25.* Nevertheless, Mr. Behrmann informed Ms. Bruno that she would be required to call and check-in on the days she would be working from home and that she would

need to demonstrate her work product or provide an activity report. *See* Behrmann Tr. 24-25. Mr. Behrmann testified that Ms. Bruno continued to fail to report to work, failed to check-in and failed to demonstrate the tasks she was performing on the days she was supposedly working from home. *See* Behrmann Tr. 24-25. After several months of Ms. Bruno failing to report to work as required, Mr. Behrmann refused to approve Ms. Bruno's time sheet. *See* Behrmann Tr. 25. RF documents produced pursuant to Commission subpoena reflect that Senior Vice President Timothy Murphy approved Ms. Bruno's monthly time sheet for March 2004. *See* Exhibit 24. Murphy also testified that almost immediately after Ms. Bruno started working for the RF, Mr. Behrmann complained that she was not reporting to work. *See* Murphy Tr. 10-11. Murphy also testified that both he and Mr. Behrmann raised their concerns with Mr. O'Connor, who just informed Murphy not to worry about it. *See* Murphy Tr. 20-21. On April 28, 2004, only one month after Mr. Murphy began approving Ms. Bruno's timesheet, Ms. Bruno's title was changed to Special Assistant to the President and Mr. O'Connor became her supervisor.⁴

Mr. Murphy was also asked when Ms. Bruno ceased reporting to work. He testified that it was a "gradual process" where "some days she would call and say 'I have nothing to do today I am just going to stay home.' Other days she would be there for a few hours and then say, 'I'm leaving, I'm done.'" Murphy Tr. 20. Murphy continued that once Ms. Bruno became Mr. O'Connor's assistant, Mr. Murphy did not "remember seeing her after that day except informally bump[ing] into her once in a while." Murphy Tr. 26.

Third, while there are other RF employees who are permitted to telecommute, unlike Ms. Bruno, these employees are not permitted to telecommute five days per week except under very limited circumstances and only for a very limited duration, *i.e.*, for one week. For example, Lynn Manning, the Vice President for Human Resources and Administration for the RF testified that of her 24 or 25 subordinates, approximately four telecommuted. *See* Manning Tr. 13-14. None of her subordinates were permitted to telecommute five days per week. *See* Manning Tr. 15. She did, however, testify that she would be flexible with this arrangement under limited circumstances. The example she provided was one of her subordinate's husband was in the military and deployed overseas and they had small children. She permitted her subordinate to telecommute five days per week under limited circumstances, such as during school vacations. *See* Manning Tr. 15. Similarly, Mr. Behrmann testified that he remembered an occasion where a RF employee broke his leg. This employee was permitted to telecommute five days per week for the four to six week recuperation period.

Finally, while the hiring of Ms. Bruno cannot serve as the basis of a Public Officers Law violation because it occurred prior to the effective date of PEERA, it is relevant to establishing that Ms. Bruno had a "no-show job." The hiring of Ms. Bruno by Mr. O'Connor is suspect. For instance, the job description for Assistant Director in the Federal Relations Unit, the position for which Ms. Bruno was originally hired, required a Bachelor's degree or "its equivalent." *See*

⁴ Although Ms. Bruno's title was changed to Special Assistant to the President in or around April 2004 (*see* Exhibit 25), documents obtained by the Commission pursuant to subpoena reveal that there was no job description for this newly created position until three years later in March of 2007. *See* Exhibit 26. The job description was drafted a mere two months after the TU submitted a request to the RF pursuant to FOIL for records pertaining to Ms. Bruno's employment at the RF. *See* Exhibit 27.

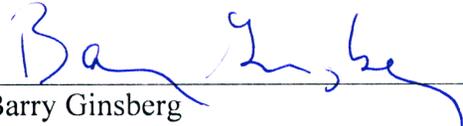
Exhibit 28. According to Ms. Bruno's resume she has taken some college coursework, but does not hold a Bachelor's or even an Associate's degree. See Exhibit 29.

When the RF hired Ms. Bruno,⁵ her father was Majority Leader of the New York State Senate. She was offered the job as Assistant Director in the Federal Relations Unit by letter dated April 16, 2003. See Exhibit 30. However, her job application is dated May 19, 2003, the first day she started work and a month after the RF formally extended her a job offer. See Exhibit 31. Furthermore, contrary to Mr. O'Connor's statement that Ms. Bruno participated in a selection process in which she was interviewed, there is no documentation that the RF ever advertised for or posted the position. Concomitantly, there is no documentary evidence that there were any other applicants for this position. Mr. Behrmann testified that in either late winter or early spring 2003, he met with or interviewed Ms. Bruno at the request of Mr. O'Connor, who had informed Mr. Behrmann that he wanted to hire Ms. Bruno. See Behrmann Tr. 4-5, 9. After meeting with Ms. Bruno, Mr. Behrmann informed Mr. O'Connor that he did not believe Ms. Bruno was the best candidate for the position and recommended that they interview other candidates with federal appropriations experience. See Behrmann Tr. 6, 9-10. Mr. Behrmann further testified that Ms. Bruno was hired without the RF interviewing any additional candidates for the position. See Behrmann Tr. 10. Thus, the evidence contradicts Mr. O'Connor's statement that there was a "selection process" that lead to Ms. Bruno's hiring. In fact, Mr. Murphy, who was responsible for the day-to-day operation of the RF, indicated that it was unusual for him to not participate in the hiring of new employees and that it was unusual for Mr. O'Connor to be involved in the hiring process for a position below director of a department or unit. See Murphy Tr. 6-7.

FINDINGS

Based upon the documentary and testimonial evidence, there is reasonable cause to believe that Mr. O'Connor allowed Ms. Bruno to receive compensation as a RF employee for little or no work. This arrangement, commonly referred to as a "no-show job", was an unwarranted privilege conferred upon Ms. Bruno. There is reasonable cause to believe, therefore, that Mr. O'Connor knowingly and intentionally violated Public Officers Law §§ 74(3)(d), (f) and (h).

Dated: May 11, 2011


Barry Ginsberg
Executive Director and General Counsel

⁵ Ms. Bruno was hired by the RF at a pay rate of \$70,000 and received cost of living adjustments through at least 2007.