

elected public official and employee of the State, Hevesi owes the State a fiduciary duty.

2. As a public official, Hevesi is a trustee of public property, with a fiduciary obligation to exercise his control over such property in the exclusive interest of the public. See Matter of Ross v. Wilson, 308 N.Y. 605, 612 (1955); see also Landau v. Percacciolo, 66 A.D.2d 80, 87, 412 N.Y.S.2d 378, 384 (2d Dep't 1978) ("The relationship between a municipality and its servants springs from the fiduciary roots of agency, a concept deeply embedded in the common law. The concept incorporates the ancient wisdom that a man may not serve two masters. . . .") (citation omitted), aff'd, 50 N.Y.2d 430, 429 N.Y.S.2d 566 (1980); Matter of Tuxedo Conservation and Taxpayers Ass'n v. Town Bd. of Town of Tuxedo, 69 A.D.2d 320, 324, 418 N.Y.S.2d 638, 640 (2d Dep't 1979) (fiduciary duty of "the punctilio of an honor the most sensitive" applies to public servants) (quoting Meinhard v. Salmon, 249 N.Y. 458, 464 (1928)).

3. In his capacity as Comptroller, Hevesi's fiduciary duty to the State, like that of any agent, includes the duty to keep clear and accurate accounts. See generally Aircheck, Inc. v. Felder, 133 N.Y.S.2d 790 (Supreme Court, N.Y. County 1954). If a fiduciary does not maintain the records enabling him to account for his use of his principal's funds, "all 'obscurities and doubt' created by the failure to keep clear and accurate records are to be resolved against him." Polish Am. Resource Corp. v. Byrczek, 270 A.D.2d 96, 96, 704 N.Y.S.2d 249, 250 (1st Dep't 2000) (citation omitted).

4. New York Public Officers Law § 74 sets forth the Code of Ethics for state officers and employees. Under this Code, Hevesi cannot "have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest." N.Y. Pub. Officers L. § 74(2). The Code further obligates Hevesi not to "use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others." N.Y. Pub. Officers L. § 74(3)(d).

FINDINGS

The OAG finds as follows:

State Employees Were Assigned to Perform Duties for Hevesi's Wife

5. Shortly after taking office as State Comptroller in January 2003, Hevesi directed that a state employee be assigned to transport his wife, who has suffered from a variety of serious illnesses for many years. Initially, David Burke (“Burke”), who already was employed by the Department as a driver when Hevesi took office, was assigned this duty. Burke was not part of the Comptroller’s Office’s security detail and had no training in security protection. In or around the summer of 2003, Burke was reassigned to other duties, although he transported Mrs. Hevesi intermittently through September 2003. Another state employee, Nicholas Acquafredda (“Acquafredda”), who was assigned to perform constituent services for the Department’s Division of Intergovernmental Affairs and Community Relations, thereafter assumed the assignment to transport Mrs. Hevesi. At that time, Acquafredda was not formally relieved of any of his constituent duties.

6. Acquafredda previously had worked for Hevesi performing constituent services when Hevesi was the Comptroller of the City of New York (the “City”). As a City employee, Acquafredda provided driving services to Mrs. Hevesi until May 2001 when Hevesi received a press inquiry and directed that the practice stop. At that point, Hevesi repaid the City for the time he maintained that Acquafredda had spent transporting his wife.

7. When, as State Comptroller, Hevesi directed that Acquafredda be assigned to transport his wife, Hevesi’s Executive Assistant Comptroller Diana Hoffman (“Hoffman”), who also had worked for Hevesi at the City, questioned that course of action. Although Hoffman could not recall her exact words, she testified that she “could have” said to Hevesi, “Do we want to do this again?”¹ Acquafredda nonetheless again was assigned to Mrs. Hevesi.

¹All quoted statements and references to testimony herein refer to the record of testimony given before the Ethics Commission, which has not been provided to Hevesi’s counsel.

8. Also in 2003, two other Department employees assigned to the office's security detail, Johnson and Piccard, performed duties for Mrs. Hevesi. Johnson testified that he was assigned to Mrs. Hevesi for one day approximately three years ago, which would have been 2003. Piccard – who did not testify before the Ethics Commission – recalled when interviewed by the OAG that he was assigned to Mrs. Hevesi for a one week period in December 2003 when Hevesi was away on business in Israel.

9. Mrs. Hevesi's handwritten entries in her appointment books show that Acquafredda transported her to and from medical and other personal appointments, ran errands with her (and, in some instances, for her), ate lunch with her, transported her to the Hevesi home in Somers, New York, and spent time with her there. According to Johnson and Piccard, they performed duties of a similar nature when they were assigned to Mrs. Hevesi.

10. Witnesses before the Ethics Commission testified that, over time, Acquafredda spent progressively less time at the office and more time with Mrs. Hevesi. In February 2005, Hevesi directed that Acquafredda's title be changed to Confidential Aide and he thereafter reported directly to Hoffman. After April 2005, when Mrs. Hevesi's health deteriorated, Acquafredda rarely reported to the office, commuting instead to the Hevesi residences, the primary one in Queens and the other home in Somers. Acquafredda physically appeared in the office so infrequently that Hoffman signed Acquafredda's name to his time sheets for months.

11. Mrs. Hevesi's appointment books, too, show that Acquafredda spent increasing time with her, including day after day before Mrs. Hevesi had knee surgery in July 2005. After the knee surgery, Acquafredda assisted her for many hours over many days, sometimes aiding with rehabilitative knee exercises at the Hevesi home in Somers. Acquafredda was assigned to Mrs. Hevesi on virtually a full-time basis until she was hospitalized in June 2006.

Hevesi Obtains Guidance from the Ethics Commission

12. In a letter dated May 14, 2003, Hevesi had asked the Ethics Commission for an opinion regarding whether the Department lawfully could provide his wife with security or

transportation. He wrote: “I would like to arrange to have a member of my security detail and appropriate transportation made available for [my wife’s] well being and protection when she is meeting me for official events, and on those occasions when she must travel without a companion and the need for security is apparent in the judgment of those on my staff assigned to make these determinations.” Hevesi supported his request with a description of past threats against himself, and additionally apprised the Ethics Commission that his wife “suffers physically from years of a debilitating illness.”

13. In that same letter to the Ethics Commission, Hevesi stated: “In those instances where the advisability of security is not apparent, I will of course be prepared to reimburse this Agency for any personnel and transportation costs incurred.” Hevesi did not apprise the Ethics Commission that a state employee, Burke, already had been assigned to Mrs. Hevesi.

14. Approximately two weeks after Hevesi’s request, the Ethics Commission responded by letter dated May 30, 2003. That letter advised Hevesi that there would be no violation of New York Public Officers Law “when independent law enforcement personnel determine through a risk assessment process that security and transportation for Mrs. Hevesi is warranted . . . ,” or “[w]hen an elected official and spouse attend an event in his or her official capacity, fulfilling a job responsibility and acting for a State agency purpose.”

15. The Ethics Commission emphasized the distinction between those circumstances and “situations when legitimate security concerns are not found to be present, or when the function is unrelated to [Hevesi’s] official business.” In those cases, Hevesi was advised to either “refrain or reimburse the State for any costs incurred for the use of State resources. . . .” Hevesi has stated that the Ethics Commission’s opinion was “absolutely clear.”

16. After receiving the Ethics Commission’s opinion, the Department sought a risk assessment for Mrs. Hevesi from the New York City Police Department, which referred the matter to the New York State Police (“State Police”). A State trooper performed the assessment, and on July 29, 2003, wrote to his superiors: “Carol L[.] Hevesi should be classified as a **Low-Threat**

Risk. This determination is based on the fact that there have not been any specific threats made against Mrs. Hevesi. This determination, however, does take into consideration that Mrs. Hevesi's husband has been and continues to be the target of numerous threats and, to that extent, a threat risk is indicated." (bold in original) Thereafter, by letter to the Comptroller dated August 19, 2003, the Superintendent of the State Police confirmed that Mrs. Hevesi had been classified a "Low Threat Risk," but added, "at this time there does not appear to be a nexus between your high public office and Mrs. Hevesi's safety."

17. The two primary employees assigned to Mrs. Hevesi, Burke and Acquafredda, were not members of Hevesi's security team and had no training in security. Acquafredda testified that he did not regard himself as someone who was supposed to provide security to Mrs. Hevesi or "someone who was asked to defend her against an individual." He stated that in all the years of his assignment to Mrs. Hevesi, he was not briefed on any specific threat against either Hevesi or his wife and had no regular contact with security personnel. And, if he needed assistance with respect to Mrs. Hevesi, he said, he would "dial 911."

Hevesi Failed to Maintain Records

18. Notwithstanding the Ethics Commission's opinion, upon its receipt Hevesi did not account to the State for his use of state resources that already had been expended on his wife from January 2003 through May 2003. Nor did he institute any measures to account for non-official services that would be provided in the future.

19. Hevesi has admitted that he kept no records and did not instruct anyone on his staff to keep records of the time that state employees spent on assignment to his wife. He testified before the Ethics Commission that: "I am sitting here because I did not deal with the issue in the advisory that you drafted, a very clear, thorough, professional advisory which added the element of reimbursement for the non-security portion of any expenditures of somebody providing driving/security. But I didn't do it. I didn't think it through, and there is no excuse[] for that. I should have, but I didn't do it." In a later submission to the Ethics Commission, Hevesi stated,

“My fault, given the guidance I received, was the absence of good recordkeeping and failure to make regular repayments to the State for that portion of staff time that may not have directly related to [my wife’s] safety and security needs.”

20. In September 2006, after the matter was publicly disclosed, Hevesi instructed his Deputy Chief of Staff to calculate the amount that Hevesi should reimburse the state for the period of time that Acquafredda drove his wife. The Deputy Chief of Staff based her calculation on Acquafredda’s “best estimate” of his own time usage. She consulted only one of Acquafredda’s direct supervisors, and she did not review computer records that that supervisor told her would have shown dates on which Acquafredda was in the office. She advised Hevesi as to the method she used to arrive at the calculation. He did not modify or amend it. He did not direct her to seek or review any records to verify Acquafredda’s estimate. He did not direct her to include the value of the other drivers’ time in the amount of the estimated reimbursement.

21. On September 25, 2006, Hevesi sent a letter to the Ethics Commission requesting it to “review my actions in regard to the use of one of my employees in providing security and transportation to my wife.” In that letter, Hevesi wrote that Acquafredda was “the only employee about whose time these questions have been raised.” Hevesi omitted the fact that there were other employees who provided similar services to Mrs. Hevesi, including Burke, who had done so intermittently over the course of eight months.

22. In his September 25 letter, Hevesi also informed the Ethics Commission that he had decided to reimburse the State for the cost of all time Acquafredda had spent with his wife. He stated that he had “instructed [his] Deputy Chief of Staff to make a current approximation of the amount of reimbursement owed to the State for Mr. Acquafredda’s time,” and that such calculation with interest was \$82,688.82. He informed the Ethics Commission that he would be sending a check in that amount to the New York State Commissioner of Taxation and Finance and further stated, “If you deem it appropriate, I would welcome your opinion with respect to the amount of this reimbursement.”

23. Also by letter dated September 25, 2006, Hevesi remitted a check in the amount of \$82,688.82 to the New York State Department of Taxation and Finance and wrote that the payment was “to reimburse the State for the time of Nicholas Acquafredda, an employee of the Comptroller’s Office, for portions of the years 2003 through 2006.”

24. On October 11, 2006, the day before Hevesi was scheduled to testify under oath before the Ethics Commission, the Department disclosed in a document production that other state employees had also been assigned to Mrs. Hevesi, including Burke. When he testified the next day, Hevesi acknowledged this personally, and stated that he had previously not recalled the other employees.

25. In an undated post-testimony submission faxed to the Ethics Commission on October 17, 2006, Hevesi wrote that he “made the determination that [he] would reimburse the State for 100% of the estimated time that was spent, in particular by Acquafredda, without distinction as to security purposes.” He also stated that he would make similar reimbursement for “the one or two other drivers” who were assigned to Mrs. Hevesi.

26. Hevesi has not, nor has the Department independently, advanced an accounting of the total amount of money Hevesi owed the State for his use of state employees for non-official services.

The OAG’s Gathering of Documents

27. Beginning in early October 2006, the Ethics Commission requested records from the Department showing the time that Acquafredda and others spent on assignment to Mrs. Hevesi. Specifically, by letter dated October 4, 2006, the Ethics Commission requested records reflecting the dates that any state employee provided security, transportation, or other services or assistance to Mrs. Hevesi since January 1, 2003. On October 11, 2006, the Department responded: “There are no OSC documents that reflect the dates of that service.”

28. On October 25, 2006, the OAG made a written request of the Department, asking that it voluntarily produce by November 1, 2006, all records tending to demonstrate when

Acquafredda was physically present at or absent from the Department's offices from January 2003 through July 2006, including "[r]ecords that reflect work on the Department's computer system, including sending or opening emails, creating, reviewing, or opening documents, and making entries into any kind of case management or other computer system or program;" "[r]ecords of logging in or out of any computer system employed by the Department;" "[r]ecords of any and all swipe or proximity cards issued to Acquafredda;" "[s]ign in or out records, of any kind, for the office or for the building;" and "[r]ecords documenting work or attendance at another Department office or other site." In that letter, the OAG also requested similar information for Burke, Johnson, and Piccard.

29. On the same date, October 25, 2006, the OAG made a written request of Hevesi, asking that he voluntarily produce by November 1, 2006, certain documents, including "[a]ny and all records reflecting Carol Hevesi's activities or appointments from January 2003 to July 2006."

30. On November 1, 2006, Hevesi, in response to the OAG's request, delivered to the OAG appointment books belonging to Mrs. Hevesi for the period December 2003 to June 2006.

31. Between November 1, 2006 and November 13, 2006, the Department, in response to the OAG's request, delivered to the OAG certain records and asserted that others did not exist. Included in this production were records of entries made by Acquafredda into the Department's case management system; records of emails sent by Acquafredda from a Department computer; records of Acquafredda's logins to the Department's computer; records of Acquafredda's attendance at Department training sessions; and records of telephone calls placed from a telephone that was on Acquafredda's desk in an open cubicle.

32. Regarding records of entry in and out of Department offices and buildings, the Department represented that the Maiden Lane building to which Acquafredda was assigned until late 2005 did not require a swipe or proximity card to enter. Subsequent visible inspection at that building by the OAG showed that the Department had an electronic keypad entry system to its offices. The Department has represented that it has no records of employee use of that system

during the relevant time period. Department employees were admitted to the executive offices at 633 Third Avenue, to which Acquafredda was assigned in 2006, through the use of a swipe card.² The building maintained those records for 18 months. The Department represented that it never had obtained those records for itself. In the course of the OAG's inquiry, the Department provided the OAG with a letter of consent enabling the OAG to obtain these records directly from the building.

33. The Department's production of records to the OAG did not include documents maintained by Burke at the Department in which he recorded days on which he had driven Mrs. Hevesi. The OAG first learned of these documents from Burke when he provided them to the OAG at his interview on November 20, 2006. At that interview, Burke told the OAG that he previously had offered these documents to the Counsel to the Department, who declined his offer.³

34. On December 4, 2006, the Department produced to the OAG nine pages from Hevesi's schedule, each bearing the handwritten entry "Nick." The Department stated that these pages "might possibly relate to driving Mrs. Hevesi." The pages had not been previously produced to the Ethics Commission and were among the type of records that the Department had previously represented did not exist. (See supra at ¶ 27.) When the Department produced these records to the OAG, it stated that they had been "discovered" during the latter part of the week of November 27, 2006.

35. On December 7, 2006, the OAG raised concern with the Department about the records the Department had produced in November 2006 regarding Acquafredda's use of the Department's computerized case management system. The next day, December 8, 2006, the

²The Comptroller's offices at that location had a swipe card system on the 31st floor and the Department produced those records.

³In a letter dated November 1, 2006, accompanying the Department's document production to the OAG, the Counsel to the Department stated that "documents that may be in the custody or control of an individual or another entity are not included as part of this response." A similar qualification was made by the Counsel to the Department in a document production to the Ethics Commission dated October 11, 2006.

Department advised that the records had the effect of overstating Acquafredda's use of the case management system, and identified which entries it believed should be disregarded.

The OAG's Reconstruction and Calculation

36. Based on a preliminary review of the documents provided, on November 2, 2006, the OAG demanded that Hevesi provide the State with an additional \$90,000 to hold in escrow pending the completion of the OAG's inquiry. Hevesi remitted a check in that amount on November 3, 2006. Subsequent analysis has shown that Hevesi owes an additional \$33,604.97.

37. The OAG used the following methodology to calculate a repayment amount: first, the OAG mapped the data relevant to Acquafredda's whereabouts and Mrs. Hevesi's activities onto a calendar. Second, using the calendar, the OAG determined each day (or half day) that the evidence did not show conclusively that Acquafredda was at his assigned work station. Third, using Acquafredda's salary plus the value of his fringe benefits, the OAG calculated a daily rate for Acquafredda's time, and multiplied this rate by the days or half days where the evidence did not show Acquafredda at his work station. Fourth, the OAG added charges for the proportionate amount of Acquafredda's paid and accrued vacation and leave time and for interest on the total. Fifth, using available documents and testimony, the OAG performed similar calculations for the other three drivers, Burke, Johnson, and Piccard.

Step 1: The Data

38. First, the data obtained from the Department was mapped on a calendar from June 2003, when Acquafredda initially was assigned to Mrs. Hevesi, to June 2006, when the assignment ended. This was done to determine what days Acquafredda physically was present at his work station. The information included data that showed whether Acquafredda: (1) attended Department training; (2) used a swipe or proximity card to enter the office's buildings or floors; (3) logged onto a Department computer; (4) sent emails from a Department computer; and (5)

made entries into the Department's computerized case management system.⁴ Given the configuration of the Department's network, Acquafredda could perform computer tasks only when in the office; he had no remote log-in capability.⁵ This data was entered on the calendar in blue.

39. Second, relevant entries from Mrs. Hevesi's appointment book were mapped onto the calendar in red. When Mrs. Hevesi's appointment book reflected a medical appointment, that appointment was recorded on the calendar in red as "Medical." When Mrs. Hevesi's appointment book reflected other personal matters or responsibilities (such as hair and nail salon visits, household errands and shopping, and lunch appointments), those entries were recorded on the calendar in red as "Personal." When Mrs. Hevesi's appointment book had a specific reference to Acquafredda, that reference was recorded on the calendar in red as "Nick." In addition, for each day in 2006 that Mrs. Hevesi's appointment book had a specific reference to knee exercises on a Continuous Passive Motion machine, that reference was recorded on the calendar in red as "CPM Machine."

40. Third, days in 2003 when Burke or Piccard drove Mrs. Hevesi were recorded on the calendar by reference to their respective names in black.⁶

41. The calendar bearing these entries is attached hereto as Exhibit A.

42. After a draft calendar was prepared and provided to his counsel, the OAG invited Hevesi to provide any evidence beyond what had already been provided that would demonstrate

⁴The Department represented that it had "no record of any computer logins prior to March 11, 2005." In addition, it represented that it had "no record of when emails are opened" and that records of any deleted emails did not exist. Further, it represented that it did "not have" swipe card records for entry onto the 31st floor at 633 Third Avenue reflecting activity that occurred prior to June 30, 2005.

⁵In response to the OAG's request, the Department also delivered to the OAG records of telephone calls placed from Acquafredda's assigned telephone line and represented that it had "no record of "hard-line telephone usage prior to February 2004." Whereas using the Department's computer required a unique log-in and could be done only in the office, anyone in the office could have used the telephone in Acquafredda's open cubicle. The telephone records, consequently, although mapped on the calendar, were not used to determine days on which Acquafredda was in the office.

⁶There are additional days prior to June 2003 that Burke was assigned to Mrs. Hevesi. In addition, the day Johnson was assigned to Mrs. Hevesi is not reflected on the calendar because the exact date is unknown. The OAG has included all of these days in its calculation.

Acquafredda's physical presence at his workplace. None was provided.

Step 2: Conclusions drawn from the data

43. Three types of days emerge from the mapped data. First, there were numerous days for which no data of any kind placed Acquafredda at the office during regular business hours. The OAG charged Hevesi for each of these days in full, and they are reflected on the calendar, Exhibit A, in bright yellow. Second, there were days on which the records show that Acquafredda was at the office during regular business hours performing work. The OAG did not charge Hevesi for these days, and they are reflected on the calendar in white. Finally, there were days on which there were few indications that Acquafredda was at the office, or the indications showed that he was in the office for only half the day, either in the morning or the afternoon. In each of these cases, the OAG exercised judgment based on the number and the timing of the electronic "fingerprints," sometimes charging Hevesi a full day, sometimes a half day, and sometimes not at all. Half days appear on the calendar in light yellow.

Step 3: Acquafredda's daily rate

44. The Department provided Acquafredda's salary, merit award, and fringe benefits for the time periods in question. For each year in the period under review, taking the total days in each such period, subtracting weekends, and then dividing that number by Acquafredda's salary and fringe benefits for the period, yielded the daily rates for Acquafredda for each year.

45. Multiplying the daily rates by the time charged to Hevesi yielded the total amount of money the State paid to Acquafredda for services provided to Mrs. Hevesi.

46. A spreadsheet showing these calculations is attached hereto as Exhibit B.

Step 4: Proportionate vacation time and interest

47. Acquafredda's vacation, sick, and other leave days, as well as accrued vacation and personal leave, were multiplied by the percentage of time he spent on non-official duties for Mrs. Hevesi and by the daily rates during the relevant periods to calculate the value of the pro rata vacation and other personal leave owed by Hevesi to the State. This number was added to the

number yielded in Step 3.

48. Finally, interest calculated was based on the prime rate compounded annually to determine the total amount owed by Hevesi to the State.

49. The spreadsheet attached hereto as Exhibit B shows these calculations.

50. The same methodology was used to calculate the amount owed for Burke, Johnson, and Piccard except that because those employees used a state car to transport Mrs. Hevesi, the cost of the mileage driven between the office where they worked at 633 Third Avenue and the Hevesi house in Queens was added to the daily rate, as well as any reimbursed travel expenses. A spreadsheet showing these calculations is attached hereto as Exhibit C.

51. Adding the cost of Acquafredda (\$195,065.50) to the other drivers (\$11,228.29) equals a total of \$206,293.79 that Hevesi owed to the State. Of that total, Hevesi previously has paid \$82,688.82 and placed an additional \$90,000 in escrow, leaving a balance of \$33,604.97.

52. A summary of the total calculations for Acquafredda, Burke, Johnson, and Piccard, the payments made by Hevesi, and the balance owed is attached hereto as Exhibit D.

RELIEF

WHEREAS, the OAG is willing to accept the terms of this Assurance, pursuant to New York Executive Law § 63(15), and to discontinue its inquiry;

WHEREAS, the acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of Hevesi's conduct and Hevesi shall make no representation to the contrary;

WHEREAS, Hevesi is willing to enter into this Assurance without admitting or denying the OAG's findings; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED by and between the parties that:

1. The \$90,000 held in escrow by the OAG shall be released to the State of New York.

2. Within ten calendar days of execution of this Assurance, Hevesi shall pay the State the amount of \$33,604.97. This amount added to Hevesi's \$82,688.82 payment and the \$90,000 escrow payment equals the total amount the OAG finds that Hevesi owes to the State to reimburse it for the costs incurred for his use of state resources for his wife.

3. This Assurance shall be effective as of the date it is executed by the parties.

4. 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 Alan G. Hevesi to:

Stephen E. Kaufman, Esq.
Stephen E. Kaufman, P.C.
277 Park Avenue
New York, New York 10017
212-826-0820
fax 212-832-8532

and

Joel Cohen, Esq.
Stroock
180 Maiden Lane
New York, New York 10038
212-806-5644
fax 212-806-2644

If to the OAG to:

Office of the Attorney General
Public Integrity Unit
120 Broadway, 22nd floor
New York, New York 10271
Attn: Carrie H. Cohen, Esq.
212-416-8242
fax 212-416-8026

or to such other address or facsimile number as such party may hereafter specify by written notice to the other parties to this Assurance. Each such notice, request or other communication shall be effective (i) if delivered in person, when such delivery is made; (ii) if delivered by overnight courier, the next business day after such delivery is sent; (iii) if delivered by certified mail return

receipt requested, as of the date noted as the date of delivery on the return receipt; or (iv) if delivered by facsimile, when such facsimile is transmitted and the appropriate confirmation is received.

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

6. This Assurance constitutes the entire agreement, and supersedes all prior Assurances, agreements, and understandings, both written and oral, among the parties with respect to the subject matter of this Assurance. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made or relied upon by any party to this Assurance.

7. This Assurance may be executed in counterparts, each of which shall be considered the same as if a single document shall have been executed, but shall become effective when such counterparts have been signed by each of the parties hereto.

8. The use of titles in this Assurance is for purposes of clarity only.

9. 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, no party shall assert that such invalidity, illegality, or unenforceability affects any other provision of this Assurance.

10. The OAG retains the right under Executive Law Section 63(15) to compel compliance with this Assurance. Evidence of violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any civil action or proceeding thereafter commenced by the OAG. Should it be determined that a breach or other violation of this Assurance has occurred, said breaching party shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including, without limitation, legal fees, expenses, and court costs.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on the 12th of
December, 2006.

Office of the Attorney General of the State of New York
120 Broadway
New York, New York 10271
(212) 416-8242

By: _____
Carrie H. Cohen
Assistant Attorney General in Charge
Public Integrity Unit

ALAN G. HEVESI

By: _____
Alan G. Hevesi

By: _____
Stephen E. Kaufman
Stephen E. Kaufman, P.C.
Attorneys for Alan G. Hevesi
277 Park Avenue
New York, New York 10017
212-826-0820

By: _____
Joel Cohen, Esq.
Stroock
Attorneys for Alan G. Hevesi
180 Maiden Lane
New York, New York 10038
212-806-5644