

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

In the Matter of the

**Investigation by Eric T. Schneiderman,
Attorney General of the State of New York, of**

Mark Gelvan and Raising Money, Inc.

Assurance No. 14-095

WHEREAS, the Office of the Attorney General of the State of New York (“OAG”), Eric T. Schneiderman, has conducted an investigation (the “Investigation”), pursuant to the Not-for Profit Corporation Law, the Estates Powers and Trust Law, and the Executive Law into potential violations by Mark Gelvan (“Gelvan”) and Raising Money Inc. (“RMI”), of the Stipulation and Order of Settlement between the OAG, on the one hand, and Gelvan and All-Pro Telemarketing Associates Corp., on the other hand, So-Ordered on January 9, 2004 and entered in the Supreme Court of the State of New York, County of Albany in connection with the litigation styled *Spitzer v. All-Pro Telemarketing Assoc. Corp., et al.*, Index. No. 6726-02 (the “Order”);

This Assurance of Discontinuance (“Assurance”) contains certain findings of the OAG’s Investigation, and it also contains the relief agreed to by the OAG, Gelvan and RMI (collectively, the “Parties”).

FINDINGS

The Order

1. On or about December 2003, Gelvan and All-Pro entered into a Stipulation of Settlement with the OAG concerning a litigation commenced by the OAG in the Supreme Court of the State of New York, County of Albany, styled *Spitzer v. All-Pro Telemarketing Assoc. Corp., et al.*, Index. No. 6726-02. The Stipulation of

Settlement was So-Ordered by the Honorable Thomas W. Keegan, J.S.C., on January 9, 2004 (the "Effective Date").

2. Among other things, the Order prohibits Gelvan from:
 - (i) solicit[ing] any contributions for any charitable organization from any person resident in the State of New York, or participat[ing] in or contro[ing] such solicitations conducted by any other person (Order ¶ 4);
 - (ii) directly or indirectly (including through any alter ego such as a family member of Mark Gelvan), act[ing] as a professional fund raiser, professional solicitor, fund raising counsel, or commercial co-venturer for the solicitation of charitable contributions from any person resident in the State of New York, or as a broker of contracts or agreements contemplating such solicitations (Order ¶ 5);
 - (iii) serv[ing] as an officer, director, shareholder, owner, partner, employee, independent contractor or agent of, nor be[ing] otherwise retained or engaged by a professional fund raiser professional solicitor, fund raising counsel, or any person that sells or brokers contracts or agreements contemplating the solicitation of charitable contributions from any person resident in the State of New York (Order ¶ 6); and
 - (iv) directly or indirectly acquir[ing] any right to receive any compensation of any kind whatsoever in respect of or derive[ing], directly or indirectly, any benefit from the solicitation of contributions for charitable organizations from any person resident in the State of New York or from the sale or brokering of contracts or agreements contemplating such solicitations....

3. The prohibitions of the Order became permanent as of the Effective Date.

The W2W and NVVF Agreements

4. RMI is a Delaware for-profit corporation. Gelvan is the sole owner and employee of RMI.

5. Midwest Publishing-DN, Inc. ("Midwest"), is a Michigan for-profit corporation that is registered as a professional fundraiser in the State of New York.

6. Woman to Woman Breast Cancer Foundation ("W2W") is a not-for-profit entity registered to solicit charitable contributions in the State of New York.

7. RMI, on the one hand, and Midwest, on the other hand, entered into a "Broker Agreement," dated March 19, 2010 (the "W2W Agreement"). The W2W Agreement was signed on behalf of RMI by Gelvan.

8. The W2W Agreement provides, in relevant part, that: (i) RMI acted as the broker of an agreement between Midwest and W2W whereby Midwest would solicit charitable contributions in the State of New York on behalf of W2W; and (ii) RMI would receive 3% of the gross collections from Midwest's fundraising activities on W2W's behalf.

9. Gelvan and RMI have represented that for the period of March 19, 2010 to December 31, 2013, they received \$22,154.59 under the W2W Agreement. The OAG has relied on this representation and it is a material reason the OAG enters into this Assurance.

10. National Vietnam Veterans Foundation ("NVVF") is a not-for-profit entity registered to solicit charitable contributions in the State of New York.

11. RMI, on the one hand, and Midwest, on the other hand, entered into a "Broker Agreement," dated June 1, 2010 (the "NVVF Agreement"). The NVVF Agreement was signed on behalf of RMI by Gelvan.

12. The NVVF Agreement provides, in relevant part, that: (i) RMI acted as a broker of an agreement between Midwest and NVVF whereby Midwest would solicit charitable contributions in the State of New York on behalf of NVVF; and (ii) RMI would receive 4% of the gross collections from Midwest's fundraising activities on

NVVF's behalf. By agreement between Midwest and RMI, the 4% figure was later reduced to 3%.

13. Gelvan and RMI have represented that for the period of March 19, 2010 to December 31, 2013, they received \$15,565.65 under the NVVF Agreement. The OAG has relied on this representation and it is a material reason the OAG enters into this Assurance.

14. As a result of the conduct set forth in Paragraphs 7-9 and 11-13 above, Gelvan and RMI violated the Order in at least the following ways: (i) brokering contracts or agreements that contemplate charitable solicitations in New York; and (ii) financially benefiting from contracts or agreements that contemplate charitable solicitations in New York.

15. On November 1, 2013, after the commencement of the Investigation, Midwest and RMI executed an addendum to the W2W Agreement providing that RMI would no longer receive commissions or other payments in connection with fundraising activities performed by Midwest on behalf of W2W in the State of New York.

16. The addendum provides in relevant part:

RMI shall, as its total compensation for all efforts and costs associated with this agreement, be entitled to receive four percent (3%) of gross collections from fundraising activities performed by [Midwest] on behalf of W2W, excluding all collections from fund raising activities performed by [Midwest] on behalf of W2W in the State of New York. Said payments will be made to RMI by [Midwest] on a weekly basis.

17. Also on November 1, 2013, Midwest and RMI executed an addendum to the NVVF Agreement providing that RMI would no longer receive commissions or other payments in connection with fundraising activities performed by Midwest on behalf of NVVF in the State of New York.

18. The addendum provides in relevant part:

RMI shall, as its total compensation for all efforts and costs associated with this agreement, be entitled to receive four percent (4%) of gross collections from fundraising activities performed by [Midwest] on behalf of NVVF, excluding all collections from fund raising activities performed by [Midwest] on behalf of NVVF in the State of New York. Said payments will be made to RMI by [Midwest] on a weekly basis.

PROSPECTIVE RELIEF

WHEREAS, Gelvan and RMI neither admit nor deny the OAG's Findings recited in Paragraphs 1 through 17 above;

WHEREAS, the OAG finds the relief and agreements in this Assurance to be in the public interest and accepts the terms of this Assurance pursuant to New York Executive Law § 63(15);

WHEREAS, nothing herein is intended to or shall operate to alter, amend or modify the Order including, without limitation, the prohibitions of Paragraphs 4-8 thereof and the remedies provided in the Order, all of which shall remain in full force and effect;

MONETARY RELIEF

19. Gelvan and RMI, jointly and severally, shall pay \$50,000 as disgorgement for the gains in violation of the Order together with an additional penalty (the "Payment").

20. The Payment shall reference this Assurance #14-095 and be payable to the New York Department of Law pursuant to the following schedule:

- a. Upon execution of this Assurance, a certified check and/or bank check in the amount of \$17,000 shall be hand delivered to the OAG;
- b. on or before May 12, 2014, a payment of \$17,000 shall be made by wire transfer, certified check and/or bank check; and

c. on or before June 11, 2014, a payment of \$16,000 shall be made by wire transfer, certified check and/or bank check.

21. In the event that Gelvan or RMI fail to make any of the payments set forth in Paragraph 20(a)-(c) when such payment is due, the OAG shall provide written notice of such default with 5 calendar days' notice to cure. In the event Gelvan and RMI fail to make payment within 5 calendar days of delivery of such notice upon him, all payments due under this Assurance that are then outstanding shall become immediately due and owing and the OAG may enter judgment for the full amount then outstanding.

22. Contemporaneously with the execution of this Assurance, Gelvan and RMI shall execute affidavits of confession of judgment in the form annexed hereto as Exhibits A and B. All such affidavits will be held in escrow by the OAG, and the OAG may file the appropriate confession in connection with any action to collect from Gelvan or RMI the full amount remaining due under this Assurance.

ADDITIONAL PROVISIONS

23. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Gelvan (as to himself and any other entity in which he has an ownership interest), and RMI (as to itself), concerning the matters addressed in this Assurance and the OAG's own factual investigation as set forth in the findings above. The OAG has relied the representations made to the OAG by Gelvan and RMI concerning the matters addressed in this Assurance and these representations are a material reason the OAG enters into this Assurance.

24. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

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

26. Gelvan (as to himself and any other entity in which he has an ownership interest), and RMI (as to itself), represent and warrant, through their signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

27. Gelvan and RMI shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Gelvan's and RMI's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party.

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

29. This Assurance shall be binding on and inure to the benefit of the Parties to this Assurance and their respective successors and assigns, provided that no Party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

30. This Assurance does not affect the rights, claims, obligations and liabilities, and does not inure to the benefit, of any person or entity not a party to this Assurance.

31. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held 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.

32. To the extent not already provided under this Assurance, Gelvan and RMI shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.

33. All notices, reports, requests, and other communications to any Party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to the OAG, to:

Elizabeth Ann Fitzwater
Assistant Attorney General
Charities Bureau
120 Broadway, 3rd Floor
New York, NY 10271

If to Gelvan or RMI, to:

Mark Gelvan
150 River Road
Unit i-3
Montville NJ 07045

34. All correspondence and payments related to this Assurance must reference Assurance No. 14-095.

35. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and Gelvan and RMI shall make no representation to the contrary.

36. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance by Gelvan or RMI shall constitute prima facie proof of violation of the applicable law as to that party in any action or proceeding thereafter commenced by the OAG.

37. If a court of competent jurisdiction determines that Gelvan or RMI have breached this Assurance, or the OAG must file the confessions of judgment to collect the Payment, Gelvan and RMI shall pay to the OAG the cost, if any, of such determination and/or of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

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

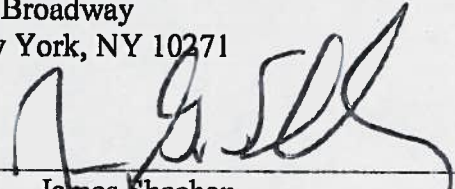
39. Gelvan and RMI agree not to raise or interpose in any way their residency, state of incorporation, or any other jurisdictional objection as a defense to any cause of action, claim or argument arising from the OAG's enforcement of this Assurance, and Gelvan and RMI consent to the jurisdiction of the Courts of New York State, New York County, for the purpose of interpreting, carrying out the terms of this Assurance, and/or granting such other and further relief as may be necessary for its enforcement.

40. Gelvan and RMI agree not to raise or interpose in any way any statute of limitations or laches defense, claim or argument arising from the OAG's enforcement of this Assurance or of the Order.

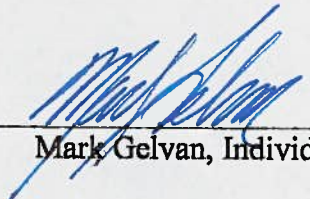
41. Except as otherwise set forth herein, nothing contained herein shall be construed as to deprive any person of any private right under the law.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto as of
April 18th, 2014.

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, NY 10271

By: 
James Sheehan
Bureau Chief
Charities Bureau

MARK GELVAN

By: 
Mark Gelvan, Individually

RAISING MONEY, INC.

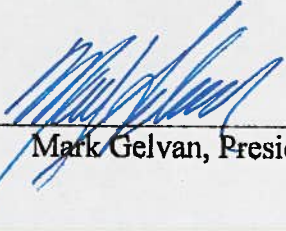
By: 
Mark Gelvan, President

EXHIBIT A

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ERIC T. SCHNEIDERMAN, Attorney General
of the State of New York, on behalf of the People
of the State of New York,

Plaintiff,

- against -

MARK GELVAN,

Defendant.

Index No.

**AFFIDAVIT OF
CONFESSION OF JUDGMENT**

STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

Mark Gelvan, being duly sworn, deposes and says:

1. I am a resident of the State of New Jersey and reside at 150 River Road
Unit i-3, Montville NJ 07045.
2. I hereby confess judgment in accordance with N.Y. C.P.L.R. § 3218 in favor of
the Attorney General of the State of New York for the sum of \$50,000 under the Assurance of
Discontinuance (the "Assurance") that I executed on April 18, 2014, plus 9% interest
compounded annually.
3. I authorize that this judgment be entered against me in the State of New York,
County of New York.
4. This confession of judgment is for a debt justly due to the Attorney General in
consideration for the making and execution of the Assurance, and I am personally liable to the
Attorney General in the amount of \$50,000.

5. As agreed in Paragraph 20 (a) - (c) of the Assurance, I am obligated to pay a total of \$50,000 to the Attorney General in installments as follows: \$17,000 due upon execution of the Assurance; \$17,000 on or before May 12, 2014; and \$16,000 on or before June 11, 2014.

6. In the event of my default on timely tender of any payment due, I understand that the Assurance will be accelerated by its terms. In that event, I hereby authorize the Attorney General to enter judgment against me for the full amount of the installments remaining outstanding at the time of any such default.

7. This original Confession of Judgment shall be held in escrow by the Attorney General.



Mark Gelvan

Sworn to before me this 18th
day of April 2014



Notary Public

I, Kate Sworri, an officer of the Attorney General's office, hereby consent to the terms and conditions set forth in this Confession of Judgment.

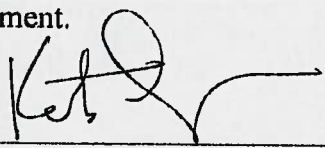


EXHIBIT B

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ERIC T. SCHNEIDERMAN, Attorney General
of the State of New York, on behalf of the People
of the State of New York,

Plaintiff,

- against -

MARK GELVAN,

Defendant.

Index No.

**AFFIDAVIT OF
CONFESSION OF JUDGMENT**

STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

Mark Gelvan, being duly sworn, deposes and says:

1. I am the President and sole owner of Raising Money, Inc. ("RMI"). RMI is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal offices located at 150 River Road, Unit i-3, Montville NJ 07045.

2. I am authorized to confess judgment on behalf of RMI.

3. RMI confesses judgment in accordance with N.Y. C.P.L.R. § 3218 in favor of the Attorney General of the State of New York for the sum of \$50,000 under the Assurance of Discontinuance (the "Assurance") that it executed on April 18, 2014, plus 9% interest compounded annually.

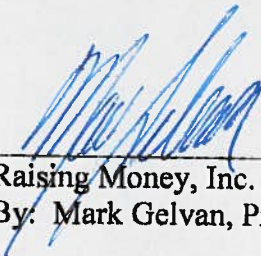
4. RMI authorizes this judgment to be entered in the State of New York, County of New York.

5. This confession of judgment is for a debt justly due by RMI to the Attorney General in consideration for the making and execution of the Assurance.

6. As agreed in Paragraph 20 (a) - (c) of the Assurance, RMI is obligated to pay a total of \$50,000 to the Attorney General in installments as follows: \$17,000 due upon execution of the Assurance; \$17,000 on or before May 12, 2014; and \$16,000 on or before June 11, 2014.

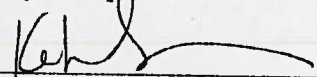
7. In the event of RMI's default on timely tender of any payment due, RMI understands that the Assurance will be accelerated by its terms. In that event, RMI hereby authorizes the Attorney General to enter judgment against RMI for the full amount of the installments remaining outstanding at the time of any such default.

8. This original Confession of Judgment shall be held in escrow by the Attorney General.



Raising Money, Inc.
By: Mark Gelvan, President

Sworn to before me this 18th
day of April 2014



Notary Public

I, Kate Swari, an officer of the Attorney General's office, hereby consent to the terms and conditions set forth in this Confession of Judgment.

