SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

THE STATE OF NEW YORK, by ELIOT SPITZER, ATTORNEY GENERAL OF THE STATE OF NEW YORK, Plaintiff, – against – BUFFALO OFFICE INTERIORS, INC., Defendant.	Index No. 04- **VERIFIED COMPLAINT AND JURY DEMAND**

The State of New York, by and through its attorney, Eliot Spitzer, Attorney General of the State of New York, as and for its complaint, alleges, upon information and belief, as follows:

NATURE OF ACTION

1. The State of New York, by Eliot Spitzer, Attorney General of the State of New York (the "State," "Attorney General," or "Plaintiff") brings this action pursuant to the New York Executive Law § 63-c (the "Tweed Law") to recover government money without right obtained from the County of Erie ("Erie County" or the "County") by Defendant Buffalo Office Interiors, Inc.'s ("BOI" or "Defendant") breach of contract.

2. Pursuant to the Tweed Law, Plaintiff seeks to recover from BOI the County funds it without right obtained and other related damages and compensation.

PARTIES AND JURISDICTION

3. Plaintiff, the State of New York, is represented by its chief legal officer, Eliot Spitzer, Attorney General of the State of New York. The State has authority to bring this action pursuant to the Tweed Law, which permits the State to recover local government funds that are "without right obtained." Under the Tweed Law, such authority exists whether an action by the locality to recover the funds "is or is not pending" at the time that the State commences its action. Pursuant to the Tweed Law, upon commencement of such an action by the State, the entire cause of action "is transferred to and becomes absolutely vested in the state."

4. Defendant BOI is a New York corporation doing business in the State of New York. BOI is located at 1418 Niagara Street, Buffalo, New York 14213. BOI is a distributor of office furniture for various manufacturers.

5. As the acts alleged herein occurred in the County of Erie and Defendant resides in the County of Erie, venue is proper in this County.

FACTUAL ALLEGATIONS

6. From January 1, 2001 through and including December 31, 2003 ("2001-2003"), BOI sold the County approximately $2 million of office furniture manufactured by Haworth, Inc. ("Haworth"). Such sales were made pursuant to annual contracts with the County, each of which contained a clause known colloquially as a "most favored nation" clause, a provision ensuring that the County would pay no more for the furniture than any other BOI customer. In addition to the "most favored nation" clause, the contracts had an additional price protection clause. This clause required BOI to sell Haworth furniture to the County at BOI's bid price or the price available through the State contract for Haworth, "whichever [wa]s more favorable to Erie County."

7. First, in breach of the "most favored nation" clause, BOI sold Haworth furniture to the County at higher prices than it charged other customers for the same or substantially similar furniture.

8. Second, in breach of BOI's contractual obligation to use the Haworth rate "most favorable" to the County as between the bid price and Haworth's State contract price, BOI used the less favorable of the two, *i.e.*, the County rate.

9. As a result of BOI's contract breaches, during 2001-2003, the County overpaid BOI and BOI without right obtained more than $500,000.

BOI's 2001 County Contract: 210082-V

10. In late 2000, the County issued to the public an Invitation to Bid on office supplies and equipment for the calendar year 2001. The Invitation to Bid solicited bids for office furniture made by a variety of named manufacturers and requested potential vendors to bid by naming a percentage by which they would discount manufacturers' list prices for furniture. For that discounted price, winning bidders would provide, deliver, and install the furniture. The bid number was 210082-V.

11. The 210082-V bid documents contained a "most favored nation" clause: "PRICES CHARGED TO THE COUNTY OF ERIE are to be no higher than those offered to any other governmental or commercial consumer." (Emphasis and capitalization in original.)

12. The 210082-V bid documents also required bidders to disclose the existence of any relevant State contract: "If a bidder has a New York State or a Federal GSA contract for any of the items covered in this bid or any similar items, he shall so indicate that he has said contract on

these bid papers and automatically supply a copy of this contract within five days after notification of award."

13. On or about December 19, 2000, BOI submitted its bid package to the County for Bid No. 210082-V. BOI's bid package contained the Invitation to Bid (which recited the "most favored nation" clause), the Bid Specifications, a list of manufacturers with any corresponding bid by BOI, the Instructions to Bidders, and Invitation to Bid exhibits.

14. On page 2H of the bid package, BOI offered a discount percentage of 50% for Haworth furniture. BOI did not on that page (or elsewhere in its submitted bid package) disclose that the State had an extant contract with Haworth and that BOI served as Haworth's representative in Erie County.

15. By letter dated January 9, 2001 from the County to BOI, the County awarded BOI the Haworth contract as follows: a discount rate of "50% or NYS Contract, whichever is more favorable to Erie County."

16. Upon information and belief, in violation of the bid contract, BOI failed to supply the County with a copy of Haworth's State contract within five days after the 210082-V bid award.

<u>BOI's 2002 County Contract: 220061-V</u>

17. In late 2001, the County issued to the public an Invitation to Bid on office supplies and equipment for the calendar year 2002. The Invitation to Bid solicited bids for office furniture made by a variety of named manufacturers and requested potential vendors to bid by naming a percentage by which they would discount manufacturers' list prices for furniture. For that discount price, winning bidders would provide, deliver, and install the furniture. The bid number

was 220061-V.

18. The 220061-V bid documents contained a "most favored nation" clause: "PRICES CHARGED TO THE COUNTY OF ERIE are to be no higher than those offered to any other governmental or commercial consumer." (Emphasis and capitalization in original.)

19. The 220061-V bid documents also required bidders to disclose the existence of any relevant State contract: "If a bidder has a New York State or a Federal GSA contract for any of the items covered in this bid or any similar items, he shall so indicate that he has said contract on these bid papers and automatically supply a copy of this contract within five days after notification of award."

20. On or about December 13, 2001, BOI submitted its bid package to the County for Bid No. 220061-V. BOI's bid package contained the Invitation to Bid (which recited the "most favored nation" clause), the Bid Specifications, a list of manufacturers with any corresponding bid by BOI, the Instructions to Bidders, and Invitation to Bid exhibits.

21. On page 2F of the bid package, BOI offered a discount percentage of 50% for Haworth furniture. BOI did not on that page (or elsewhere in its submitted bid package) disclose that the State had an extant contract with Haworth and that BOI served as Haworth's representative in Erie County.

22. By letter dated January 9, 2002 from the County to BOI, the County awarded BOI the Haworth contract as follows: a discount rate of "50% or NYS Contract, whichever is more favorable to Erie [sic] County of Erie."

23. Upon information and belief, in violation of the bid contract, BOI failed to supply the County with a copy of Haworth's State contract within five days after the 220061-V bid

award.

BOI's 2003 County Contract

24. Bid No. 220061-V provided the County with the option to offer an extension of any contract made pursuant to the 2002 bid process on the same bid price and for no more than two successive time periods of equal length.

25. By letter dated December 20, 2002 from the County to BOI ("December 20 letter"), the County offered BOI an extension of its 2002 contract for calendar year 2003 under the "same terms, conditions, and discounts as established per bid #220061-V," which included, as also set forth in the December 20 letter, a Haworth "discount of 50% or NYS Contract, whichever is more favorable to Erie County."

26. BOI accepted the County's extension offer: at the bottom of the December 20 letter, BOI placed an X next to "Yes, BOI agrees to extend bid award at discounts offered." James Spano, President of BOI, signed and dated the acceptance December 30, 2002.

BOI's Breach of Contract

27. From 2001-2003, BOI charged the County (and the County paid BOI) approximately $2 million for Haworth furniture using the 50% discount rate. In doing so, BOI overcharged the County in excess of $500,000 in that:

a. Notwithstanding the "most favored nation" contract provision, BOI charged the County more than it charged other customers for the same or substantially similar Haworth furniture; and

b. Notwithstanding the "whichever is more favorable" contract provision, BOI charged its bid rate even though the State contract rate was "more favorable" to the County.

28. Specifically, BOI gave deeper discounts and more favorable prices to a number of customers who purchased Haworth furniture under the State contract discount rate. The discount under the State contract for Haworth furniture was approximately 69% for modular furniture and 65% for non-modular furniture. Under the State contract, however, BOI was permitted to charge additional monies for installation and design and, during the relevant years, did so. Upon information and belief, BOI charged its other customers no more than approximately 6% of the list furniture price for installation and design (4-10% is customary and usual in the industry). Consequently, BOI was giving other customers a total effective discount of approximately 63% for modular furniture and its installation and design and 59% for non-modular furniture and its installation and design. These are far deeper discounts than the 50% it charged to the County for the same type of furniture and the same level of service. For example:

a. In 2001, BOI sold Haworth modular and non-modular furniture (and comparable furniture by other manufacturers) to the Office of Court Administration for the State of New York for the new family court building in Buffalo, New York using the discount rate in the State contract and separately charging for the installation and design costs. For such sale, BOI charged for installation and design approximately 6% of list on approximately $2 million of furniture at list price.

b. In 2002, BOI sold Haworth modular and non-modular furniture (and comparable furniture by other manufacturers) to the New York State Thruway Authority using the discount rate in the State contract and separately charging for the installation and design costs. For such sale, BOI charged for installation and design approximately 5.4% of list on approximately $700,000 of furniture at list price; and

c. In 2002 and 2003, BOI sold Haworth modular and non-modular furniture (and comparable furniture by other manufacturers) to Niagara Community College using the discount rate in the State contract and separately charging for the installation and design costs. For such sale, BOI charged for installation and design approximately 6.3% of list on approximately $550,000 of furniture at list price.

29. Upon information and belief, during 2001-2003, BOI sold other furniture brands to the County using pricing practices similar to those alleged above, resulting in other breaches of contract by BOI and damages to the County in an amount to be determined at trial.

The Comptroller's Audit and the County's Lawsuit

30. In April 2004, the Erie County Comptroller ("Comptroller") issued an audit of the County's BOI furniture purchases from 2001-2003 ("Comptroller's Audit"). The Comptroller's Audit found that during the audit period, BOI had overcharged the County more than $500,000 for office furniture by billing the County under the County bid terms rather than the State bid terms, which it found were more favorable to the County.

31. In response to the Comptroller's Audit, the County Attorney, on behalf of the County, issued an opinion letter dated April 16, 2004, stating, "there has been no legal breach of contract by BOI which resulted in overpayments by the County of Erie."

32. Also in response to the Comptroller's Audit, the County Executive, Joel A. Giambra ("Giambra"), issued a letter dated April 21, 2004, stating, "there is no basis on which to pursue any meaningful recovery from Buffalo Office Interiors." The letter also said that Giambra was "shocked and saddened that my good friend James Spano, and his company Buffalo Office Interiors, has been injured by the Comptroller's allegations."

33. On April 23, 2004, the Attorney General announced that it was conducting an investigation relating to the findings in the Comptroller's Audit.

34. After the Attorney General announced its investigation, the County hired outside counsel. By Summons and Complaint dated May 10, 2004, the County, by its outside counsel, brought suit against BOI for breach of contract in New York Supreme Court, Erie County, Index No. I2004-4600.

FIRST CAUSE OF ACTION:
N.Y. Exec. L. § 63-c; Breach of Contract

35. Plaintiff repeats and realleges paragraphs 1 through 34 as if fully set forth herein.

36. By charging the County more for installation and design of furniture than it charged its other customers, BOI breached its contractual obligation to charge the County no more than it charged any other customer.

37. As a result of BOI's breach of contract, BOI without right obtained, received, converted, and disposed of money, funds, credits, and other property held and owned by the County.

38. As a result of BOI's breach of contract, the County suffered damages in excess of $500,000 or an amount to be determined at trial.

39. Pursuant to New York Executive Law § 63-c(1), the State may maintain an action to recover the monies, funds, credits, and other property without right obtained, received, converted, and disposed of and damages or other compensation for so obtaining, receiving, converting, and disposing whether another action for the same cause "is or is not pending when the action in favor of the state is commenced." Pursuant to New York Executive Law § 63-c(2), upon

commencement by the State of such action, the entire cause of action "is transferred to and becomes absolutely vested in the state."

40. Pursuant to New York Executive Law § 63-c, the State seeks recovery from BOI of the monies, funds, credits, and other property without right obtained, received, converted, and disposed of and damages or other compensation for so obtaining, receiving, converting, and disposing.

SECOND CAUSE OF ACTION:
N.Y. Exec. L. § 63-c; Breach of Contract

41. Plaintiff repeats and realleges paragraphs 1 through 40 as if fully set forth herein.

42. By charging the County the 50% discount rate for Haworth furniture instead of using the State contract rate, which was more favorable to the County, BOI breached its contractual obligation to charge the County a discount rate of "50% or NYS Contract, whichever is more favorable to Erie County."

43. As a result of BOI's breach of contract, BOI without right obtained, received, converted, and disposed of money, funds, credits, and other property held and owned by the County.

44. As a result of BOI's breach of contract, the County suffered damages in excess of $500,000 or an amount to be determined at trial.

45. Pursuant to New York Executive Law § 63-c(1), the State may maintain an action to recover the monies, funds, credits, and other property without right obtained, received, converted, and disposed of and damages or other compensation for so obtaining, receiving, converting, and disposing whether another action for the same cause "is or is not pending when the action in favor of the state is commenced." Pursuant to New York Executive Law § 63-c(2), upon

commencement by the State of such action, the entire cause of action "is transferred to and becomes absolutely vested in the state."

46. Pursuant to New York Executive Law § 63-c, the State seeks recovery from BOI of the monies, funds, credits, and other property without right obtained, received, converted, and disposed of and damages or other compensation for so obtaining, receiving, converting, and disposing.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff requests that this Court issue a judgment and order:

A. Declaring that Defendant has converted, disposed of, obtained, and/or received public funds without right, in violation of New York Executive Law § 63-c;

B. Awarding Plaintiff the money, funds, damages, credits, or other property without right obtained, received, converted, or disposed of, and any damages or other compensation for so obtaining, receiving, paying, converting, or disposing of same in an amount to be determined at trial;

C. Awarding Plaintiff reasonable attorneys' fees and costs;

D. Ordering that any money, funds, damages, credits, or other property recovered by or awarded to Plaintiff in the action (except for any award of Plaintiff's attorneys' fees and costs to be paid by Defendant) be reinstated to the lawful custody of the County in full and without any set-off for expenses incurred by the State; and

E. Granting such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: May 13, 2004
Buffalo, New York

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