

CONFIDENTIAL

Case #15-0085

**Agriculture and New York State Horse Breeding Fund
Registration of [REDACTED] Horses**

May 8, 2017

Lisa Lee

Acting Gaming Inspector General

Annette B. Almazan

Special Assistant to the Gaming Inspector General

Executive Summary

Since late July of 2015 and throughout this investigation, this Office received numerous reports of alleged misconduct from a complainant regarding the Agriculture and New York State Horse Breeding and Development Fund ("Fund").

The complainant made a number of allegations, including matters outside the scope of this Office's jurisdiction and raised issues which are more appropriately addressed via civil litigation. Following a careful review of all the information presented by the complainant, this Office commenced an investigation of the following allegations:

- 1) The Fund was violating its own conditions regarding the New York Sire Stakes ("NYSS") program by allowing ineligible horses to register for the program; and
- 2) The Harness Horse Breeders of New York State ("HHB"), the sole source provider and vendor to the Fund, did not act in the best interest of the Fund. Specifically, Betty Holt, HHB Executive Director, favored the interests of HHB board members to the detriment of the Fund, in that, she failed to properly advise former Fund Executive Director Michael Mullaney.

In support of these allegations, the complainant provided voluminous records to this Office for review, including, but not limited to, electronic documents and correspondence, FOIL responses, and documents derived from civil court proceedings.

This office reviewed records provided by the complainant, as well as the Fund, HHB, and court records. Interviews were also conducted, including, but not limited to, the complainant; Jean Brown, Blue Chip Farms Vice President/General Manager and HHB Secretary and Board Member; Betty Holt, HHB Executive Director; [REDACTED]

[REDACTED]

As a result of the investigation conducted by this Office, the following was determined:

- 1) The Fund failed to comply with its Conditions for Foals of 2011 for the NYSS program.
- 2) Mullaney deviated from the Fund's Conditions for Foals of 2011 for the NYSS program by agreeing to accept the [REDACTED] horses into the NYSS program despite knowing that the horses would not be registered with the USTA at the time of their supplemental entries.
- 3) Mullaney deviated from the Fund's Conditions for Foals of 2011 a second time by amending the previous agreement with the [REDACTED] even when they failed to

timely pay the amount due for supplemental entries and initial sustaining payments for their horses.

- 4) [REDACTED], one of the [REDACTED] horses, was listed as an eligible horse to NYSS #53 as a pacer filly despite late payments to the Fund and untimely registration with the USTA.
- 5) On at least four other occasions, Mullaney allowed other horses to register for and be eligible to one or more levels of the NYSS program although the owners/trainers did not meet the conditions regarding timely payments and/or USTA registration.
- 6) Mullaney believed that as the Fund's Executive Director he could grant a waiver to the registration deadlines for the NYSS program as set forth in the conditions.
- 7) Brown had a conflict of interest when she approached Mullaney about the [REDACTED] horses, in that, as a Board Member of the HHB, the sole source provider to the Fund, she had a fiduciary duty to ensure that all participants complied with the conditions for the NYSS program. She was well-aware that by the time supplemental entries were due, the [REDACTED] horses would not have the required USTA certificates because BCF was withholding the mating certificates, a prerequisite to obtaining USTA certificates.
- 8) Holt was faced with competing interests when made aware of the agreement regarding the [REDACTED] horses because Brown was an HHB board member to whom she reports, and Mullaney was the Executive Director of the Fund, for which she is responsible for administrating HHB's sole source contract. In an early e-mail regarding the agreement entered into by Mullaney allowing the registration of the [REDACTED] horses without USTA certificates, Holt stated to Mullaney and HHB Officers her belief in the importance of protecting the interests of the breeders and ensuring that they are paid for their services, but made no mention that the agreement violated the conditions for the NYSS program or could call the integrity of the program into question.
- 9) Although Holt and others have stated that she unequivocally told Mullaney that the [REDACTED] horses could not be registered to the program, e-mails do not support this claim. Initially, Holt noted that [REDACTED] paid \$50 fees (the cost for the May 15, 2012 nomination) rather than the \$500 supplemental entry fees, but did not raise a concern about the lack of USTA certificates. In a follow-up e-mail, Holt specifically asked whether she should hold the [REDACTED] horses for the eligible horses list, but again did not note the absence of USTA certificates.
- 10) Fund records were not maintained or retained in accordance with Fund policies and procedures, nor were the records organized in a logical fashion. Specifically, Mullaney and [REDACTED] handled the same types of records, but did not file these records together. In addition, although documents were typically stamped

received by HHB and/or by the Fund, it is unclear which stamps were from which entity, since they are not always accompanied by the entity's name or an individual's initials. There also appear to be handwritten notations on documents after they were received, and it is unknown when the notations were made and by whom because there are no dates or initials next to the notations. E-mails related to registration issues were not always included with corresponding registration records. Further, until late registration of horses to the NYSS program was raised as an issue, envelopes had not been retained to demonstrate proof of postmark date. A review of current Fund records indicates that retention of original envelopes is inconsistent.

- 11) Mullaney's e-mails were not maintained because he had been using his personal Microsoft Live account to access his Fund e-mails rather than accessing his work e-mail directly through Outlook or another program that would download and retain e-mails locally. Thus, not only are the business records of the Fund incomplete, but the confidentiality and integrity of such records are at risk of compromise.

Origin of Case

Since late July of 2015 and throughout this investigation, this Office received numerous reports of alleged misconduct from a complainant regarding the Agriculture and New York State Horse Breeding and Development Fund (“Fund”).

Nature of Allegation

The complainant made a number of allegations, including matters outside the scope of this Office’s jurisdiction and raised issues which are more appropriately addressed via civil litigation. Following a careful review of all the information presented by the complainant, this Office commenced an investigation of the following allegations:

- 1) The Fund was violating its own conditions regarding the New York Sire Stakes (“NYSS”) program by allowing ineligible horses to register for the program; and
- 2) The Harness Horse Breeders of New York State (“HHB”), the sole source provider and vendor to the Fund, did not act in the best interest of the Fund. Specifically, Betty Holt, HHB Executive Director, favored the interests of HHB board members to the detriment of the Fund, in that, she failed to properly advise former Fund Executive Director Michael Mullaney.

In support of these allegations, the complainant provided voluminous records to this Office for review, including, but not limited to, electronic documents and correspondence, FOIL responses, and documents derived from civil court proceedings.

Investigative Action

In furtherance of this investigation, records provided by the complainant, as well as the Fund, HHB, and court records were reviewed. Interviews were also conducted, including, but not limited to, the complainant; Jean Brown, Blue Chip Farms Vice President/General Manager and HHB Secretary and Board Member; Betty Holt, HHB Executive Director; [REDACTED]

Background

In 1961, the HHB and the state harness tracks established the NYSS program in an effort to promote the standardbred breeding industry. On July 2, 1965, Laws of New York, Chapter 567 of the Laws of 1965 was enacted and created the Fund to promote standardbred breeding and equine research by, among other things, administering the NYSS program. The Fund was governed by the Commissioner of the Department of Agriculture and Markets (“Ag and Markets”) and the members of the New York State Harness Racing Commission (“HRC”).

Although Laws of New York, Chapter 346 of the Laws of 1973 created the New York State Racing and Wagering Board (“RWB”) to consolidate five separate commissions, including the HRC, the HRC was reconstituted rather than abolished.

On February 1, 2013, pursuant to Laws of New York, Chapter 60 of the Laws of 2012, the RWB and the New York State Division of Lottery merged to form the Commission, and at that time, the HRC was abolished. The Fund’s composition was also changed to a board of directors¹ comprised of the chairman of the Commission or his/her designee, the Commissioner of Ag and Markets, and three members appointed by the Governor, all of whom are experienced or have been actively engaged in the breeding of standardbred horses in New York state, one upon the recommendation of the temporary president of the senate [*sic*] and one upon the recommendation of the speaker of the assembly.² In addition, the Office of Racing Promotion and Development (“ORPD”) was created within the Commission to “promote the breeding of horses and the conduct of equine research” and to administer the Fund, as well as the New York State Thoroughbred Breeding and Development Fund and the defunct New York State Quarter Horse Breeding and Development Fund Corporation.³

On September 27, 2012, Michael Mullaney was appointed as Executive Director of the Fund. In May 2013, Charles Diamond was appointed as the Director of ORPD.⁴ Initially, from February 1, 2013 until July 2013, the Fund had only one Director, Darrel J. Aubertine, the Commissioner of Ag and Markets, until Michael Kimelman⁵ was appointed as the second Director of the Fund. In October 2013, Aubertine resigned as Commissioner of Ag and Markets, and Barry Sample, a recent appointee to the Commission, was delegated Chair of the Commission by Governor Andrew M. Cuomo. In January 2014, Richard A. Ball was appointed Commissioner of Ag and Markets, and Peter Arrigenna⁶ was appointed as the fourth Director of the Fund. Thus, as of January 2014, there were a sufficient number of directors to constitute a quorum and hold a meeting. On March 4, 2014, Mark D. Gearan was confirmed as the Chair of the Commission.⁷

In 2013, the Fund’s only full-time employees were Mullaney and [REDACTED], [REDACTED]. In addition, the Fund received part-time services from [REDACTED], a [REDACTED] who also served as the Fund’s Controller, and [REDACTED] who also served as Counsel to the Fund.⁸

¹ Although the Fund’s members are still referred to as Trustees, this Report will refer to members as Directors, as they are now referred to by statute.

² See PML § 330(1).

³ See PML § 1201.

⁴ Diamond resigned as Director of ORPD in January 2015. To date, the position remains unfilled.

⁵ During the time period relevant to this investigation, Kimelman [REDACTED]

⁶ During the time period relevant to this investigation, Arrigenna served as HHB Vice President and a Board Member. Although Arrigenna stated that he stepped down as HHB Vice President when he was appointed to the Fund, HHB records identify him as the Vice President for 2014. In December of 2016, Arrigenna formally resigned from all HHB board positions, but currently remains a general member.

⁷ From October 2014 until August 2015 (during Gearan’s tenure as Chair of the Commission), Ochrym, then-Acting Director of the Division of Horse Racing and Pari-Mutuel Wagering for the Commission, was Gearan’s designee to the Fund.

⁸ [REDACTED] continues to serve as the Fund’s Controller. [REDACTED] currently serves as Counsel to the Fund.

Relevant Fund Policies⁹

The Fund's By-Laws and Code of Ethics state, among other things, that "[a]n officer or employee shall not disclose confidential information acquired by him/her in the course of his/her official duties or use such information to further his/her personal interest."¹⁰

The Fund's Communications & Computer Policy states, among other things, that "[e]-mail will not be used for illegal, disruptive, unethical or unprofessional activities or to misrepresent, slander or otherwise jeopardize the legitimate interests of the Fund" and that "[e]-mail is the property of the Fund and shall not be considered private."¹¹

On April 25, 2008, the Fund signed a notification of intent to use the general retention and disposal schedule for New York State government records, which states, among other things, that "[t]hose [e-mail] messages and attachments which are records should be maintained in appropriate electronic or paper files."¹²

Relevant HHB Contract Provisions¹³

Historically, the Fund utilized HHB to promote its mission. HHB, a not-for-profit organization, was recognized by the Fund to be a sole source provider with respect to the effective and efficient promotion of the standardbred breeding industry because HHB's mission is "substantially aligned with the mission of the Fund"¹⁴ and represents a majority of the breeders of registered standardbreds throughout New York State. As such, the Fund found that the HHB was "uniquely positioned to carry out, on a cost-effective basis, the measurable objectives of the Fund by advancing and promoting the standardbred racing industry, and agricultural pursuits generally, throughout the State of New York."¹⁵ Until 2004, HHB, rather than the Fund, was solely responsible for registrations and payments related to the Fund's programs. It should be noted that HHB's primary source of revenue is its contract with the Fund.¹⁶

⁹ The Fund by-laws, code, and policies referred to in this Report are the ones in effect during the time period relevant to this investigation and are annexed hereto as Exhibit "1," with each policy assigned its own letter.

¹⁰ See Fund, "By-Laws of the Agriculture & NYS Horse Breeding Development Fund," at Art. XI, Sec. 2, and Fund, "Code of Ethics," approved Jul. 15, 2010, annexed hereto as Exhibits "1A" and "1B," respectively.

¹¹ See Fund, "Communications & Computer Policy," approved Nov. 27, 2007, annexed hereto as Exhibit "1C."

¹² See N.Y.S. Archives, Office of Cultural Education, N.Y.S. Education Dep't, "General Retention and Disposition Schedule for New York State Government Records," eff. Jan. 2008, recirculated Jun. 15, 2011, at 6, http://www.archives.nysed.gov/common/archives/files/mr_pub_ed1.pdf.

¹³ See 2013 Independent Contractor (I.C.) Agreement, annexed hereto as Exhibit "2."

¹⁴ *Ibid.*, at Single Source Provider Document and Resolution. It should be noted that the Fund recently issued a Request for Proposal ("RFP") for Marketing and Public Relations Services and a Request for Quotations ("RFQ") for Administrative Services. As a result of the RFP and RFQ, Capitol Hill Management was awarded both contracts to provide administrative and marketing services to the Fund and HHB ceased serving as a sole source provider as of May 1, 2017.

¹⁵ *Ibid.*

¹⁶ In 2008, during Robert Brooks' tenure as HHB Executive Director (September 2003 until January 2009), HHB did not have a contract with the Fund. However, HHB still published the Stallion Directory and engaged in joint promotional events with the harness tracks. When HHB resumed its contractual relationship with the Fund in July 2009, it was initially only for publicity and promotional services.

Traditionally, HHB conducted most of the administrative and promotional functions for the Fund. Its contractual responsibility primarily included the following:

- 1) Receiving, maintaining, and managing the paperwork and payments for the NYSS program, including stallion registration, mare residency, shipped semen, and mares bred;
- 2) Maintaining a database used to calculate points/earnings for the various programs;
- 3) Compiling a directory of NYSS-eligible stallions;
- 4) Maintaining the Fund's website;
- 5) Proposal of NYSS program conditions and schedule;
- 6) Coordinate and implement promotional activities (e.g., farm tours, trade shows and exhibits, scholarship races, and annual award banquets) and advertising;
- 7) Host educational ownership and breeding seminars;
- 8) Prepare Annual Reports and other related historical data reports; and
- 9) Provide consulting services as requested by the Fund.¹⁷

Further, any confidential information HHB may become privy to as a vendor to the Fund must not be divulged, furnished or made accessible to others unless allowed and/or directed by the Executive Director.¹⁸

NYSS Program Eligibility for Foals of 2011¹⁹

The core program of the Fund, and thus, the majority of the HHB's work, is the NYSS program. The NYSS program is comprised of three levels – the NYSS races (held at pari-mutuel racetracks), Excelsior/State Fair Series races, and County Fair races. The Fund provides purse money for these races and additional awards to winning New York-bred standardbred horses to promote the breeding, buying, and racing of standardbred horses in New York State.²⁰ Every year the Fund, with recommendations from the HHB, issues conditions dictating eligibility for participation in the program.

The conditions for foals of 2011 to participate in two-year old and three-year old races included a mandatory nomination fee of \$50 that was due on May 15, 2012. However, if a registrant missed the nomination fee deadline, a horse could still participate in the program if a supplemental entry (sometimes referred to as a late fee) of \$500 was paid by February 15, 2013, as well as any other sustaining (sometimes referred to as continuation) payments as required.²¹

¹⁷ See Exhibit "2," at Att. 1.

¹⁸ *Ibid.*, at Sec. 6(a).

¹⁹ See "Conditions (Foals of 2011), New York Sire Stakes No. 53," "Conditions New York Excelsior Series / State Fair Races 2013," and "2013 New York Sire Stakes County Fair Races Conditions," annexed hereto as Exhibit "3."

²⁰ The Fund also sponsors various equine educational programs, such as the 4-H program, and provides financial assistance to county agriculture societies and to the Harry M. Zweig Fund for Equine Research.

²¹ See Exhibit "3," at "Conditions (Foals of 2011), New York Sire Stakes No. 53." The conditions did not specify whether the dates mentioned are due date for receipt or for postmark; however, based on interviews and documents reviewed, it appears that the Fund and HHB treated the due date as the postmarked by date. It was not the practice of the Fund to retain envelopes until late registration of horses was raised as an issue.

The supplemental entry payment was the only provision that would allow a registrant who missed the May 15, 2012 deadline the opportunity to participate in the NYSS program. There was no provision for an extension to the February 15, 2013 supplemental entry due date.

Further, to be eligible for the NYSS program, at the time of nomination, the yearling must be named and registered with the United States Trotting Association (“USTA”), in that, the USTA registration certificate (“USTA certificate”) must be dated on or before the time of nomination and must accompany each nomination.²² There was no reference, however, regarding the time frame required for USTA registration for supplemental entries. Based on the above-stated requirements for yearlings, it would follow that at the time of the nomination or supplemental entry, the two-year old must be named and registered with the USTA, and the USTA certificate must be dated on or before the time of entry and must accompany the NYSS program registration.

Chronology of Key Communications Regarding the [REDACTED] Horses

Among the numerous allegations reported to this Office was that the NYSS program conditions for foals of 2011 were not followed and that the registration of two two-year old horses owned by [REDACTED] and [REDACTED], [REDACTED] of [REDACTED] (“[REDACTED] horses”) was allowed although they were otherwise ineligible. It was alleged that this was done, in part, to benefit Blue Chip Farms (“BCF”), one of the largest farms in New York State, whose Vice President of Operations, Jean Brown, was also an HHB board member. It was further alleged that Betty Holt, HHB’s Executive Director, did not adequately advise Michael Mullaney²³ on the matter so that she could assume his position as the Fund’s Executive Director.

A review of the records provided by the complainant and obtained from the Fund, HHB, and Brown revealed the following:

May 15, 2012: Nominations for foals of 2011 (\$50 fee) were due. Nominations were not made for the [REDACTED] horses.

February 11, 2013: Brown sent an e-mail to Mullaney regarding their conversation about the [REDACTED] horses and the stud fees owed to BCF. Brown stated that someone wanted to invest in the horses, but did not have the money to put towards the stud fees until early March. Thus, Brown proposed to Mullaney that (1) [REDACTED] be allowed to make supplemental entries and sustaining payments on an unnamed filly by [REDACTED] and [REDACTED] and an unnamed colt by [REDACTED] and [REDACTED]; (2) BCF would issue mating certificates and send copies to the USTA when it received the stud fees by March 15th, and the Fund would receive

²² *Ibid.*

²³ It should be noted that Mullaney was the subject of a prior investigation by this Office regarding his compliance with Fund policies involving credit card use, employee benefits, internal controls, procurement, and time and leave.

²⁴ Although Brown and others often fail to specify to which [REDACTED] they are referring, unless otherwise noted, it appears to be the [REDACTED].

copies of the USTA certificates; and (3) if the stud fees were not paid, payments to the Fund would be non-refundable.²⁵

February 12, 2013: Mullaney responded to Brown from his personal e-mail and carbon copied his work e-mail, [REDACTED] (at two different e-mails), and [REDACTED] stating that he just spoke with [REDACTED] who struck him as a “gentleman caught in a bad situation through no fault of his own” and “[w]hile on the phone [he] ran [Brown’s] proposal [sic] past him and he seems amenable to the terms and safeguards you laid out. As such, and with your recommendation, you certainly have the Fund’s approval to carry on.”²⁶

February 15, 2013: Supplemental entries for foals of 2011 (\$500 fee) were due. Sustaining payments for two-year old horses were also due – \$200 for NYSS #53, \$125 for Excelsior/State Fair, and \$25 for County Fair.

February 19, 2013: Brown sent an e-mail to Holt inquiring whether late payments had been made on the [REDACTED] horses. Holt replied that she had not seen any payments from [REDACTED] or a staking company on behalf of [REDACTED] but would inform Brown if she received anything from [REDACTED] that day.²⁷ Later that day, Holt sent Brown an e-mail stating that they had received payments for the two horses.²⁸

The Fund received a letter addressed directly to Mullaney and a check for \$550, both dated February 15, 2013, as well as NYSS 2013 Payment Schedule forms.²⁹ No original and/or copy of the envelope in which these documents were mailed were located in Fund files. As such, the postmark date is unknown.

February 20, 2013: Holt e-mailed Mullaney and carbon copied [REDACTED], then-HHB [REDACTED], stating that the horses were not registered, that [REDACTED] sent \$50 (yearling fee) instead of \$500 (supplemental entry fee), and asking for written direction on how to handle the payments.³⁰

²⁵ See Feb. 11, 2013 18:12:54 e-mail, annexed hereto as Exhibit “4A.” E-mails referenced throughout this Report are collectively referred to as Exhibit “4,” with each e-mail or e-mail string assigned its own letter. As each Exhibit may contain multiple e-mails, the footnote will reference the date and time of the specific e-mail as appropriate. In an effort to provide the reader with some context, generally e-mail chains rather than individual e-mails are attached.

²⁶ See *Id.*, at Feb. 12, 2013 9:57 A.M. e-mail. See also *Id.*, at Feb. 27, 2013 1:18 P.M. (reiterating that he spoke with the [REDACTED] “shortly after” Brown proposed the agreement; read Brown’s proposal to [REDACTED] who accepted the terms; and Fund’s position was “identical” to Brown’s).

²⁷ See Feb. 19, 2013 10:51 A.M. and 11:01 A.M. e-mails, annexed hereto as Exhibit “4B.”

²⁸ See Feb. 19, 2013 12:21 P.M. e-mail, annexed hereto as Exhibit “4C.”

²⁹ See Feb. 15, 2013 letter from [REDACTED] to Mullaney, Feb. 15, 2013 check from [REDACTED] to the Fund, and NYSS 2013 Payment Schedule forms (two versions for [REDACTED] the horse later to be known as [REDACTED] and one for [REDACTED]), annexed hereto as Exhibit “5A.” Faxes, letters and memoranda related to the Mathurin horses referenced throughout this Report are collectively referred to as Exhibit “5,” with each set of correspondence assigned its own letter. Although [REDACTED] February 15, 2013 letter states that the horses are unnamed, the forms indicate otherwise. It should be noted that the form does not indicate what the supplemental entry fee is or that it is being paid. See NYSS 2013 Payment Schedule form, annexed hereto as Exhibit “6.”

³⁰ See Feb. 20, 2013 3:08:13 P.M. e-mail, annexed hereto as Exhibit “4D.”

February 21, 2013: Holt e-mailed the HHB Officers, including [REDACTED] [REDACTED], and carbon copied Mullaney, including her February 20, 2013 e-mail and repeated her request for direction. She also commented that she “do[es] believe it is important to protect the breeders and ensure that they get their stud fees paid” and wanted written permission to hold the [REDACTED] horses for the eligible list.³¹

February 27, 2013: Mullaney included Holt on an e-mail string that initially included only himself and Brown and stated that “if the terms of [Brown’s] proposal, which I believe were quite generous, were not met or were broken, all bets are off.”³²

In response, Holt included [REDACTED] and [REDACTED], [REDACTED] for the Commission, on the e-mail and said that “[b]ased on the information below it is my understanding that I should return the check and forms and let Mr. [REDACTED] know that he broke the agreement that he had with Blue Chip Farm and the Fund and will not accept his horses. . . I will plan on mailing them back tomorrow if I do not hear otherwise from you.”³³ Holt also stated that she wanted to know Mullaney’s decisions on “the other horses in question.”³⁴ No e-mail response from Mullaney was found in the documents provided to or obtained by this Office.

On that same day, Holt sent a subsequent e-mail to [REDACTED] and commented “[l]ooks like Mike corresponds with Jean.”³⁵

February 28, 2013: Brown e-mailed Mullaney and carbon copied Holt stating that she and Holt spoke and would try to reach [REDACTED] to reiterate that “according to NYSS rules, late payments are due 2/15/13 and must be paid immediately for the agreement to be valid.”³⁶ By this date, the supplemental entries and the first sustaining payments, both due February 15th, were two weeks overdue.

In a subsequent e-mail to Mullaney the same day, Brown stated that she and Holt spoke with [REDACTED] who had a different interpretation of his conversation with Mullaney and thought he could pay late fees at any time up until the start of NYSS season. Brown informed [REDACTED] that the “agreement was that he pay the late fees/nomination/sustaining fees when due on Feb 15th to be fair to all the other participants in the program.” Nevertheless, Brown proposed that Mullaney extend the deadline for paying the NYSS program fees to March 15th for the [REDACTED] horses.³⁷

March 1, 2013: Mullaney responded from his personal e-mail and carbon copied Holt stating that he assumed that they spoke with the [REDACTED], with whom he would also speak to regarding the agreement made with the [REDACTED]. Mullaney indicated that the original

³¹ See Feb. 21, 2013 10:55:15 A.M. e-mail, annexed hereto as Exhibit “4E.”

³² See Exhibit “4A,” at Feb. 27, 2013 1:18 P.M. e-mail.

³³ See Feb. 27, 2013 2:03 P.M. e-mail, annexed hereto as Exhibit “4F.”

³⁴ Holt was apparently referencing other horses for which accommodations from the stated conditions were made. This Office reviewed e-mails and records related to such horses, which will be detailed in a separate section below.

³⁵ See Feb. 27, 2013 3:44 P.M. e-mail, annexed hereto as Exhibit “4G.”

³⁶ See Feb. 28, 2013 2:43 P.M. e-mail, annexed hereto as Exhibit “4H.”

³⁷ See Feb. 28, 2013 15:35:20 e-mail, annexed hereto as Exhibit “4I.”

proposal was still in effect, but that “[a]s [Brown has] attempted to accommodate the [redacted] [he had] absolute faith in [Brown’s] judgment and back you in the new deadline.”

It should be noted that in his February 27, 2013 e-mail, Mullaney stated that the original terms of the agreement must be met, but nonetheless agreed to extend the deadline to March 15 “with no further accommodations,” explaining that Brown “convinced [him] that the greater good comes from postponing the “drop-dead date.””³⁸

March 18, 2013: The Fund received a letter and check, both dated March 15, 2013, from [redacted] addressed to Mullaney. The letter states that the check is written for \$500 “[p]ursuant to our agreement with Blue Chip Farms and the NYSS [] for the late fees for late stake nomination of our two [redacted] two year [sic] olds.”³⁹

On the same day, Mullaney e-mailed Brown and informed her that he received an additional \$500 and asked whether her “agreement with him been [sic] satisfied or shall I hold off on depositing the checks?”⁴⁰ Prior to receiving a response from Brown though, Mullaney e-mailed Holt and carbon copied Brown, stating that the [redacted] “are getting closer to fulfilling their agreements and it is with a degree of confidence that today I will be depositing their checks for the unnamed [redacted] 2-year-olds. A judge’s hearing Mid April [sic] should be relief to all of us.”⁴¹

In response to Mullaney’s e-mail, Brown stated her belief was that the late fees for each horse were \$500.⁴²

Holt separately e-mailed Brown asking about the status of the March 15th deadline. Brown responded that according to Mullaney the late payments were received, and the funds for BCF’s stud fees were being held in escrow with the bankruptcy court.⁴³

Holt also e-mailed [redacted] and carbon copied Mullaney stating that [redacted] had faxed a \$500 check from [redacted] and inquired whether she “[forgot] to send us the copy of the other check or is the other check still to come?”⁴⁴

March 19, 2013: Holt sent [redacted] a fax stating “[d]on’t do anything with these till you hear from Mike,” to which copies of the two checks from [redacted] were attached.⁴⁵

March 27, 2013: Mullaney sent a letter to Brown acknowledging receipt of “[redacted] late fees and Feb. 15 payment,” stating that he would not deposit the checks until he learns that an

³⁸ *Id.*, at Mar. 1, 2013 11:01 A.M. e-mail.

³⁹ See Mar. 15, 2013 letter from [redacted] to Mullaney and Mar. 15, 2013 check from [redacted] to the Fund, annexed hereto as Exhibit “5B.” No original and/or copy of the envelope in which these documents were mailed were located in Fund files. As such, the postmark date is unknown.

⁴⁰ See Mar. 18, 2013 10:50 A.M. e-mail, annexed hereto as Exhibit “4J.”

⁴¹ See Mar. 18, 2013 11:26 A.M. e-mail, annexed hereto as Exhibit “4K.”

⁴² See Exhibit “4J,” at Mar. 18, 2013 12:31:58 P.M. e-mail.

⁴³ See Mar. 18, 2013 1:03 P.M. and 1:06 P.M. e-mails, annexed hereto as Exhibit “4L.”

⁴⁴ See Mar. 18, 2013 2:33 P.M. e-mail, annexed hereto as Exhibit “4M.”

⁴⁵ See Mar. 19, 2013 fax from Holt to [redacted] annexed hereto as Exhibit “5C.”

investor was going to be involved with the [REDACTED] horses. He stated that “[a]s far as the Fund is concerned, it is our hope that this clears the way for the aforementioned investor to pay the stud fees due to Blue Chip Farms as well as, of course, sustaining payments due in April.”⁴⁶

March 28, 2013: Brown e-mailed Mullaney and carbon copied his personal e-mail stating that Mathurin’s investor wanted a statement in writing from the Fund that the “late fees and February payments” were made on the [REDACTED] horses prior to paying the stud fees owed to BCF.⁴⁷ Mullaney responded that he would “gladly deposit [the two] checks today if your generous accommodations to the [REDACTED] have been completely met.”⁴⁸ Brown asked whether “once we confirm receipt of the stud fees the new owner will be OK to go forward with making the April payments?”⁴⁹ Mullaney stated that he felt “good about it” and asked if Brown was “OK.”⁵⁰ Brown replied that she was “fine with it as it will mean that two foals have a future. But I need to assure the investor that he will be able to race in the NYSS program if the money is sent to us. Only the Fund office can make that guarantee. That is why I need something in writing from you.”⁵¹ Mullaney then asked Brown to call him so he can “detail the letter as best [he] can and [he] could use a reminder of events.”⁵²

Fund records revealed that the [REDACTED] February 15, 2013 and March 15, 2013 checks totaling \$1,050 were deposited into the Fund bank account the same day.⁵³

Later that afternoon, Mullaney forwarded Brown’s e-mail regarding the [REDACTED] investor to the HHB e-mail (to and from which Holt sends e-mails) and asked whether the fees for the [REDACTED] horses was “square” or whether [REDACTED] had other debts because he would “like to send a note to Jean, greenlighting the process described below.”⁵⁴ In response, Holt detailed the amounts due for each horse totaling \$1,450.⁵⁵

Holt forwarded her last e-mail to Mullaney regarding registration fees owed by the [REDACTED] to Brown.⁵⁶

March 29, 2013: Mullaney exchanged e-mails with Holt (from his personal e-mail) requesting the phone numbers for the [REDACTED] preferably for the “decision-maker.”⁵⁷ He also e-mailed

⁴⁶ See Mar. 27, 2013 letter from Mullaney to Brown, annexed hereto as Exhibit “5D.” This document was saved in Mullaney’s computer files as “[REDACTED] Release.” See also “Timeline: Correspondence & Events Re> [REDACTED],” annexed hereto as Exhibit “7,” at 3. Although the timeline is undated and unattributed, based on documents reviewed by this Office and the prior similar use of “>” the writer is likely Mullaney.

⁴⁷ See Mar. 28, 2013 11:39:37 A.M. e-mail, annexed hereto as Exhibit “4N.”

⁴⁸ See *Id.*, at Mar. 28, 2013 10:52 A.M. e-mail. It is unclear why the e-mails from Brown have later times than the e-mail responses from Mullaney.

⁴⁹ See *Id.*, at Mar. 28, 2013 12:27:42 P.M. e-mail.

⁵⁰ See *Id.*, at Mar. 28, 2013 11:02 A.M. e-mail.

⁵¹ See *Id.*, at Mar. 28, 2013 12:41:02 P.M. e-mail.

⁵² See *Id.*, at Mar. 28, 2013 12:40 P.M. e-mail.

⁵³ See Cash Deposit printout dated Mar. 28, 2013, Key Bank Receipt dated Mar. 28, 2013, Key Bank Deposit Ticket totaling \$52,711.41, NYSS 2013 Payment Schedule forms for [REDACTED] and [REDACTED] stamped received Feb. 19, 2013, copy of Feb. 15, 2013 and Mar. 15, 2013 checks, and Feb. 15, 2013 and Mar. 15, 2013 letters from [REDACTED] to Mullaney, annexed hereto as Exhibit “8A.” The Fund’s Controller’s records are collectively referred to as Exhibit “8,” with each set of records assigned its own letter.

⁵⁴ See Mar. 28, 2013 2:33 P.M. e-mail, annexed hereto as Exhibit “4O.”

⁵⁵ See *Id.*, at Mar. 28, 2013 4:43:21 P.M. e-mail.

⁵⁶ See Mar. 28, 2013 4:46 P.M. e-mail, annexed hereto as Exhibit “4P.”

Brown separately asking for contact information for the [REDACTED] and sent subsequent e-mails saying he left detailed messages for [REDACTED]. He advised Brown that [REDACTED] informed him via text message that a check was placed in the mail and that he (Mullaney) would draft a letter the following day.⁵⁹ This Office, however, did not find any such letter to the [REDACTED] investor in the Fund's records, nor was provided a copy by any relevant party.

March 31, 2013: Mullaney e-mailed Brown (from his personal e-mail) and carbon copied [REDACTED] and Holt stating that [REDACTED] gave his assurance that a \$400 check for "late payment" would be sent to the Fund, which would then total the \$1,450 owed. Even though [REDACTED] had not timely paid the money owed despite an additional extension of time, Mullaney assured BCF that the [REDACTED] horses would be allowed into the NYSS program. Mullaney commented that "[t]hroughout this process, the communication and openness of all parties, especially [Brown] and Blue Chip Farms, helped pave the way through this process. It's very much appreciated, and the Fund commends you for it. With that, and barring any unforeseen complications, please take this note as an assurance that The Fund recognizes the legitimacy of those 2-year-olds to compete in this summer's New York Sire Stakes."⁶⁰

April 2, 2013: The Fund deposited a \$400 check from [REDACTED].⁶¹ However, Fund records show receipt of the March 29, 2013 letter and check from [REDACTED] on April 3, 2013.⁶² Approximately six weeks after the February 15th deadline and after two extensions, the supplemental entries and February 15, 2013 NYSS payments for the [REDACTED] horses were paid in full. However, the mating certificates had not been issued for the horses, and they could not be registered with the USTA, thus, rendering the horses still ineligible for the program.

April 11, 2013: Brown e-mailed Mullaney and carbon copied Holt stating that the [REDACTED] had paid their stud fees, and if the Fund received its additional payments, then "all is set to go." She also said indicated her appreciation of the Fund and commented that the [REDACTED] horses would now "have a chance to have a productive future."⁶³ Holt replied only to Brown asking her to advise the [REDACTED] to send copies of the horses' USTA registration forms and that she would add the horses to the website as soon as they are registered.⁶⁴

April 15, 2013: Additional sustaining payments for two-year olds were due – \$35 for NYSS #53, \$325 for Excelsior/State Fair Series, and \$75 for County Fair races.

⁵⁷ See Mar. 29, 2013 1:42 P.M. and 2:10 P.M. e-mails, annexed hereto as Exhibit "4Q."

⁵⁸ See Mar. 29, 2013 2:02 P.M. e-mail, annexed hereto as Exhibit "4R."

⁵⁹ See *Id.*, at Mar. 29, 2013 3:31 P.M. and Mar. 30, 2013 5:20 P.M. e-mails.

⁶⁰ See Mar. 31, 2013 9:17 P.M. e-mail, annexed hereto as Exhibit "4S."

⁶¹ See Cash Deposit printout dated Apr. 2, 2013, Key Bank Receipt dated Apr. 2, 2013, Key Bank Deposit Ticket totaling \$10,625, annexed hereto as Exhibit "8B."

⁶² See Mar. 29, 2013 letter from [REDACTED] to Mullaney, Mar. 29, 2013 check from [REDACTED] to the Fund, and copy of envelope, annexed hereto as Exhibit "5E."

⁶³ See Apr. 11, 2013 3:11 P.M. e-mail, annexed hereto as Exhibit "4T." See also Apr. 12, 2013 12:10 P.M. e-mail, annexed hereto as Exhibit "4U" (forwarded e-mail from Brown to Mullaney of e-mail sent to [REDACTED] with copy of mating certificate for foal out of [REDACTED] and also stating that both mating certificates were sent via Fed Ex to [REDACTED]).

⁶⁴ See Exhibit "4T," at Apr. 11, 2013 3:21 P.M. e-mail.

April 16, 2013: [REDACTED], the unnamed filly formerly owned by the [REDACTED] was registered with USTA. According to USTA records, [REDACTED] purchased [REDACTED] on the same date as the USTA registration. Records revealed that [REDACTED] was listed as eligible for NYSS #53 as a two-year old pacer filly.

April 18, 2013: The Fund received a letter and check, both dated April 15, 2013. The check was written for \$875 for sustaining payments and “2012 nomination fees which [Mullaney] indicated in a voice mail that we still owe.”⁶⁶

April 22, 2013: The Fund deposited [REDACTED] check for \$875.⁶⁷

May 9, 2013: Mullaney inquired of Holt whether there was missing USTA paperwork for the [REDACTED] horses, to which Holt responded that “the horse” was not registered.⁶⁸ Almost three months after the February 15, 2013 NYSS program deadline, one of the horses still did not have the required USTA certificate and remained ineligible. On May 13, 2013, Mullaney sent an e-mail to Holt stating that [REDACTED] would handle the USTA registration issue the following day at the latest.⁶⁹ On an unknown date, the Fund received an additional letter and check dated May 15, 2013, for \$100, from [REDACTED].⁷⁰

May 21, 2013: The Fund deposited [REDACTED] \$100 check.⁷¹

May 23, 2013: Mullaney sent an e-mail to Brown thanking her for walking him through the registration of the [REDACTED] horses and said he would be mailing a letter to [REDACTED] later that day.⁷² Mullaney sent a separate e-mail to Holt thanking her for the “heads up” and saying that the Fund would “notify Mr. [REDACTED] of the bad news.”⁷³

⁶⁵ See Pathway Basic Horse Report for [REDACTED], annexed hereto as Exhibit “9A.” Pathway reports are collectively referenced as Exhibit “9,” with each report assigned a letter.

⁶⁶ See Apr. 15, 2013 letter from [REDACTED] to Mullaney and Apr. 15 2013 check from [REDACTED] to the Fund, annexed hereto Exhibit “5F.” No original and/or copy of the envelope in which these documents were mailed were located in Fund files. As such, the postmark date is unknown.

⁶⁷ See Cash Deposit printout dated Apr. 22, 2013, Key Bank Receipt dated Apr. 22, 2013, Key Bank Deposit Ticket totaling \$103,609.64, copy of Apr. 15, 2013 check, and Apr. 15, 2013 letter from [REDACTED] to Mullaney, annexed hereto as Exhibit “8C.”

⁶⁸ See May 9, 2013 12:21 P.M. and 5:12:39 P.M. e-mails, annexed hereto as Exhibit “4V.”

⁶⁹ See May 13, 2013 10:37:00 A.M. e-mail, annexed hereto as Exhibit “4W.”

⁷⁰ See May 15, 2013 letter from [REDACTED] to Mullaney and May 15, 2013 check from [REDACTED] to the Fund, annexed hereto Exhibit “5G.” There is no received date stamped on the letter, and no original and/or copy of the envelope in which these documents were mailed was located in Fund files. As such, the postmark date is unknown.

⁷¹ See Cash Deposit printout dated May 21, 2013, Key Bank Receipt dated May 21, 2013, Key Bank Deposit Ticket totaling \$5,550, and two copies of May 15, 2013 letter from [REDACTED] to Mullaney (one with copy of May 15, 2013 check and handwritten notations and one without), annexed hereto as Exhibit “8D.”

⁷² See May 23, 2013 10:19:09 A.M. e-mail, annexed hereto as Exhibit “4X.” The attachment was not retained with the e-mail. However, a copy of a signed May 23, 2013 letter from Mullaney to [REDACTED] was located in Fund records, annexed hereto as Exhibit “5H.” This document was saved in Mullaney’s computer files as “[REDACTED] letter.”

⁷³ See May 23, 2013 10:48:50 A.M. e-mail, annexed hereto as Exhibit “4Y.”

The same day, Mullaney drafted a memorandum to [REDACTED] requesting a refund check of \$100 for [REDACTED].⁷⁴

Also on the same day, three and a half months after the February 15, 2013 deadline and despite assurances from Mullaney that the horses would be entered into the NYSS program, Mullaney sent a letter to [REDACTED] regarding “Yearling [*sic*] Registration” stating that the Fund “must decline” registration because of outstanding stud fees to Blue Chip Farms in the amount of \$32,000.⁷⁵ However, according to Brown, [REDACTED] paid the stud fees for these horses in full on April 11, 2013, and [REDACTED] was listed as eligible to participate in NYSS #53.

June 24, 2013: One month after Mullaney informed [REDACTED] that the horses would not be eligible for the NYSS program, the previously unnamed colt owned by the [REDACTED] was named [REDACTED] and registered with the USTA.⁷⁶

July 30, 2013: Holt e-mailed [REDACTED] and carbon copied Mullaney to “document” a situation at Monticello from the previous day regarding a two-year old colt named [REDACTED] that was not on the list of eligible horses for the Excelsior/State Fair Series. Holt noted that the horse was not registered with the USTA until June 24, 2013, and had not been registered by the deadline set forth in the NYSS program conditions. Holt observed that “[i]f this horse were to beat other horses in a race it could open up a legal issue for the Fund. I did not feel it was my decision to make and I did not want to accept legal responsibility. I referred them to Mike at the “Fund” office for a final decision on accepting the horse.”⁷⁷ In his reply, Mullaney asked if this was one of the [REDACTED] horses.⁷⁸ In a related e-mail exchange with [REDACTED] Mullaney stated that he believed that the horse was involved in a “complication” between the [REDACTED] and BCF.⁷⁹

July 31, 2013: Holt e-mailed Mullaney and [REDACTED] and carbon copied [REDACTED] stating:

You told me to add the horses to the eligible lists. I cannot legally do that if they are not registered. I was never told otherwise.

If this horse races and is not on the eligible horse list and someone looks up the horse and sees it was registered on 6/24/13 you can count on a lawsuit.

FYI:

You have accepted 2 horses late.

Many of the NYSS rules pertaining to payments and eligibility have been broken.

If this “hits the fan” how will that look for you all?

You are the Executive Director and need to be responsible for any decisions your office makes.

⁷⁴ See May 23, 2013 memorandum from Mullaney to [REDACTED] annexed hereto as Exhibit “5I.” This document was saved in Mullaney’s computer files as “[REDACTED] Reimbursement.”

⁷⁵ See Exhibit “5H.”

⁷⁶ See Pathway Basic Horse Report for [REDACTED] annexed hereto as Exhibit “9B.”

⁷⁷ See Jul. 30, 2013 11:37:28 A.M. e-mail, annexed hereto as Exhibit “4Z.”

⁷⁸ See *Id.*, at Jul. 31, 2013 11:34 A.M. e-mail.

⁷⁹ See Jul. 31, 2013 12:17:19 P.M. e-mail, annexed hereto as Exhibit “4AA.” The attachments were not retained with the e-mail. However, based on the names of the attachments, the documents were Exhibits “5D,” “5H,” and “5I,” respectively.

I am and was trying to protect the NYSS program.⁸⁰

Although the e-mail above was also sent to [REDACTED] Holt forwarded this e-mail again to [REDACTED] later the same day.⁸¹ Despite having been included in relevant e-mails, Holt raised no such concern about protecting the NYSS program previously, and [REDACTED] was included on the list of eligible horses to NYSS #53.

August 2, 2013: Mullaney sent an e-mail (from his personal e-mail) to [REDACTED] stating that he believed [REDACTED] owners would attempt to enter the horse the following Monday and would leave a packet of e-mails and letters related to [REDACTED] for [REDACTED] to review. Mullaney also stated that [REDACTED] had reviewed the packet and received an e-mail from Holt.⁸²

August 3, 2013: [REDACTED] responded to Mullaney's August 2, 2013 e-mail and said that he spoke with Brown regarding [REDACTED] [REDACTED] stated that:

[e]very opportunity was presented for the horse to be registered after the deadline.
The horse should not be eligible.
It isn't fair for the owners who follow the rules.
Jean indicated that she received an email from you which stated I'm inclined to allow the eligible [sic]. I'm not in favor.⁸³

[REDACTED] forwarded this e-mail to Holt who responded that she did not "recall sending anything to [REDACTED]".⁸⁴

January 27, 2014: Mullaney sent an e-mail to Brown that included her April 11, 2013 e-mail confirming that the [REDACTED] paid the stud fees owed to BCF.⁸⁵

February 27, 2014: [REDACTED] appeared at the Fund meeting and discussed the eligibility issue he was facing with [REDACTED] [REDACTED] purchased the horse on the assumption that it was eligible to race in NYSS program. The minutes of the meeting reflect that Mullaney noted that the "reason the horse was disqualified from participating because the eligibility payments not [sic] made on time by the previous owner."⁸⁶

⁸⁰ See Jul. 31, 2013 12:44:25 P.M. e-mail, annexed hereto as Exhibit "4BB." The attachments were not retained with the e-mail. There were multiple e-mails with the same subject so this Office was unable to determine which e-mails were attached.

⁸¹ See Jul. 31, 2013 3:41 P.M. e-mail, annexed hereto as Exhibit "4CC." The attachments were not retained with the e-mail. There were multiple e-mails with the same subject so this Office was unable to determine which e-mails were attached.

⁸² See Aug. 2, 2013 9:32 P.M. e-mail, annexed hereto as Exhibit "4DD."

⁸³ *Id.*, at Aug. 3, 2013 7:55 P.M. e-mail.

⁸⁴ *Id.*, at Aug. 3, 2013 9:52 P.M. e-mail.

⁸⁵ See Jan. 27, 2014 11:13 A.M. e-mail, annexed hereto as Exhibit "4EE."

⁸⁶ See Feb. 27, 2014 Fund Minutes, Board of Trustees Meeting Minutes, annexed hereto as Exhibit "10," at Eligibility Issue.

March 24, 2014: Mullaney's Weekly Board Report recounted that:

[t]he case of [REDACTED] one of two horses who were sold last year under the purchaser's understanding that they would be eligible [*sic*] for NY Sire Stakes. **I, as executive director, was of the understanding that there was room for discretion on this matter** and I was provided with what I believed to be a compelling argument to allow the horses into the program days after the deadline. Subsequently, the breeder [*sic*] did not follow through on several steps (registration, payments, ...), and he was informed by phone and mail that consideration to allow the horses into the program was withdrawn. Eventually, reportedly, the breeder entered into bankruptcy. Prior to that notification, the transaction for the purchase of the horses was completed. [REDACTED] was the purchaser and he hopes to race one of those horses, [REDACTED] in the Sire Stakes program this year as a 3-year old. [REDACTED], who has retained counsel, has paid into the program for 2014 and he seeks determination regarding the eligibility of his horse. [REDACTED] scheduling and possibly training of the horse will be impacted by that decision. (emphasis added)⁸⁷

May 22, 2014: Mullaney sent a letter to [REDACTED] and carbon copied [REDACTED] and [REDACTED], stating that [REDACTED] was not eligible to participate in the NYSS program "due to the failure of the horse's previous owner to follow the rules and regulations of the New York Sire Stakes. There may have been misunderstanding from communications in 2013, but, on a consistent basis, neither sustaining payments nor registration fees were paid on time." Mullaney further stated that "[t]he Fund never registered [REDACTED] nor could it have done so consistent with its rules and procedures." Enclosed with the letter was a check for \$1,150 reimbursing all funds sent in 2014 related to [REDACTED].⁸⁸

June 4, 2014: An Order to Show Cause was filed by [REDACTED] against the Fund for a temporary injunction permitting [REDACTED] to race in 2014 NYSS events ("action").⁸⁹ [REDACTED] provided an attestation with the verified complaint for the [REDACTED] litigation. According to the verified complaint, [REDACTED] "entered into an oral agreement with Sire Stakes Executive Director Michael Mullaney in which [REDACTED] would pay Blue Chip Farms the stud fee on [REDACTED] and pay the required Sire Stakes fees. In exchange, Mullaney agreed to make [REDACTED] eligible and otherwise allow [REDACTED] to participate in the Sire Stakes." The dates that [REDACTED] sent checks to the Fund were provided.⁹⁰

⁸⁷ See Mar. 24, 2014 Weekly Board Report from Mullaney to Fund Board and [REDACTED], Executive Director, Commission, annexed hereto as Exhibit "11A." See also Apr. 24, 2014 and May 1, 2014 Weekly Board Reports from Mullaney to Fund Board and [REDACTED] annexed hereto as Exhibit "11B" and "11C," respectively. Weekly Board Reports are collectively referenced as Exhibit "11," with each report assigned a letter.

⁸⁸ See May 22, 2013 [*sic*] letter from Mullaney to [REDACTED] and carbon copied to [REDACTED] [REDACTED] and [REDACTED] annexed hereto as Exhibit "5J."

⁸⁹ See Plaintiffs' papers filed June 4, 2014, annexed hereto as Exhibit "12A." [REDACTED] litigation papers referenced throughout this Report are collectively referred to as Exhibit "12," with each document assigned its own letter.

⁹⁰ See *Id.*, at Verified Complaint, at 2-3.

June 12, 2014 and June 17, 2014: Mullaney requested copies of e-mails from Brown related to the [REDACTED] horses.⁹¹ Mullaney also asked Brown and Holt for assistance in developing a timeline. Additionally, he asked Holt for her interpretation of a provision related to three-year old horses retaining eligibility to the NYSS program and asked her to list “the fumbles that Mr. [REDACTED] had along the way” as he and the attorney were “having a hard time tying on to what was paid and when.”⁹³

June 18, 2014: Outside counsel submitted the Fund’s response to the [REDACTED] action, including an affidavit from Mullaney detailing the registration “rules and regulations” pertaining to [REDACTED].⁹⁴ In response to the allegation that he entered into an oral agreement with [REDACTED] Mullaney stated that “no details of the alleged contract are alleged, and there is no allegation that the Fund made an agreement to change the rules [*sic*] and list the horse as eligible to complete as a 3-year old during the 2014 Sire Stakes season” (emphasis added).⁹⁵

June 24, 2014: [REDACTED] [REDACTED] and [REDACTED] request for a preliminary injunction was denied.⁹⁶

July 7, 2014: A stipulation of discontinuance of the action was filed with the court.⁹⁷ As a result of the lawsuit, the Fund paid outside counsel \$10,071.90 in legal fees.⁹⁸

Registration of Other Horses Not in Compliance with the Conditions of the NYSS Program

During the course of this investigation, this Office discovered four additional instances where Mullaney made exceptions to the NYSS program conditions. A review of e-mails and Fund and HHB records revealed the following:

March 5, 2013: Mullaney sent an e-mail to [REDACTED] at HHB stating to “accept this note as acknowledgment that [REDACTED] fees will be accepted as on time.”⁹⁹ Fund records revealed a NYSS Payment Schedule form for [REDACTED] was date-stamped received on February 14, 2013, and indicated payment for the County Fair fee by check dated Jan. 11, 2013. Subsequently, a second check dated February 15, 2013, was received for [REDACTED] Excelsior fees. A copy of the February 14, 2013 date-stamped NYSS Payment Schedule form was edited to reflect payment of fees for the Excelsior/State Fair Series and contained a

⁹¹ See three Jun. 12, 2014 e-mail strings between Mullaney and Brown with [REDACTED] carbon copied on two e-mail strings, annexed hereto as Exhibit “4FF.”

⁹² See two e-mail strings involving Mullaney, Brown, and Holt and carbon copied to [REDACTED] annexed hereto as Exhibit “4GG,” collectively from Jun. 17, 2014, with a copy of the timeline drafted by Brown, at Jun. 17, 2014 10:11 A.M.

⁹³ See Jun. 18, 2014 10:41 P.M. e-mail, annexed hereto as Exhibit “4HH.” See also Jun. 18, 2014 12:25:26 e-mail, incl. attachment, annexed hereto as Exhibit “4II.”

⁹⁴ See Affidavit of Michael Mullaney in Opposition to Plaintiff’s Motion for Preliminary Injunction, dated June 18, 2014, annexed hereto as Exhibit “12B,” at 4-6.

⁹⁵ *Id.*, at 7-8.

⁹⁶ See June 24, 2014 Order, annexed hereto as Exhibit “12C.”

⁹⁷ See June 24, 2014 Stipulation of Discontinuance, annexed hereto as Exhibit “12D.”

⁹⁸ See Invoices from [REDACTED] to the Fund, dated Jun. 30, 2014 and Jul. 31, 2014, annexed hereto as Exhibit “13.” No request to recover fees was made by Fund’s outside counsel.

⁹⁹ See Mar. 5, 2013 11:24 A.M. e-mail, annexed hereto as Exhibit “4JJ.”

notation that the County Fair fees had been paid already. No received date was noted for the additional check or second form, nor was an original and/or copy of the envelope in which these documents were mailed was located in Fund files. As such, the postmark date is unknown.¹⁰⁰

March 5, 2013: [REDACTED] sent an e-mail to Mullaney regarding a conversation that Mullaney had with "[REDACTED] partner, about missing the February 15, 2013 deadline and asking for "flexibility." In response, Mullaney stated that "[w]e like to think we're inclusive at the NYSS and to that end, as you have been communicative and you have credibility with us, we will on this occasion exercise discretion."¹⁰² The Fund received checks from [REDACTED] ([REDACTED] for [REDACTED] dated February 15, 2013 and April 15, 2013, and the NYSS 2013 Payment Schedule form for [REDACTED] indicating payment for the February and April fees, was date-stamped March 11, 2013. Both checks were deposited on March 13, 2013.¹⁰³

March 7, 2013: Mullaney e-mailed [REDACTED] and [REDACTED] at HHB and carbon copied [REDACTED] stating that he

[REDACTED] just received a call from [REDACTED], who offered a compelling story in asking that, at this late date, she [*sic*] be allowed to name [REDACTED] horse [REDACTED] to the Excelsior and County Fair series.

[REDACTED] said she has already named the filly to Sire States races (I'll check that). [REDACTED]'s winning story will be one of, if not the last, extensions: Per yesterday's conversation, the curtain comes down with finality on any and all sad stories tomorrow, Friday, March 8.¹⁰⁴

Fund records support [REDACTED] assertion that NYSS fees were timely paid for [REDACTED]. The Fund subsequently received a check dated March 7, 2013, from [REDACTED] on behalf of [REDACTED] and a second completed NYSS 2013 Payment Schedule form indicating payment for February fees owed for the Excelsior/State Fair Series and County Fair races, as well as the upcoming April 15, 2013 payments for the entire NYSS program. No received date is indicated on the second form.¹⁰⁵

¹⁰⁰ See Cash Deposit printout dated Feb. 20, 2013, Key Bank Receipt dated Feb. 20, 2013, Key Bank Deposit Ticket totaling \$8,600, [REDACTED] NYSS 2013 Payment Schedule form stamped received Feb. 14, 2013 with a copy of Jan. 11, 2013 check, Cash Deposit printout dated Mar. 13, 2013, Key Bank Receipt dated Mar. 13, 2013, Key Bank Deposit Ticket totaling \$1,025, and two copies of [REDACTED] NYSS 2013 Payment Schedule form with a copy of checks dated Jan. 11, 2013 and Feb. 15, 2013 (one copy with a handwritten note attached and one without the note, neither showing an additional received date stamp on the form), annexed hereto as Exhibit "8E."

¹⁰¹ See Mar. 5, 2013 4:29:43 P.M. e-mail, annexed hereto as Exhibit "4KK."

¹⁰² *Id.*, dated Mar. 5, 2013 3:25 P.M. It is unclear why Mullaney's e-mail has an earlier time than the e-mail to which he responded.

¹⁰³ See Cash Deposit printout dated Mar. 13, 2013, Key Bank receipt dated Mar. 13, 2013, Key Bank Deposit Ticket totaling \$550, copy of Exhibit "4KK," and NYSS 2013 Payment Schedule Form for [REDACTED] with copies of checks dated Feb. 15, 2013 and Apr. 15, 2013, Exhibit "8F."

¹⁰⁴ See Mar. 7, 2013 8:17 A.M. e-mail, annexed hereto as Exhibit "4LL."

¹⁰⁵ See Cash Deposit printout dated Feb. 20, 2013, Key Bank receipt dated Feb. 20, 2013, Key Bank Deposit Ticket totaling \$12,650, NYSS 2013 Payment Schedule form for [REDACTED] stamped received Feb. 13, 2013 with copy of check dated Feb. 8, 2013, Cash Deposit printout dated Mar. 13, 2013, Key Bank receipt dated Mar. 13, 2013, Key Bank Deposit Ticket totaling \$1,025, and NYSS 2013 Payment Schedule form for [REDACTED] with no received date, but with notation that NYSS Feb. 15, 2013 payment "already paid" and copy of check dated Mar. 7, 2013, annexed hereto as Exhibit "8G".

March 11, 2013: [REDACTED] e-mailed Mullaney (at his work and personal e-mail addresses) and carbon copied HHB's general e-mail address with the subject "Wrapping up Feb payments" stating that there are balances due for February 15th payments for the following horses: [REDACTED] [REDACTED] also stated that stud fees for [REDACTED] [sic] were owed to Morrisville.

Fund records for [REDACTED], later renamed [REDACTED], include an e-mail stating that Morrisville had not issued the horse's "registration." The NYSS 2013 Payment Schedule form date-stamped received on February 19, 2013, stated that the horse's name was pending and that a \$500 penalty (supplemental entry fee) was charged for that horse. The USTA certificate for [REDACTED] was dated March 27, 2013. A second copy of the form shows has an additional stamp stating it was "checked" in April 2013; the exact date is illegible.¹⁰⁷

Nonetheless, records revealed that [REDACTED] [REDACTED] were listed as eligible horses to one or more 2013 NYSS program series.

Key Interviews

Jean Brown

Brown has been involved in the horse breeding industry her entire life and is currently BCF Vice President and General Manager. In this role, she is responsible, among other things, for breeding contracts and collecting stud fees. She has been an HHB Board Member since the mid-1990s, though there were sporadic periods when she was not on the board. Currently, Brown serves as the HHB Secretary. At the time relevant to this investigation, Brown was BCF Vice President of Operations and an HHB Board Member.

When asked about her involvement with the [REDACTED] horses, Brown stated that the [REDACTED] utilized BCF stud services, but had not informed BCF that their mares had had live foals or paid their stud fees. Thus, mating certificates for the horses were not issued. Brown explained that bookings for breedings are made 12 to 15 months in advance. She further explained that industry practice for standardbreds and thoroughbreds is that stud fees are not due in advance, but rather after live foal (gestation is 11 months). It is also industry practice not to issue certificates until stud fees are paid. At the time, the average standardbred stud fee at BCF was \$8000.

Initially, Brown was not aware of the [REDACTED] financial condition and noted that the [REDACTED]. When she learned of the [REDACTED] horses, it was rumored that the

¹⁰⁶ See Mar. 11, 2013 12:46:17 P.M. e-mail, annexed hereto as Exhibit "4MM."

¹⁰⁷ See Cash Deposit printout dated Mar. 20, 2013, Key Bank receipt dated Mar. 21, 2013, Key Bank Deposit Ticket totaling \$6,724.10, e-mail printed out Mar. 6, 2013, and 2 copies of NYSS 2013 Payment Schedule form for [REDACTED] (one with a note that the horse was not eligible, was not added to the eligible lists, and that the check may bounce and one without the note or copy of the check), Cash Deposit printout dated Apr. 11, 2013, Key Bank receipt dated Apr. 11, 2013, Key Bank Deposit Ticket totaling \$21,885, and copy of NYSS 2013 Payment Schedule form for [REDACTED] amended to [REDACTED], with copy of check dated Feb. 15, 2013, for \$1,250, annexed hereto as Exhibit "8H." It should be noted that on March 20, 2013, \$1,250 from [REDACTED] was deposited by the Fund. There is no copy of the \$50 check deposited on April 11, 2013.

██████████ were in severe financial distress and could not afford to keep their horses. Brown spoke with BCF's CFO ██████████, her immediate supervisor, about the ██████████ financial situation and how to show "best effort" to the shareholders of the stallion to which the horses were bred. Brown denied speaking with ██████████ about the ██████████ horses, adding that as ██████████ was the face of the farm and not involved in collection matters. She stated that ██████████ learned of the matter afterwards and expressed concern about how she handled the situation, but he noted that Mullaney had approved of her proposed plan.

Brown stated that she was concerned about the welfare of the horses as they would be worthless if they were not registered with the NYSS program because of their limited earning potential. Thus, she approached Mullaney about allowing the ██████████ horses into the NYSS program even though their mating certificates had not been issued (and thus, ineligible as they lacked USTA certificates). Brown acknowledged that a condition for registering with the NYSS program is a USTA certificate, which requires submission of the mating certificate. Brown claimed that she was wearing her BCF rather than her HHB "hat" when she spoke with Mullaney about the matter¹⁰⁸ and noted that BCF had already agreed to make a large concession with respect to their share of the stud fees.

Brown stated that she informed Mullaney of the ██████████ financial situation and the apparent future of these horses. She also proposed the terms of the agreement, namely, the ██████████ would make timely supplemental entry payments, but that the mating certificates would not be issued until BCF was paid its reduced stud fees by March 15, 2013. Brown's understanding is that Mullaney then spoke with the ██████████. She stated that BCF was paid its stud fees late, after the March 15th deadline, due to the ██████████ bankruptcy proceedings which began after the agreement had been made. She believed that the Fund was paid as well, but similarly late and not as originally agreed upon.

On April 11, 2013, the ██████████ paid BCF's stud fees, and on April 12, 2013, BCF sent mating certificates to the USTA. According to Brown, ██████████ only registered the filly with the USTA and not the colt. She believed that neither of the horses raced in the NYSS program because ██████████ failed to comply with the terms of the agreement. Brown added that the payments received by the Fund were not returned to ██████████.

Brown claimed that she did not speak with anyone at HHB before approaching Mullaney about this agreement. She also claimed that it did not occur to her that there may have been a conflict of interest since she was also an HHB Board Member and HHB was the sole source provider responsible for administering the NYSS program on behalf of the Fund. Brown reiterated that she was speaking with Mullaney in her capacity as an employee of BCF and not as an HHB Board Member.

¹⁰⁸ This Office discovered in Mullaney's computer and paper files a document entitled "Background on the Case of ██████████ annexed hereto as Exhibit "14." The document states that the Fund was contacted by HHB, but does not mention by whom specifically, regarding the ██████████ horses and that Mullaney later had conversations with ██████████ and Brown. The document also reiterated that Mullaney believed that he had discretion to allow late registration of horses to the NYSS program. The document only cited the issue of late and insufficient payments and made no mention of the horses being unregistered with the USTA, another condition for registration. Although Mullaney is referred to in the third-person in the document, the metadata of the computer file revealed that the document was created by Mullaney.

When the HHB Board became aware of the [REDACTED] matter, Brown stated that her actions were discussed at a board meeting.¹⁰⁹ Reportedly, Brown explained to her Board that she wanted the horses to have a future, but nonetheless a majority of the Board was displeased and disappointed in her actions. Brown explained that the Board was concerned that she had asked for an exception from the NYSS program conditions and that her actions would reflect poorly on the HHB despite her assertion that she made the request in her capacity as BCF Vice President.

Brown further stated that this was the only time she approached the Fund about making an accommodation for a horse. When asked why she did so in this instance, Brown responded that she had nothing to lose by asking, and it may prevent the horses from going to the kill pens. Despite being an HHB Board Member for an extended period of time, Brown stated that she was unaware if the Fund allowed late registrations into the NYSS program. She stated that Mullaney could have said no to the agreement, and BCF would have written-off the stud fees as a business loss if they were unpaid.

Brown commented that she and Mullaney were trying to do the right thing, but in the end caused problems. She and Mullaney did not speak again about the matter after it was resolved.¹¹⁰

Betty Holt

Holt has been involved in breeding and racing for decades. She commenced her employment with HHB in 2007 as Administrative Director, and in 2011, assumed her current title of Executive Director. As Executive Director, she is responsible for carrying out the work related to the HHB's sole source contract with the Fund. In general, the terms of the contract include processing payments and paperwork and maintaining the Fund database. (Holt noted that only HHB has access to the database because when [REDACTED] had access, she would improperly change information in the database.)

Holt stated that the HHB has no authority to authorize or refuse acceptance of a horse to the NYSS program and, instead, is merely responsible for processing paperwork. She explained that once paperwork is received by HHB, three copies (one for HHB, one for [REDACTED] and one for [REDACTED]) are made of the NYSS payment schedule form and check submitted for payment, and the original documents (envelope, form, and check) are forwarded to [REDACTED]. A copy of the envelope is not made by HHB since it is presumed to have been timely received unless otherwise noted. A spreadsheet detailing all the checks received and provided to the Fund is created as a cover sheet for the original documents, and all the information is entered into the HHB database and the Fund website.

¹⁰⁹ Records indicate that as early as February 20, 2013, the HHB Board President was made aware of Brown's inquiry regarding the [REDACTED] horses. See Exhibit "4D." The following day Holt included the entire HHB Board on her follow-up e-mail. See Exhibit "4E." Brown was unsure when the HHB board meeting took place, but believed after March of 2013.

¹¹⁰ When litigation concerning [REDACTED] registration to the NYSS program was filed, Mullaney contacted Brown and asked her for copies of e-mails related to the [REDACTED] horses, as well as her recollection of the timeline of what transpired.

When Mullaney was the Executive Director, Holt did not review the documents received for deficiencies, and instead, assumed that Mullaney would address any issues that may arise. However, Holt stated that she made notations if a payment was late or if the USTA certificate was missing. Holt added that HHB is allowed to hold on to a submission for up to ten days, which she may do if the incorrect payment amount was made. In such instances, she would call the owner and advise him/her of the problem, which was often the result of an oversight or calculation error, and the owner would submit the difference owed.

Holt stated that she is unaware of what happens to the original paperwork after she sends it to the Fund, as [REDACTED] often loses or misplaces documents and will request additional copies from the HHB. Holt indicated that she has informed [REDACTED] of this and added that, in general, there have been no problems since Mullaney resigned.

When asked about the [REDACTED] horses, Holt recalled that she received payments by mail for two unnamed horses. She determined that the horses were not registered with the NYSS program or with the USTA, so she contacted Mullaney and advised him that the horses were not eligible to participate in the NYSS program. Holt explained that there were subsequent communications back and forth, including Mullaney and Brown, and she was informed that Brown had negotiated an agreement that was approved by Mullaney. In sum, [REDACTED] was allowed to make all NYSS program payments due, even though the deadline had passed.

Holt explained that the horses were not registered with the USTA because the stud fees had not been paid and the mating certificates had not been issued. The agreement negotiated by Brown allowed the [REDACTED] horses to participate in the NYSS program if [REDACTED] made payments to the Fund and BCF by certain dates. Holt claimed that she advised Mullaney that the agreement violated the NYSS program conditions, but that he said that it was his decision because he was the Executive Director. She also claimed that she advised Mullaney that the Fund would be at risk of a lawsuit for entering into such an arrangement. She added that the situation was further complicated by the late payments being returned for insufficient funds.¹¹¹

Holt initially stated that to her knowledge no such agreement had ever been made before or even after the [REDACTED] incident. However, Holt later stated that the [REDACTED] horses were not the only late registrants Mullaney allowed into the NYSS program and that he accepted at least four others. She added that previously the Fund did not retain the envelopes in which registration paperwork was sent so there would be no record as to the postmarked date or when the paperwork was sent. Holt stated that the Fund began to keep envelopes when [REDACTED], a breeder, started to complain about the Fund accepting late registrants.

Holt maintained that she was very frustrated by the agreement involving the [REDACTED] horses citing that "rules applied to everybody." She described Brown as being very upset with [REDACTED] as he had failed to fulfill every promise that he had made. According to Holt, [REDACTED] had taken over the business from [REDACTED], but essentially ran the business into the ground.¹² She also described Brown as feeling bad for the horses and merely trying to help the

¹¹¹ Fund records do not support Holt's contention that [REDACTED] checks were returned for insufficient funds.

¹¹² Based on this Office's review of e-mail records, Mullaney, Brown, and Holt were primarily dealing with the [REDACTED].

horses. However, Holt noted that Brown was a breeder whose responsibility was to ensure that she received payment of her stud fees, and as an HHB officer at the time, “should have known better” because she was well aware of the rules and regulations of the program.

Holt stated that despite Mullaney’s agreement with [REDACTED] she did not enter the horses into the NYSS program as they were not registered with the USTA. The horses were registered with the USTA only a week prior to the first race of the NYSS program and sold to another individual who did not know that the horses were ineligible to race in the program. Consequently, Monticello Raceway called to inquire as to one of the horse’s status, as the new owner attempted to enter it into a race there. Holt directed the inquiry to Mullaney who could not be reached. Calls were also made to [REDACTED] to no avail. Ultimately, Monticello did not allow the horses to race. The following week, Holt heard that the new owner filed a lawsuit against the Fund. Holt stated that she could not recall if she spoke to Fund’s counsel regarding the matter, but she was asked to make copies of records and provide them to [REDACTED], General Counsel for the Commission.

Holt recalled that [REDACTED] who was then new to the Fund’s Board, was upset when he learned of the agreement with [REDACTED]. She stated that she spoke with [REDACTED] after-the-fact, and he told her that Brown handled accounts on behalf of BCF, so he was not aware of what transpired. Holt stated that Mullaney was new to his position and speculated that perhaps he was trying to establish a good relationship with BCF, the state’s largest breeding farm. She added that [REDACTED] also learned of the matter after-the-fact and was not pleased with the decisions made by Mullaney.

Holt observed that many felt that she was responsible for the termination of the previous Fund Executive Director, [REDACTED], as she had complained about him to the Fund trustees and [REDACTED]. Consequently, she was chided by the HHB Board for being too vocal. Holt noted that the HHB had previously lost its contract with the Fund when HHB’s former Executive Director [REDACTED] complained in similar fashion. As a result, Holt did not raise her concerns about the [REDACTED] horses to anyone. She explained that she voiced her concerns to Mullaney and that as the Fund’s Executive Director it was ultimately his decision to make.¹¹³ She believed that e-mails clearly demonstrate her belief that the registration of the [REDACTED] horses was not being handled appropriately.

Holt explained that her relationship with Mullaney was initially good and that they worked well developing the Fund’s filing system and database. However, the relationship soured over the preparation of the Fund’s 2012 Annual Report. Holt stated that she initially offered to assist with the report for free, but she never received the requisite information despite numerous requests to Mullaney. Thus, Holt informed [REDACTED] that she could not prepare the report as Mullaney had not provided her with the necessary information, and she e-mailed to

¹¹³ In his interview, former HHB President [REDACTED] concurred with Holt that Mullaney was ultimately responsible for making such decisions on behalf of the Fund and that HHB/Holt, even as the vendor for the Fund, should not offer unsolicited advice. In an early e-mail regarding the [REDACTED] horses, Holt stated that during the February 7, 2013 HHB board meeting she was instructed “not to volunteer to provide any extra services.” See Exhibit “4E.”

Mullaney everything that she had prepared up until that time. Thereafter, Mullaney stopped speaking to her.

Interviews of Former and Current Fund Staff and Fund Directors [REDACTED] and [REDACTED]

Interviews revealed that during this time the Fund was undergoing a transition. The Fund's office was moved from Albany to Schenectady. Mullaney became Executive Director of the Fund at the end of September 2012 and admittedly had no professional experience with the standardbred industry, with the majority of his experience consisting of being a journalist and publicist covering the thoroughbred industry. Moreover, Mullaney did not regularly seek out, or consult with, Commission staff, and instead, appeared to rely upon himself to navigate the Standardbred industry and Fund programs. As noted earlier, after the HRC was abolished in February 2013, there was an absence of Fund director appointments. Thus, there was no quorum to hold meetings and make decisions related to the Fund during the time that the [REDACTED] matter unfolded. Further, the position of Director of the ORPD was vacant until May 2013. Thus, despite Mullaney's inexperience, he was effectively allowed to administer the Fund without oversight.

It was reported to this Office by various individuals that, initially, Mullaney's relationship with Fund employees and HHB was amicable, but over time, his relationship with some individuals, in particular [REDACTED] and Holt, deteriorated. However, he developed good relationships with [REDACTED] and [REDACTED] (who often lunched with Mullaney). Staff stated that [REDACTED] was acting as the Fund's Counsel because [REDACTED], [REDACTED], was [REDACTED]. However, [REDACTED] was unfamiliar with the Fund's work and processes.

Although [REDACTED] was the Fund's [REDACTED], Mullaney would receive Fund correspondence directly and maintain his own records, which he would compile in binders rather than files. When she did handle mail, [REDACTED] did not always stamp the correspondence with a received date, in particular, when she received a large volume of registration paperwork and checks, purportedly so the checks could be processed more quickly by [REDACTED]. Staff attempted to organize Mullaney's files after he left the Fund, but said that the task was difficult based on how Mullaney arranged his records, and some believed that Mullaney may have taken records with him when he resigned.¹¹⁴

Reportedly, Mullaney handled FOIL requests on his own, despite having no experience with FOIL. On occasion, though, Mullaney would confer with and seek guidance from [REDACTED] who was then, and is currently, [REDACTED].

Neither [REDACTED] nor [REDACTED] were Fund Directors when Mullaney, Brown, and Holt were discussing the issues related to the registration of the [REDACTED] horses, and both professed limited direct knowledge about what transpired. At the time, [REDACTED] was [REDACTED], and [REDACTED] was [REDACTED], but both reported that they did not learn of the [REDACTED] matter until they became Fund Directors and when [REDACTED] raised the issue of [REDACTED] registration in the NYSS program. One Fund Director, however, expressed

¹¹⁴ Staff also stated that [REDACTED] may have taken Fund records when he left the Fund.

frustration that the Fund did not meet to discuss the matter before [REDACTED] filed his lawsuit and added that it was he, rather than Mullaney, who explained the conditions for the NYSS program to outside counsel.¹¹⁵

Both Directors agreed that Brown should not have requested an accommodation from Mullaney for the [REDACTED] to facilitate BCF's collection of stud fees since the Fund conditions were clear about the NYSS program deadlines. Brown should have simply issued the mating certificates to allow the [REDACTED] to timely register their horses with the USTA and NYSS program and deal with collecting stud fees after. In addition, as an HHB Board Member, Brown placed the HHB (the Fund's sole source provider charged with maintaining the lists of eligible horses to the NYSS program) in a bad position. However, one Director expressed his belief that Brown believed that she was acting in the best interests of the horses, rather than to the detriment of the Fund.

The Directors did not believe that Mullaney had a relationship with the [REDACTED] but one Director described Mullaney as wanting to be an advocate or champion for certain individuals or causes without thinking about the consequences. In particular, Mullaney seemed to be influenced by [REDACTED] even though Mullaney was cautioned about [REDACTED] motives.¹¹⁶ The Directors agreed though that Mullaney did not always know what he was doing and lacked supervision.

The Directors had conflicting views about Holt's involvement in the [REDACTED] matter. One Director believed that when Holt learned of Mullaney's agreement with Brown and the [REDACTED] that she informed Mullaney that the agreement should not be entered into because the horses would remain ineligible for the NYSS program since it lacked USTA certificates. The same Director speculated stated that if Mullaney had a better relationship with HHB he would have consulted with Holt or someone on the HHB board. However, the other Director believed that Holt wanted Mullaney to allow the late registration of the horses so he would lose his job (but made no assertion that Holt wanted the position of Fund Executive Director).

One Director placed blame squarely on the [REDACTED] for the matter as he signed the contracts to breed the horses; entered into the agreement with the Fund and BCF, but did not live up to the terms; and lied to [REDACTED] about [REDACTED] eligibility to the NYSS program.

¹¹⁵ The Director also stated that [REDACTED] advised the Fund to allow the court to direct the Fund to let the horse into the program.

¹¹⁶ This Office reviewed an affidavit drafted by Mullaney regarding his relationship with [REDACTED] annexed hereto as Exhibit "15" and including the e-mail to which it was attached. In the affidavit, he states he was advised by [REDACTED] that [REDACTED] issue with [REDACTED] was a private matter not involving the Fund. However, Mullaney continued to research [REDACTED] dispute with [REDACTED] with the assistance of [REDACTED]. Although Mullaney claims that a Director threatened both his and [REDACTED] employment, in relation to the Fund's handling of the 10-year lease requirement for out-of-state stallions, when interviewed, [REDACTED] denied that anyone had done so. The lease issue will be addressed in a separate report.

Fund Records

This Office obtained and reviewed copies of e-mails and other records from various sources, including but not limited to, the complainant, the Fund, HHB, and Brown. The Office was unable to rely on Fund records, in particular for the time period relevant to this investigation, because the records were not maintained or organized in a manner that allowed this Office to have confidence in the integrity and completeness of the records.

Although it was asserted that the files maintained by [REDACTED] were the Fund's official business records and should contain all original Fund registration records, this Office discovered original records in files maintained by [REDACTED] as his working copies. More troubling is that most of the Fund records related to the [REDACTED] horses and the other horses for which "extensions" to the NYSS program deadlines were granted were not found in files maintained by [REDACTED] but by others, including Mullaney and [REDACTED].

Generally, this Office determined that the Fund's NYSS registration records were not consistently or appropriately maintained. Registration records for horses that were deemed ineligible for the NYSS program were sometimes, but not always, kept. Although the Fund is expected to retain its original registration records, this Office found many files that did not appear to contain original records, and as noted above, original records were often found elsewhere. Envelopes showing proof of postmark date were not retained as a matter of course, and interviews revealed that this practice did not begin until questions were raised regarding the registration of ineligible horses. A review of current Fund records reveals that retention of original envelopes is inconsistent. E-mails discussing the eligibility and/or registration of horses to the NYSS program were also not retained in the registration file of that horse. In addition, horses registered to the various Fund programs do not have a comprehensive file. Rather, a new file was and is created every year, and previous records were not integrated into the new file, resulting in records related to a horse active in a Fund program possibly being archived.

Further diminishing the reliability of the Fund's records was the fact that multiple copies of the same document were found in a single file, but the copies were not always identical. For example, different copies contained different notations. It is unknown when, or who, made these notations as there are rarely dates or initials. Date stamps made by HHB and/or by the Fund are found on registration records, but it is not always clear which stamps were made by which entity since they are not always accompanied by the entity's name or an individual's initials. Interviews revealed that the HHB routinely date stamped documents as received, but the Fund did not always stamp registration records, in particular, when there was a large influx of documents.

This Office also reviewed records from the Fund's file rooms and those that had been previously sent to storage for archiving. Both the Fund's file room records and archived files were maintained haphazardly and included empty folders or multiple copies of the same documents. Further, multiple folders bore the same label, identical records were found in more than one file, and records from the same time period were not consistently archived.

A search of the Fund file rooms also revealed that Mullaney maintained binders rather than files of various correspondence and/or matters involving the Fund, which he labeled as he saw fit. For example, a binder containing Fund-related litigation and FOIL requests was labeled “II BEEFS,” but the corresponding binder “I BEEFS” was not located. Other Fund-related litigation and FOIL requests were found in a binder entitled both “Legal” and “Daybook.” No index was found listing all the binders kept by Mullaney nor was an index found listing the contents of each binder.

Similarly, some, if not all, of [REDACTED] files when he was Director of ORPD were found in one of the Fund’s file rooms, though they are not labeled as [REDACTED]. Only upon review of the contents of the files, which often contained documents printed out by [REDACTED] would one know the origin of the files.

It should also be noted that during his tenure, Mullaney used his personal computer as “backup” to conduct Fund business.¹¹⁷ There were at least two instances when Fund computers/systems were infected by computer viruses.¹¹⁸ For a period of time, only Mullaney’s computer was being backed up by the Fund’s computer data backup provider. The Fund also experienced difficulties with migration of information when it changed e-mail hosts and backup providers. Thus, the completeness of Fund records for this time period is questionable.

Interviews revealed that Mullaney regularly accessed his Fund e-mail account from his personal Microsoft Live account rather than Outlook or another program that would have downloaded the e-mails to his Fund computer. As such, his Fund e-mails were not retained on his work computer, and e-mails that were retained were largely hard copies produced in response to FOIL requests made while he was Executive Director.¹¹⁹ A complete record of Fund responses to FOIL requests could not be located. Interviews also revealed that at least until July 2013, Mullaney sent FOIL responses without cover letters or redactions. It is unclear with whom Mullaney consulted when preparing FOIL responses, though one FOIL response found had a note that stated “[REDACTED] says these can go” apparently referring to [REDACTED].

This Office’s review of existing e-mail records related to this investigation found that Mullaney forwarded several Fund e-mails pertaining to the [REDACTED] horses to his personal e-mail account between July 24, 2013 and July 26, 2013,¹²⁰ in addition to conducting Fund business using his personal e-mail account. This Office also found that Holt exchanged e-mails with Brown about the [REDACTED] horses prior to confirming with Mullaney that she (Brown)

¹¹⁷ See Untitled document, undated, attached hereto as Exhibit “16.” The properties for the document indicate that it was created on Oct. 24, 2012.

¹¹⁸ *Ibid.* and Weekly Board Report from Mullaney to Fund Board and [REDACTED] Commission, dated May 14, 2014, annexed hereto as Exhibit “11D.”

¹¹⁹ This Office reviewed multiple copies of identical e-mails produced in response to multiple FOIL requests made by the same individual, as there were different dates in the footers of the e-mails indicating when they were printed. It should be noted that some of the e-mails produced were not from Fund e-mail accounts, but rather from that of HHB.

¹²⁰ On July 24, 2013, Mullaney forwarded three e-mails, two dated Mar. 28, 2013 and one dated Apr. 11, 2013. On July 25, 2013, Mullaney forwarded two e-mails, both dated Mar. 28, 2013. On July 26, 2013, Mullaney forwarded two e-mails, one dated May 9, 2013 and another dated May 13, 2013. These e-mails are annexed collectively hereto as Exhibit “4NN.”

should even be privy to that information.¹²¹ Lastly, it should be noted that this Office received Outlook e-mails, rather than printouts of e-mails, from the complainant indicating that these e-mails were either forwarded or blind carbon copied to the complainant by either someone at the Fund, HHB, or Commission.

Findings

This investigation determined the following:

- 1) The Fund failed to comply with its Conditions for Foals of 2011 for the NYSS program.
- 2) Mullaney deviated from the Fund's Conditions for Foals of 2011 for the NYSS program by agreeing to accept the [REDACTED] horses into the NYSS program despite knowing that the horses would not be registered with the USTA at the time of their supplemental entries.
- 3) Mullaney deviated from the Fund's Conditions for Foals of 2011 a second time by amending the previous agreement with the [REDACTED] even when they failed to timely pay the amount due for supplemental entries and initial sustaining payments for their horses.
- 4) [REDACTED], one of the [REDACTED] horses, was listed as an eligible horse to NYSS #53 as a pacer filly despite late payments to the Fund and untimely registration with the USTA.
- 5) On at least four other occasions, Mullaney allowed other horses to register for and be eligible to one or more levels of the NYSS program although the owners/trainers did not meet the conditions regarding timely payments and/or USTA registration.
- 6) Mullaney believed that as the Fund's Executive Director he could grant a waiver to the registration deadlines for the NYSS program as set forth in the conditions.
- 7) Brown had a conflict of interest when she approached Mullaney about the [REDACTED] horses, in that, as a Board Member of the HHB, the sole source provider to the Fund, she had a fiduciary duty to ensure that all participants complied with the conditions for the NYSS program. She was well-aware that by the time supplemental entries were due, the [REDACTED] horses would not have the required USTA certificates because BCF was withholding the mating certificates, a prerequisite to obtaining USTA certificates.
- 8) Holt was faced with competing interests when made aware of the agreement regarding the [REDACTED] horses because Brown was an HHB board member to whom she reports, and Mullaney was the Executive Director of the Fund, for

¹²¹ See Exhibits "4B" and "4C."

which she is responsible for administrating HHB's sole source contract. In an early e-mail regarding the agreement entered into by Mullaney allowing the registration of the [REDACTED] horses without USTA certificates, Holt stated to Mullaney and HHB Officers her belief in the importance of protecting the interests of the breeders and ensuring that they are paid for their services, but made no mention that the agreement violated the conditions for the NYSS program or could call the integrity of the program into question.

- 9) Although Holt and others have stated that she unequivocally told Mullaney that the [REDACTED] horses could not be registered to the program, e-mails do not support this claim. Initially, Holt noted that [REDACTED] paid \$50 fees (the cost for the May 15, 2012 nomination) rather than the \$500 supplemental entry fees, but did not raise a concern about the lack of USTA certificates. In a follow-up e-mail, Holt specifically asked whether she should hold the [REDACTED] horses for the eligible horses list, but again did not note the absence of USTA certificates.
- 10) Fund records were not maintained or retained in accordance with Fund policies and procedures, nor were the records organized in a logical fashion. Specifically, Mullaney and [REDACTED] handled the same types of records, but did not file these records together. In addition, although documents were typically stamped received by HHB and/or by the Fund, it is unclear which stamps were from which entity, since they are not always accompanied by the entity's name or an individual's initials. There also appear to be handwritten notations on documents after they were received, and it is unknown when the notations were made and by whom because there are no dates or initials next to the notations. E-mails related to registration issues were not always included with corresponding registration records. Further, until late registration of horses to the NYSS program was raised as an issue, envelopes had not been retained to demonstrate proof of postmark date. A review of current Fund records indicates that retention of original envelopes is inconsistent.
- 11) Mullaney's e-mails were not maintained because he had been using his personal Microsoft Live account to access his Fund e-mails rather than accessing his work e-mail directly through Outlook or another program that would download and retain e-mails locally. Thus, not only are the business records of the Fund incomplete, but the confidentiality and integrity of such records are at risk of compromise.

Conclusions & Recommendations

As a result of the above findings, it is recommended that this case be closed as substantiated in part. This investigation found that Jean Brown, then-BCF Vice President of Operations and also an HHB Board Member, initiated discussions with Mullaney to accommodate the late registrations of two horses owned by [REDACTED] and [REDACTED] to the NYSS program. The initial agreement specified that the supplemental entries and sustaining payments be paid in full by the deadline stated in the

conditions for foals of 2011. However, the agreement also acknowledged that the mating certificates would not be issued until the [REDACTED] paid their stud fees to BCF, with a due date after the supplemental entries were due. The mating certificates were necessary to obtain USTA certificates, a prerequisite to being registered with the NYSS program. As an HHB Board Member, Brown had a fiduciary responsibility to the Fund since the HHB is the sole source contractor for the Fund and should not have asked Mullaney to deviate from the conditions of the NYSS program.

Betty Holt, HHB Executive Director, although not part of the initial e-mail memorializing the agreement to accommodate the [REDACTED] sought direction from Mullaney when she received the supplemental entries and initial sustaining payments for the [REDACTED] horses. She indicated that it was his decision whether to accept the “late” payments despite knowing it violated the NYSS program conditions and would detrimentally impact the program. Holt noted that [REDACTED] initially paid the nomination fees rather than the supplemental entry fees, but she made no mention that there were no USTA certificates accompanying the registration paperwork, prohibiting acceptance into the NYSS program even if the correct fees were paid. Rather, Holt asked Mullaney for written permission to hold the horses for the list of eligible horses. If USTA certificates had accompanied timely supplemental (and sustaining) payments, there would have been no issue of “late” registration, as [REDACTED] would have been in compliance with the NYSS program conditions.

Although Holt stated that she did not volunteer her opinion or advice regarding decisions that are within the purview of the Fund, she made statements that would lead one to reasonably believe that the Fund would not be acting outside of its interests if it deviated from its own conditions. In particular, in an early e-mail to Mullaney and HHB’s officers, Holt expressed that “it [i]s important to protect the breeders and ensure that they get their stud fees paid,” implying that entering into the arrangement proposed by Brown, despite the NYSS program conditions, would be acceptable or even desirable to the Fund.¹²² Although Holt admittedly did not have a good relationship with Mullaney, this Office did not find sufficient evidence that she sought to secure the Fund Executive Director position for herself.

Nevertheless, Mullaney ultimately made the decision to enter into this agreement and stated his belief that he had the discretion to allow horses into the NYSS program after deadlines set in the program conditions had passed. Although it was alleged that Mullaney was not properly advised by Holt, Mullaney’s e-mails and memoranda do not indicate that he entered into the agreement based on the advice, or lack thereof, from Holt or that he was influenced into making this decision because of Brown’s status as an HHB board member, though he indicated that he valued Brown’s judgment. Mullaney similarly improperly exercised this discretion in other instances for late registration to the NYSS program. Although Mullaney had no experience in the standardbred industry, he failed to seek direction and was largely left unsupervised due to the lack of appointments to the Fund.

¹²² See Exhibit “4E.”

Accordingly, the following is recommended:

- 1) The Fund should regularly remind its members, employees, and vendors of the prohibitions on conflicts of interest and its fiduciary obligations to the Fund. All agents of the Fund should disclose if they have any personal or financial interests in a matter in which they are involved through their association with the Fund and advise if anyone associated with the Fund is acting or making decisions that violate the Fund's statutes, by-laws, policies and procedures, and/or conditions.
- 2) The Fund should ensure that all its members, employees, and vendors are mindful of keeping the confidentiality of Fund business and records. Although the nature of the Fund's activities require regular and constant interaction with the public and as a public benefit corporation, the Fund or its agents should not disclose information that would not be publicly available.
- 3) The Fund should review its record retention policies and procedures to ensure that it is maintaining and retaining all the records necessary to support its activities, including e-mails. The Fund should consider establishing a filing system that ensures that comprehensive records pertaining to horses currently participating in any Fund programs are readily available. The Fund should also consider establishing a record of files that have been sent to storage for archiving to ensure that the Fund is able to retrieve complete historical records when needed.
- 4) Fund staff should receive training as to proper record keeping and retention practices.
- 5) Mullaney's conduct should be noted in his personnel file in the event he should seek employment with the Fund again.
- 6) HHB's conduct should be noted in its vendor file and/or performance evaluation.