

STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS

540 Broadway
Albany, New York 12207

IN THE MATTER OF JAMES F. CAPALINO AND
ASSOCIATES, INC., & JAMES F. CAPALINO,
Individually,

Respondents.

"JCOPE" Rec'd
MAR 30 2018

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT
Case No. 16-090

WHEREAS, the Joint Commission on Public Ethics ("Commission") is authorized by Executive Law §94 to conduct an investigation to determine whether a substantial basis exists to conclude that any violations of Article 1-A of the New York State Legislative Law (the "Lobbying Act") have occurred, to issue a report of its findings of fact and conclusions of law, and to impose penalties for any violation;

WHEREAS, this Settlement Agreement ("Agreement") is entered into by and between the Commission and James F. Capalino and Associates, Inc., and James F. Capalino, individually. ("Respondents");

WHEREAS, Respondent Capalino and Associates, Inc., ("Capalino and Associates") was registered as a lobbying firm at all times relevant to this matter, including during the 2015-2016 biennial lobbying registration period and through the present time, and is therefore subject to the jurisdiction of the Commission and the proscriptions set forth in the Lobbying Act;

WHEREAS, Respondent James F. Capalino ("Capalino") was at all times relevant to this matter the Chief Executive Officer of Capalino and Associates, was personally registered as a lobbyist for that firm during the 2015-2016 biennial lobbying registration period and through the present time, and is therefore subject to the jurisdiction of the Commission and the proscriptions set forth in the Lobbying Act;

WHEREAS, the Campaign for One New York ("CONY") was a 501(c)(4) not-for-profit entity which was formed in 2013 following the election of the Mayor of the City of New York, Bill de Blasio ("the Mayor"), by Ross Offinger and other people, to advocate on behalf of the City of New York by informing the public and policymakers about legislative and public policy options, such as Universal Pre-K and increased affordable housing, and from which the Mayor sought and obtained support for his legislative and policy objectives. Offinger was the Treasurer and a chief fundraiser of CONY and a fundraiser for the Mayor's election campaign;

WHEREAS, §1-m of the Lobbying Act prohibits any lobbyist from offer[ing] or giv[ing] a gift to any public official, unless under the circumstances it is not reasonable to infer that the gift

was intended to influence such public official; Part 934, effective June 18, 2014, provides that, pursuant to §1-m of the Lobbying Act, a gift may not be given to a third party, including a charitable organization, on behalf of or at the designation or recommendation of a public official, when such gift cannot be offered or given to the Public Official under the law;

WHEREAS, on June 1, 2016, the Commission sent a letter to Respondents which afforded Respondents a period of 15 days to respond to allegations that Respondents violated §1-m of the Lobbying Act;

WHEREAS, since June 1, 2016, Respondents have cooperated fully with the Commission's inquiry by voluntarily providing documents and agreeing to a personal interview of Respondent Capalino by the Commission's staff. In addition, Respondents, through counsel, have submitted two (2) written memoranda of law addressing the legal and factual issues involved; and

WHEREAS, Respondents and the Commission, the parties to this Agreement have agreed to resolve this matter in a manner that avoids additional administrative and/or adjudicatory proceedings except as provided below;

NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of this matter, the parties stipulate and agree that:

1. At all relevant times, Respondents were engaged in lobbying officials of the City of the New York, including the Mayor, Deputy Mayors, New York City Commissioners and their staff, and New York City elected officials.
2. In or about April of 2015, the Mayor directly requested Respondent Capalino's support in advancing the City's legislative and policy objectives and advised Respondent Capalino that Ross Offinger, who was the then treasurer of CONY, would provide further information on the details for that support. Shortly after this conversation with the Mayor, Offinger asked Respondent Capalino for a financial donation to the CONY and assistance in raising money from other individuals.
3. On or about May 27, 2015, Respondent Capalino contributed \$10,000 and obtained contributions from nine of Respondents' lobbying clients, totaling \$100,000 in contributions to CONY in 2015. Respondent Capalino provided Offinger with a list of the prospective donors whom Respondent Capalino had contacted before their donations were made. Offinger did not direct Capalino to solicit contributions from any particular person.
4. Shortly after the contributions were made to CONY, Respondent Capalino coordinated with Offinger to schedule a meeting, which Respondent Capalino described to clients as a "kitchen cabinet." After several adjournments, a breakfast meeting was held in September of 2015, between the Mayor, Capalino and clients of Respondent Capalino and Associates who had made the contributions to CONY.
5. At the time of soliciting the contributions from clients, Respondents were retained

by those clients and others to lobby on their behalf before the City of New York including the Mayor and members of his Executive staff.


6. Respondents acknowledge that §1-m of the Lobbying Act prohibits any lobbyist from offer[ing] or giv[ing] a gift to any public official, unless under the circumstances it is not reasonable to infer that the gift was intended to influence such public official; Part 934, effective June 18, 2014, provides that, pursuant to §1-m of the Lobbying Act, a gift may not be given to a third party, including a charitable organization, on behalf of or at the designation or recommendation of a public official, when such gift cannot be offered or given to the Public Official under the law.
7. Respondents agree to pay to the Commission the amount of forty thousand dollars (\$40,000.00) in settlement of this matter within thirty (30) days of the execution of this Agreement.
8. The Commission has agreed to the terms of this Agreement based on, among other things, the representations made to the Commission by Respondents. To the extent that representations made by Respondents are later found by the Commission to be materially incomplete or inaccurate, Respondents shall be in breach of this Agreement.
9. If Respondents fail to timely perform any conditions set forth in the Agreement, Respondents shall be in breach of this Agreement.
10. Respondents agree not to take any action or to make, permit to be made, authorize, or agree to any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Respondents': (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Commission is not a party. A violation of this Paragraph constitutes a breach of this Agreement by Respondents.
11. Upon a material breach of this Agreement, the Commission shall have sole discretion to deem the Agreement null and void in its entirety, issue a new Notice of Substantial Investigation and Hearing, which may include additional charges against Respondents and proceed with an enforcement action, and then issue a new Substantial Investigation Report; or to deem the Respondents in breach of this Agreement and pursue, in court, any other remedy to which the Commission is entitled at law or in equity, including but not limited to, specific performance or injunction. As to any new Notice of Substantial Investigation and Hearing or enforcement action by the Commission pursuant to this paragraph: (1) Respondents waive any claim that such action is time-barred by a statute of limitations or any other time-related defenses; and (2) Respondents expressly acknowledge and agree that the Commission may use any statements herein, or any other statements,

documents or materials produced or provided by Respondents prior to or after the date of this Agreement, including, but not limited to, any statements, documents, or materials, if any, provided for the purposes of settlement negotiations or in submissions by Respondents or by counsel on behalf of Respondents, in any proceeding against Respondents relating to the allegations herein.

12. Respondents shall upon written request by the Commission, provide all documentation and information reasonably necessary for the Commission to verify compliance with this Agreement.
13. Respondents understand and acknowledge that the Commission may investigate any other conduct, not covered by this Agreement, by Respondents and take any appropriate action.
14. Respondents waive the right to assert any defenses or any challenges to this Agreement, as well as any right to appeal or challenge the determination or conduct of the Commission relating to this matter in any forum.
15. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
16. Respondents consent to the jurisdiction of the Commission in any proceeding to enforce this Agreement.
17. It is understood that this Agreement is not confidential and will be made public within 45 days of its execution in accordance with Executive Law §§94(14) & (19).
18. This Agreement constitutes the entire agreement between the parties and supersedes any prior communication, understanding, or agreement, whether oral or written, concerning the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth in this Agreement has been relied upon by any party to this Agreement.
19. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
20. This Agreement shall become effective upon execution by the Commission or its designee.
21. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
22. By signing below, Respondents acknowledge reading this Agreement in its entirety, understanding all terms and conditions of this Agreement, and having done so, knowingly, voluntarily, and freely enter into this Agreement. Electronic signatures

are deemed originals for the purposes of this Agreement. Respondents were represented by counsels, Bruce J. Maffeo and Kenneth K. Fisher, Cozen O'Connor, 277 Park Avenue, New York, New York 10172.


Dated: 3/30/18



Seth Agata
Executive Director
New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO
THIS 27th DAY OF March, 2018

Respondent-
JAMES F. CAPALINO AND
ASSOCIATES, INC.

By: 
Name: James Capalino
Title: President

Respondent- James Capalino, Individually.

By: 
Name: James Capalino

Approved:

Michael K. Rozen
Chair

Robert Cohen
James E. Dering
Marvin E. Jacob
Seymour Knox, IV
Gary J. Lavine
J. Gerard McAuliffe, Jr.
David McNamara
Barry C. Sample
George H. Weissman
Members

Dawn L. Small
James A. Yates
Absent