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Nonprofit Ethics Case

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NPA 601: Nonprofit Ethical Leadership

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1. Title

Paying for the Crime Without Any Time: Lithuanian Assistance Foundation Reaches \$7M Settlement for Self-Dealing

2. Summary

Does this case of a couple of Board members taking advantage of their position point to greater issues within the nonprofit sector? Read more to find out.

The Lithuanian Assistance Foundation was formed in 1991 to provide assistance to Lithuanians in need. In recent years, an investigation by the Office of the Attorney General of California found that members of the Board had been using their positions to improperly transfer donated real estate, thereby enriching themselves and depriving the nonprofit of its proper assets.

In 2020, the Attorney General of California announced that a settlement had been reached with the Lithuanian Assistance Foundation and its directors. The settlement included a payment of \$7,200,000 by the foundation, its directors and its officers, the dissolution of the foundation, and restrictions on certain individuals against serving on nonprofit boards in the future.

Litigation is lengthy and costly, so the settlement avoided a drawn-out case that would likely have led to a similar result. It also ensured that the intended beneficiaries of the funds would receive them, and it avoids repetitions of the same wrongdoing by forbidding some board members from holding positions of power in the future. The ethical question remains: is that enough?

3. Applications

This case illustrates an ethical issue that occurs far too often in the nonprofit sector. It is not uncommon for nonprofits to benefit from planned gifts that are significant and unusual, and these may often include real estate. If the bequest is not something that can be used for programs it makes sense to sell it to create revenue that *can* be used. Though it may seem harmless to sell it to yourself or a friend or family member, transactions on this scale are so consequential: 1% of the market value of \$6 million buildings would pay for quite a lot of services in Lithuania!

Financial Policies and Fund Development Ethics - this case illustrates how all nonprofits should have robust policies to safeguard their assets from being improperly diverted by individuals with decision-making authority. This includes a Whistleblowers Policy, an Audit policy, and a Conflict-of-Interest policy. These policies should not only exist but should be regularly reviewed and updated. And they should be enforced! It is incumbent upon all Directors to remind one another to declare conflicts and abstain from discussions and decision-making when appropriate (Price, 2018).

Board member education - Board members may be appointed because of their background, connections or particular skills; and they may lack knowledge about the legal and ethical expectations of their position. Nonprofits (whether they are public benefit charities, private foundations, or something else) should ensure that they educate their board members on their duties of care, loyalty and obedience (Takagi, Top 15 Nonprofit Governance Mistakes (and How to Avoid Them), 2020).

Self-dealing Transactions - the Board members of LAF admit no wrong-doing, but it is easy to see how bad the optics are in this case. Even if it is true (as they claim) that fair market prices were paid for the properties, all of the Board members who had a conflict

of interest should have recused themselves from the decision-making process (Takagi, California Nonprofit Law: The Self-Dealing Prohibition, 2017).

Integrity - there are legal reasons why the Board members of LAF should have avoided self-dealing transactions. However, we would like to offer the argument that one should do the right thing *because it's the right thing to do* - not just to avoid getting into trouble.

4. Outcomes

This case serves as a reminder that:

- All nonprofit leaders have a duty to carefully steward the resources of their organization and ensure that they are used in the furtherance of the mission. When this duty is taken seriously by leadership, it sets an example throughout every level of the organization (Conlon, n.d.).
- Optics matter - when considering possible courses of action to take, ask yourself "What would the headline be if this came out?". A leader with integrity will avoid courses of action that they would prefer to keep hidden.
- Nonprofits should be scrutinized - there are not enough safeguards in the nonprofit center to keep it safe from unscrupulous actors. It will benefit the nonprofit sector if the IRS has more funding to audit the sector more frequently.

5. Video

We believe this case demonstrates a severe lack of understanding of the fiduciary duty of nonprofit Board members. Often, Board members may be elected to serve because they are connected to the founder, because they are passionate volunteers or donors, or because they have another desirable skill. Not all Board members understand the legal responsibilities that come with their new role. Thus, we have selected a short video that explains what fiduciary duty is.

Fiduciary Duty | Ethics Defined - McCombs School of Business

Retrieved from: <https://www.youtube.com/watch?v=pNoKMffph3o>

6. Description

The Lithuanian Assistance Foundation is a private foundation formed shortly after Lithuania regained its independence from the USSR in 1991, and the charitable purpose stated in its founding documents was:

“... (1) for the benefit of those people living in Lithuania or of Lithuanian descent who are orphaned, handicapped, aged or sickly; (2) for the provision of medical equipment, supplies or training for the Lithuanian people; and (3) for the provision of collegiate scholarships and student aid for the people of Lithuania, or other charitable purposes...” (Praske, 1991)

For two decades or so, the foundation appears to have abided by its mission and supported a wide variety of programs in Lithuania - in fact, one of the co-founders won the Medal of Diplomacy from the Lithuanian Embassy in Washington, D.C. in 2013 (Casuso, 2020). Around the same time, however, the Attorney General of California began an investigation into the organization, alleging that members of its Board of Directors were engaged in self-dealing transactions by transferring donated properties to themselves or their family members at below-market rates. Additionally, the Attorney General alleged that the foundation did not file accurate registration renewal documents with their office.

The parties reached a settlement in 2020 that included:

- Dissolution of the foundation within 60 days of the settlement date.
- Restrictions on serving on future nonprofit activities - one Board member was restricted from serving on a Board or founding a nonprofit in the future, while three others were required to undergo Board Member Training.
- A payment of \$7 million to the California Community Fund, which will be used to fund programs in Lithuania (California Attorney General, 2020).

From a personal perspective, this case seriously tarnishes the reputations of the Board members involved. **Albinas Markevicius** and **Joseph Praske**, the co-founders of the Lithuanian Assistance Foundation, are high profile businessmen in Santa Monica - Markevicius is a realtor with his own firm who also started a credit union, while Praske is a tax and estate planning attorney (Hall, 2020). For both individuals, a Google search of their names quickly brings up stories related to the dissolution of their foundation - it's not hard to imagine that their reputations will suffer from this case.

In the Attorney General's Guide for Charities, the duty of loyalty is explained as needing to “make decisions [that] he or she believes are in the best interests of

the corporation". The guide also advises directors to stay away from self-dealing transactions that result in "giving a material economic benefit to a director, or his or her company or partnership." Both Markevicius and Praske had the knowledge and experience to know that (at the very least) they had a conflict of interest and should have declared it. Board member **Zina Markevicius** should also have declared a conflict, as she is the daughter of a person who stood to gain from the real estate sale. This would have left one Board member, **Arunus Sodonis**, who is also an attorney and should have foreseen that these transactions were ill-advised at best (Conlon, n.d.).

Overall, the individuals escaped lightly - they were able to settle the case out of court, avoid prison time, and mount a public relations campaign to recover their reputations, even framing the story as one final act of voluntary generosity in local papers (Casuso, 2020).

From an organizational lens, we can see that this Board of Directors failed to perform their fiduciary duty, one of the primary functions of a governing body. The end result is the closure of an organization that was impactful in uplifting poor Lithuanians. Though the misappropriated funds will ultimately find their way to the intended beneficiaries through the settlement, the dissolution of the organization is a loss. If it had continued to exist, it is likely that they would have been able to continue raising funds and contributing to their chosen cause for many years to come. This Board of Directors acted in their own best interests to the detriment of a higher cause.

When we take a systems approach, two themes emerge:

1. **This behavior undermines faith in the system** - cases like this may make individuals more hesitant to donate to nonprofits in the future, and it may have an especially outsized impact on the likelihood of people choosing to leave real estate as a legacy gift.
2. **It might be worth the gamble (if you're that kind of person)** - it is unclear how the Attorney General caught wind of this particular transaction, but the consequences were not that severe. No one went to prison, no one had their professional license revoked, and the IRS took little interest. It is conceivable that this had been going on for years - after all, who takes a chance on a multi-million-dollar property for their first act of self-dealing?

The Lithuanian Assistance Foundation is not the first nonprofit to be caught engaging in this kind of behavior, but even more worrying is the nonprofits who are *not* caught. Staffing and funding of the IRS Charities Bureau has not kept

pace with the proliferation of 501(c)3 organizations, so it is likely that there are many more similar cases that are just not being detected. Many high-profile cases of unethical nonprofit leadership have emerged in the last few years, and we increasingly see how the wealthier members of society are able to use nonprofit tax benefits to their own advantage. Examples include private inurement of directors at the National Rifle Association, the college bribery scheme nicknamed 'Operation Varsity Blues' that used a nonprofit to hide bribery to admissions officials, and inappropriate payments by the Trump Foundation.

As the United States continues to grapple with judicial and economic inequities, it might be time for a reckoning on how the nonprofit sector is contributing to systemic injustice and a widening wealth gap.

7. Questions

1. Board members have a fiduciary duty to act in the best interests of the nonprofit they serve. How did the Board members of LAF fail in this duty?
2. Board members serve as volunteers, donating their time and talent to the nonprofit. Why should they not be able to benefit from transactions with the organization?
3. How did this case affect the Lithuanian Assistance Foundation?
4. What were the consequences for the intended beneficiaries of the foundation?
5. How might this case affect trust in the nonprofit sector?
6. The settlement was not an admission of guilt, and the Board members involved will not serve time in prison or have a criminal record. How does this reflect on the criminal justice system as a whole?
7. The settlement ensured that lengthy litigation was avoided and the beneficiaries of LAF's funds were provided for. Would a utilitarian think that this resolves the ethical issue?

8. Resources

Social Media Website for the now-dissolved [Lithuanian Assistance Foundation - Home](#)

Press Release on the settlement: [Attorney General Becerra Announces \\$7 Million Settlement Against Lithuanian Assistance Foundation for Illegal Self-Dealing Transactions](#)

9. Endnotes

California Attorney General. "Lithuanian Assistance Foundation Settlement Agreement." 2020.

California Department of Justice Charitable Trusts Section. "Attorney General's Guide for Charities." 2017.

https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/publications/guide_for_charities.pdf

Casuso, Jorge. Settlement Between State, Santa-Monica Based Lithuanian Foundation to Help Needy in Homeland. 2020.

https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2020/July-2020/07_17_2020_Settlement_Between_State_Santa_Monica_Based_Lithuanian_Foundation_To_Help_Needy.html

Chan, Emily. BoardSource Leadership Forum 2010 – Part II: Top Ten Legal Risks for Nonprofit Boards. 2010.

<https://nonprofitlawblog.com/boardsource-leadership-forum-2010-part-ii-top-ten-legal-risks-for-nonprofit-boards/>

Conlon, Karen. Understanding the Fiduciary Duty of Being in the Boardroom. n.d.

<https://cacm.org/understanding-the-fiduciary-duty-of-being-in-the-boardroom/>

Hall, Matthew. Charity forced to close after allegations of self-dealing. 2020.

<https://www.smdp.com/charity-forced-to-close-after-allegations-of-self-dealing/193747>

Jonker, Kim and William F. Meehan III. A Better Board Will Make You Better. 2014.

https://ssir.org/articles/entry/a_better_board_will_make_you_better

Praske, Joseph J. "Articles of Incorporation." 1991. Lithuanian Assistance Foundation.

Price, Nick. Conflict of Interest Policy for Nonprofit Boards. 2018.

<https://www.boardeffect.com/blog/conflict-of-interest-policy-for-nonprofit-boards/>

State of California Department of Justice. Attorney General Becerra Announces \$7 Million Settlement Against Lithuanian Assistance Foundation for Illegal Self-Dealing Transactions. 2020.

<https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-7-million-settlement-against-lithuanian>

Takagi, Gene. California Nonprofit Law: The Self-Dealing Prohibition. 2017.

<https://nonprofitlawblog.com/california-nonprofit-law-self-dealing-prohibition/>

Unknown. Top 15 Nonprofit Governance Mistakes (and How to Avoid Them). 2020.

<https://charitylawyerblog.com/2020/12/07/top-15-nonprofit-governance-mistakes-and-how-to-avoid-them/>

Unknown. Albinas Markevicius and Lithuanian Assistance Foundation Announce Lithuanian Charities to Receive Nearly \$7 Million From California Agreement. 2020.

<https://www.businesswire.com/news/home/20200709005916/en/Albinas-Markevicius-and-Lithuanian-Assistance-Foundation-Announce-Lithuanian-Charities-to-Receive-Nearly-7-Million-From-California-Agreement>

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