

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

PRESENT: HON. RICHARD F. BRAUN

PART 23

Eliot Spitzer  
J.S.C.  
Justice

INDEX NO.

401751/05

MOTION DATE

1/9/00

MOTION SEQ. NO.

001

MOTION CAL. NO.

\_\_\_\_\_

- v -

Society for Prevention of Cruelty to Children

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for for voluntary

Non-judicial Dissolution

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that ~~this motion~~ be exparte notice is granted  
pursuant to stipulation of settlement and order of Decade.

**FILED**

JAN 23 2006

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: New York, New York, Jan 9, 2006

Editer

[Signature]

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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

-----X  
ELIOT SPITZER, Attorney General of the State  
of New York,

Plaintiff,

- against -

THE SOCIETY FOR THE PREVENTION OF  
CRUELTY TO CHILDREN OF THE COUNTY  
OF KINGS, INC., a Not-For-Profit Corporation,  
and BURTON BORKAN, individually and as a  
former officer of The Society For The Prevention  
of Cruelty to Children of the County of Kings, Inc.,

Defendants.  
-----X

IAS Part 23  
Index No. 05-401751

**STIPULATION  
OF SETTLEMENT  
AND ORDER**

WHEREAS, there is pending in the Supreme Court of the State of New York, County of New York, a civil lawsuit entitled *Eliot Spitzer, Attorney General of the State of New York, v. The Society for the Prevention of Cruelty to Children of the County of Kings, Inc., a Not-for-Profit Corporation, and Burton Borkan, individually and as a former officer of The Society for the Prevention of Cruelty to Children of the County of Kings, Inc.* (the "Action"); and

WHEREAS, Defendant The Society for the Prevention of Cruelty to Children of the County of Kings, Inc. ("Kings County SPCC") is a New York Not-for-Profit Corporation that maintains a regular place of business at 1 Bush Plaza, Brooklyn, New York 11232, and an office at 156 William Street, New York, New York 10038; and,

WHEREAS, in or about 1989, the Kings County SPCC was incorporated as a society for the prevention of cruelty to children under New York Not-For-Profit Corporation Law ("N-PCL") § 1403(b) by filing a certificate of incorporation with the State of New York Department of State (the "Certificate of Incorporation"); and,

WHEREAS, pursuant to Article Third of the Certificate of Incorporation, the purposes of the Kings County SPCC are the prevention of cruelty to children and the enforcement of laws relating to or in any way affecting children and, as a society for the prevention of cruelty to children, under the N-PCL, New York Family Court Act §§ 1024, 1032, and 1054, and New York Social Services Law §§ 417, 424, and 425, the Kings County SPCC is granted the power, inter alia, to: (a) file a complaint in court for the violation of any law relating to children; (b) aid in presenting the law and facts in such proceedings; (c) be appointed guardian of a minor child; and (d) receive and retain a child on commitment by a court; and,

WHEREAS, the Kings County SPCC is not an agency, unit, department, division, or subdivision of the State of New York, is not a police department or any police department subdivision, and its officers, directors, agents, and members are neither employees of the State of New York nor employees of any agency, unit, department, division, or subdivision of the State of New York; and,

WHEREAS, defendant Burton Borkan ("Borkan"), who has a residence at 3417 Fulton Avenue, Oceanside, New York, from in or about 1989 to in or about April 2005, was a director and officer of the Kings County SPCC, and held the title "Commissioner" of the Kings County SPCC until on or about April 22, 2005; and,

WHEREAS, the People of the State of New York, by ELIOT SPITZER, Attorney General of the State of New York (the "Attorney General"), filed the Action pursuant to N-PCL §§ 112(a)(1), 112(a)(3), 112(a)(5), 112(a)(7), 706, 714, 1101(a)(2), and 1102(a)(2)(E), Executive Law § 63, and the New York Estates, Powers and Trusts Law ("EPTL"), as well as the Attorney General's common law parens patriae authority, alleging that: (i) Kings County SPCC conducts

little, if any, child protective work; (ii) has abused the special powers of a society for the prevention of cruelty to children; (iii) has exceeded the authority conferred upon it by law; (iv) has carried on its business in a persistently fraudulent and illegal manner; and (v) has abused its powers contrary to the public policy of this State, in violation of N-PCL §§ 112(a)(1) and 1101(a)(2). Specifically, the Action alleges that Kings County SPCC and Borkan misrepresent and/or engage in conduct that gives the false impression that the Kings County SPCC is a police department or an agency, unit, department, division, or subdivision of the State of New York. The Action further alleges that Borkan violated his fiduciary duties to and as a director and an officer of the Kings County SPCC, in violation of N-PLC § 717 and Article 8 of the EPTL; and,

WHEREAS, the Kings County SPCC, Borkan, and the Attorney General wish to resolve this matter without the need and expense of further legal proceedings and acknowledge that entry into this agreement does not constitute an admission of liability by Kings County SPCC and Borkan; now therefore, it is hereby;

STIPULATED AND AGREED as follows:

1. Kings County SPCC agrees to pursue a voluntary non-judicial dissolution pursuant to Article 10 of the New York Not-for-Profit Corporation Law and shall file a petition for such dissolution within three (3) months of its executing this Stipulation of Settlement and Order. No less than thirty (30) days prior to filing its petition for dissolution, Kings County SPCC will provide a copy of its draft petition for dissolution, via certified mail, return receipt requested, to the Office of the Attorney General of the State of New York, attention Assistant Attorney General Stacy P. Aronowitz, Public Integrity Unit, 120 Broadway, 22<sup>nd</sup> Floor, New York, New York, 10271. When the certificate of dissolution of the Kings County SPCC has

been filed with the New York State Department of State, the Attorney General shall withdraw the Action with prejudice.

2. In the event that Kings County SPCC fails to file a petition for dissolution within the time frame prescribed herein and the Attorney General seeks an involuntary dissolution pursuant to Article 11 of the Not-for-Profit Corporation Law, the Kings County SPCC hereby agrees to waive any and all defenses to such involuntary dissolution.

3. Borkan agrees not to serve as an officer or a director of any society for the prevention of cruelty to children within the State of New York.

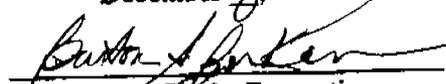
4. If Borkan becomes a member or seeks to become a member of any society for the prevention of cruelty to children within the State of New York, or seeks peace officer status with the State of New York, Borkan agrees to notify the Attorney General, in writing, via certified mail, return receipt requested, within twenty (20) days of such event, by letter to Assistant Attorney General Stacy P. Aronowitz, Office of the Attorney General of the State of New York, Public Integrity Unit, 120 Broadway, 22<sup>nd</sup> Floor, New York, New York, 10271.

5. The parties understand and agree that if either Borkan or the Kings County SPCC, by its officers and directors, does not fully comply with the terms and conditions of this Stipulation of Settlement and Order, the Attorney General is entitled to enforce this Stipulation of Settlement and Order and pursue all remedies and penalties that may lawfully be imposed, including, but not limited to, contempt of court and specific performance. For purposes of enforcing this Stipulation of Settlement and Order, the Court shall retain jurisdiction over this action.

6. The Kings County SPCC and Borkan agree that this Stipulation of Settlement and

7. The undersigned represent that they are authorized to enter into this Stipulation of Settlement and Order and that it shall be binding upon the Kings County SPCC and Borkan and their successors, successors in interest, agents, and assigns.

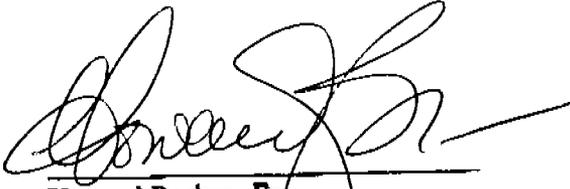
Date: New York, New York  
December 8, 2005

  
The Society for the Prevention  
of Cruelty to Children of the  
County of Kings, Inc.

By: Burton S. Borkan

Title: OFFICER

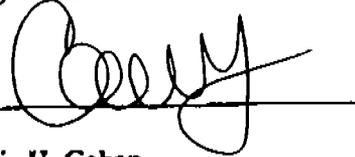
  
Burton Borkan  
3417 Fulton Avenue  
Oceanside, New York



Howard Borkan, Esq.  
156 William Street  
New York, New York 10038  
Counsel for Burton Borkan and The  
Society for the Prevention of  
Cruelty to Children of the County of  
Kings, Inc.

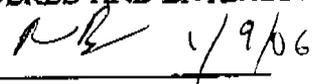
ELIOT SPITZER  
Attorney General of the  
State of New York  
120 Broadway, 22nd Floor  
New York, New York 10271  
(212) 416-8242

**FILED**  
JAN 23 2006  
COUNTY CLERK'S OFFICE  
NEW YORK

By 

Carrie H. Cohen  
Assistant Attorney  
General-in-Charge  
Stacy P. Aronowitz  
Assistant Attorney General  
Public Integrity Unit

James Robert Pigott, Jr.  
Section Chief  
Charities Bureau

SO ORDERED AND ENTERED:  
  
J.S.C.