New York City Campaign Finance Board
100 Church Street, 12th Floor, New York, NY 10007
212.409.1800 | www.nyccfb.info

# Summary of Final Board Determination

## Mark Levine

### Candidate, Council District 7 (2013)

1. **Accepting and failing to report an over-the-limit contribution from a prohibited source** **$8,686**

The Act defines "independent" activity as that in which a candidate or a candidate's committee "did not authorize, request, suggest, foster or cooperate." Admin. Code § 3-702(8). If not independent, expenditures are in-kind contributions, which are considered both contributions and expenditures, subject to the contribution and expenditure limits. *See* Admin. Code § 3-703(1)(f); Board Rule 1-08(f)(1), (3). Campaigns may not accept, either directly or by transfer, any contribution, loan, guarantee, or other security for a loan from any corporation, partnership, limited liability partnership (LLP), or limited liability company (LLC). *See* N.Y.C. Charter §1052(a)(13); Administrative Code §3-703(1)(l); Board Rules 1-04(c), (e). Candidates for City Council member in the 2013 elections are not permitted to accept contributions that aggregate in excess of $2,750 from a "single source." *See* Admin. Code §§ 3-702(8), 3-703(1)(f); Board Rule 1-04(h).

Factors for determining whether an expenditure is independent include, but are not limited to:

i. whether the person, political committee, or other entity making the expenditure is also an agent of a candidate;
ii. whether the treasurer of, or other person authorized to accept receipts or make expenditures for, the person, political committee, or other entity making the expenditure is also an agent of a candidate;
iii. whether a candidate has authorized, requested, suggested, fostered, or otherwise cooperated in any way in the formation or operation of the person, political committee, or other entity making the expenditure;
iv. whether the person, political committee, or other entity making the expenditure has been established, financed, maintained, or controlled by any of the same persons, political committees, or other entities as those which have established, financed, maintained, or controlled a political committee authorized by the candidate;
v. whether the person, political committee, or other entity making the expenditure and the candidates have each retained, consulted, or otherwise been in communication with the same third party or parties, if the candidate knew or should have known that the candidate's communication or relationship to the third party or parties would inform or result in expenditures to benefit the candidate; and
vi. whether the candidate, any agent of the candidate, or any political committee authorized by the candidate shares or rents space for a campaign-related purpose with or from the person, political committee, or other entity making the expenditure.

Board Rule 1-08(f)(1). The Board considers various types of evidence of non-independent activity in evaluating third party expenditures, including without limitation common vendors and shared office space. See CFB Advisory Op. 2009-7 (Aug. 6, 2009) ("A.O. 2009-7").

The Advance Group ("TAG") is the general consultant to, and therefore an agent of, the 2013 Council campaign of Mark Levine ("the Campaign").

During the 2013 election, New Yorkers for Clean, Livable and Safe Streets ("NYCLASS") was located in the TAG office, its political director was TAG president Scott Levenson, its communications director was TAG communications director Chelsea Connor, it paid TAG for wages, and its Independent Expenditure Disclosure System ("IEDS") account was established, and its filings submitted, by TAG's director of lobbying and government relations, Jamin Sewell.

The relationships between the Campaign and TAG, and between NYCLASS and TAG, satisfy Board Rule 1-08(f)(1)(v): the entity making the expenditure (NYCLASS) and the candidate (Levine) "have each retained, consulted, or otherwise been in communication with the same third party" (TAG), and "the candidate knew or should have known" that his "campaign's communications with or relationship" to TAG "would inform or result in expenditures" made by NYCLASS to benefit his campaign. As a result, expenditures by NYCLASS in support of the Campaign could not be and were not independent of the Campaign.

Sewell, who had frequent contact with CFB staff in his capacity as NYCN4S's (New York City is Not for Sale) IEDS contact, was specifically told by CFB staff in August that, based on TAG's relationship with NYCLASS, expenditures by NYCLASS on behalf of campaigns advised by TAG would not be considered independent.

On September 8, 2013, NYCLASS reported independent expenditures on behalf of the Campaign in the amount of $8,436. On September 9, CFB staff sent a letter to the Campaign quoting Rule 1-08(f)(1)(v) and noting that, based on the above information, it appeared that the Campaign and NYCLASS had relationships with TAG as contemplated in the Rule. The letter further reminded the Campaign that non-independent expenditures made on its behalf would be considered in-kind contributions and subject to the contribution and expenditure limits of the Act.

These non-independent expenditures constitute an in-kind contribution from NYCLASS to the Campaign. The contribution is both over the limit, by $5,686 ($8,436 - $2,750), and from a prohibited source, as NYCLASS is a 5-01(c)(4) corporation. Additionally, the Campaign failed to report the contribution.

The Board assessed a penalty of $8,686 for this violation.

The Board further determined that no other compliance ramification or public funds determination related to these expenditures will be included in the Campaign's post-election audit.

The complete text of the Final Board Determination is below.

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May 21, 2014

**By First Class Mail and E-mail**

Mark Levine
[redacted]

Janet A. McDowell
Treasurer – Levine 2013
[redacted]

Levine 2013
[redacted]

Laurence D. Laufer, Esq.
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## FINAL BOARD DETERMINATION

The New York City Campaign Finance Board (the "Board" or "CFB"), at a meeting held on May 21, 2014, made the following final determination concerning the 2013 campaign of Mark Levine (the "Campaign"):

The Board determined that the Candidate, Mark Levine ("Levine"); the Treasurer, Janet A. McDowell ("McDowell"); and the Committee, Levine 2013 (the "Committee") (collectively, "the Campaign") violated the New York City Campaign Finance Act ("Act") and Board Rules and are jointly and severally liable for paying $8,686 in penalties as follows:

A penalty of $8,686 for accepting and failing to report an over-the-limit contribution from a prohibited source: New Yorkers for Clean, Livable and Safe Streets, Inc. ("NYCLASS"), which is a corporation. *See* N.Y.C. Charter §1052(a)(13); Admin. Code §§ 3-702(8); 3-703(1)(d), (f), (g), (l), 3-703(6)(a); Board Rules 1-02, 1-04(a), (c), (e), (g), (h), 1-08(f)(1), (3), 3-03(c), 4-01(c); CFB Advisory Op. 2009-7 (Aug. 6, 2009) ("A.O. 2009-7").

The Advance Group ("TAG") is the general consultant to, and therefore an agent of, the Campaign. During the 2013 election cycle, NYCLASS reported making independent expenditures to benefit the Campaign. At the time, NYCLASS was located in the TAG office, its political director was TAG president Scott Levenson, and its communications director was TAG communications director Chelsea Connor. Sixty-six percent of the expenditures NYCLASS reported to the New York State Board of Elections for the 2013 primary election were to TAG. NYCLASS's independent spending disclosure account was established, and its filings submitted to the CFB, by TAG's then-director of lobbying and government relations, Jamin Sewell.

The relationships between the Campaign and TAG, and between NYCLASS and TAG, satisfy Board Rule 1-08(f)(1)(v) (the "Rule"): the entity making the expenditure (NYCLASS) and the candidate (Levine) "have each retained, consulted, or otherwise been in communication with the same third party" (TAG), and "the candidate knew or should have known" that his "campaign's communications with or relationship" to TAG "would inform or result in expenditures" made by NYCLASS to benefit his campaign.[1] As a result, expenditures by NYCLASS in support of the Campaign could not be and were not independent of the Campaign. NYCLASS is a corporation and therefore prohibited from making campaign contributions, including non-independent expenditures (i.e., in-kind contributions).

On September 8, 2013, NYCLASS reported independent expenditures on behalf of the Campaign in the amount of $8,436. On September 9, Board staff sent a letter to the Campaign citing the Rule and noting that, based on the above information, it appeared that the Campaign and NYCLASS had relationships with TAG that the Rule deemed non-independent. The letter further reminded the Campaign that non-independent expenditures made on its behalf would be considered in-kind contributions and subject to the contribution and expenditure limits of the Act.

On October 1, 2013, CFB staff sent the Campaign a Notice of Alleged Violations and Recommended Penalties ("Penalty Notice") recommending that the Board find that the expenditures made by NYCLASS were not independent and therefore constituted an over-the-limit in-kind contribution from a prohibited source. The Campaign contested the staff's recommendation and requested that this matter be heard before the Office of Administrative Trials and Hearings (OATH). Consequently, on March 3, 2014, CFB staff served the Campaign with a petition recommending a penalty of $8,686 for accepting and failing to report an over-the-limit contribution from a prohibited source. The petition also recommended separate violations and penalties against co-respondents TAG and NYCLASS.

[1] "[A] 'candidate' includes every authorized committee of the candidate, the treasurer of each such committee, and any other agent of the candidate." Board Rule 1-02.

On March 28, 2014, the Campaign's attorney, Laurence Laufer, submitted a letter to CFB staff on behalf of the Campaign. The letter stated that the Campaign had no dealings with NYCLASS other than participating in its endorsement process, that the Campaign did not suggest, request, or authorize any expenditures by NYCLASS, and that therefore any such expenditure was independent and not an in-kind contribution.

On April 10, CFB staff informed the Campaign that it would be removed as a party to the OATH proceeding, though the proceeding would remain pending against TAG and NYCLASS. On April 14, the Campaign waived its right to adjudication before OATH and stated that it would not contest CFB staff's recommendation to the Board.

The Board found that NYCLASS's expenditures were not independent of the Campaign, due to both parties' relationships with TAG. Because the Campaign received the benefit of these expenditures, the Board determined that the Campaign accepted and failed to report an over-the-limit contribution from a prohibited source, and assessed a penalty of $250 plus the amount of the expenditures ($250 + $8,436 = $8,686). Because the Board found credible the Campaign's assertion that it was unaware of NYCLASS's activities, the Board determined that this matter, with respect to the Campaign, had been fully resolved. Accordingly, following the aforementioned withdrawal of CFB staff's petition and the Campaign's waiver of its right to adjudicate this matter before OATH, the Campaign decided not to contest the recommended violation or penalty, and the Board determined that no other compliance ramification or public funds determination related to these expenditures will be included in the Campaign's audit for the 2013 elections. This determination does not preclude reference to the expenditures or this Final Board Determination in the Campaign's Draft Audit Report, Final Audit Report, or any other document issued by the Board pursuant to the Campaign's audit.

The 2013 election cycle was the first in which the Board's independent expenditure disclosure rules were in effect. The fact that some campaigns may not have been fully aware of the regulations and requirements concerning independent spending informed the Board's acceptance of the Campaign's statement that it was unaware of NYCLASS's activities. However, in future election cycles, campaigns will be expected to familiarize themselves with the Board's requirements in this area, and will be held responsible for ensuring that they and their agents remain in compliance. The legal and factual conclusions stated in this Determination are limited to this Campaign, this election cycle, and the expenditures described herein, and have no legal or factual relevance to any other expenditures.

**The Board determined that the amount due is $8,686.**

You must pay to the Board the full amount due of $8,686 no later than June 23, 2014. Checks should be made payable to the "New York City Election Campaign Finance Fund," and mailed to the attention of Bethany M. Perskie, Associate Counsel, New York City Campaign Finance Board, 100 Church St., 12th Floor, New York, New York 10007, or delivered to the offices of the Board.

If the Board is not in receipt of the full $8,686 by June 23, 2014, the candidate's name and the unpaid amount will be posted on the Board's website, and the Board may initiate a civil action against the candidate and treasurer to compel payment.

You may challenge this final determination, within four months, in the New York State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

If you need additional time to pay this amount or if you have any questions concerning this Final Board Determination, please contact Ms. Perskie at (212) 409-1861 or bperskie@nyccfb.info.

[redacted]

signature on original

Sue Ellen Dodell
General Counsel

**NEW YORK CITY**
**CAMPAIGN FINANCE BOARD**

SED/BMP