

**BEFORE THE NEW YORK STATE JOINT COMMISSION
ON PUBLIC ETHICS**

**IN THE MATTER OF AN INVESTIGATION INTO MISCONDUCT BY
NEW YORK ATTORNEY GENERAL ERIC T. SCHNEIDERMAN,
EXECUTIVE DEPUTY ATTORNEY GENERAL KARLA G. SANCHEZ
AND ASSISTANT ATTORNEY GENERAL DAVID N. ELLENHORN**

MAURICE R. GREENBERG AND HOWARD I. SMITH,

Complainants,

v.

NEW YORK ATTORNEY GENERAL ERIC T. SCHNEIDERMAN,
EXECUTIVE DEPUTY ATTORNEY GENERAL KARLA G. SANCHEZ AND
ASSISTANT ATTORNEY GENERAL DAVID N. ELLENHORN,

Respondents.

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INTRODUCTION

Maurice R. Greenberg and Howard I. Smith (“Complainants”) file this Complaint and respectfully petition the New York State Joint Commission on Public Ethics (the “Commission”) to investigate the misconduct of New York Attorney General Eric T. Schneiderman (“Respondent Schneiderman”), Executive Deputy Attorney General for Economic Justice Karla G. Sanchez (“Respondent Sanchez”) and Assistant Attorney General David N. Ellenhorn (“Respondent Ellenhorn”) (collectively, “Respondents”) for violations of New York Public Officers Law § 74 *et seq.*, New York Judiciary Law § 487 and the New York Rules of Professional Conduct.

This Complaint is based on a fundamental principle that is essential to the fair and orderly administration of justice: lawyers – including, and especially, sworn officers of a state law enforcement agency – cannot lie to judges or to opposing parties in a litigation. The basic requirement of honesty is as old as our system of jurisprudence itself: the first Statute of Westminster, adopted by the Parliament summoned by King Edward I of England in 1275, recognized and codified this fundamental principle. A lawyer’s duty of honesty in his or her communications with the courts and opposing counsel has been the law of New York for centuries; indeed, in 1787, the New York Legislature adopted a law with

language nearly identical to that in the first Statute of Westminster. It remains the law of the State to this very day.

The Public Officers Law prohibits Respondents from engaging in conduct that raises suspicion among the public that they are violating their trust as public officers. Respondent Ellenhorn has lied to two different courts – Supreme Court, New York County and the Appellate Division, First Department. Respondents Schneiderman and Sanchez have been on notice of Respondent Ellenhorn’s lies for months; however, they have taken no action to correct the record before the courts that were misled by Respondent Ellenhorn. By failing to correct the judicial records tainted by his own lies, Respondent Ellenhorn has unequivocally confirmed suspicions among the public that he has violated his trust as a public officer. Moreover, by failing to act on behalf of the Office of the Attorney General of the State of New York (“NYAG”), Respondents Schneiderman and Sanchez continue to confirm suspicions among the public that Respondents have violated their trust as public officers.

On November 7, 2013, Complainants filed with the Commission a complaint captioned *Maurice R. Greenberg and Howard I. Smith v. Assistant New York Attorney General David N. Ellenhorn* (the “Ellenhorn Complaint”). The Ellenhorn Complaint contains the full and detailed history of a pending litigation between Complainants and NYAG, and allegations of Respondent Ellenhorn’s violations of

the New York Public Officers Law and other misconduct in connection with that pending litigation. Subsequently, on December 30, 2013, Complainants filed with the Commission a second complaint captioned *Maurice R. Greenberg and Howard I. Smith v. New York Attorney General Eric Schneiderman, Matt Mittenthal, and Damien Lavera* (the “First Schneiderman Complaint”) based on the public statements and conduct of NYAG in connection with the Ellenhorn Complaint. The Ellenhorn Complaint and the First Schneiderman Complaint are hereby incorporated in their entirety by reference herein.

While Respondents and NYAG publicly trivialized the Commission’s investigation of the allegations set forth in the Ellenhorn Complaint, Respondents engaged in an aggressive behind-the-scenes effort to limit NYAG’s exposure to bad publicity and the possibility of an adverse finding by the Commission following a fair and comprehensive investigation. Respondent Schneiderman caused public statements to be issued in violation of his obligations and responsibilities under the New York Public Officers Law and the New York Rules of Professional Conduct (*See* First Schneiderman Complaint), but did nothing to remedy the misconduct of Respondent Ellenhorn as alleged in the Ellenhorn Complaint – misconduct that has undoubtedly misled courts of law and prejudiced the parties to a litigation brought by NYAG.

Respondent Sanchez is Respondent Ellenhorn's direct supervisor and was in court to witness Respondent Ellenhorn's misconduct. For well over a month, Respondent Sanchez has been on notice of Respondent Ellenhorn's ethical transgressions but has failed to address his misconduct knowing full well that her failure to act constitutes continuing violations of the Public Officers Law, the Judiciary Law and the New York Rules of Professional Conduct. Respondent Ellenhorn, the subject of an ongoing investigation by this Commission, has failed to take the steps necessary to remedy his misconduct. His failure to act constitutes additional and continuing violations of the Public Officers Law, the Judiciary Law and the New York Rules of Professional Conduct.

Since the filing of the Ellenhorn Complaint, the Appellate Division, First Department has considered two appeals in cases that Respondent Ellenhorn serves as lead counsel for NYAG.¹ Both appeals were on the First Department's calendar *last week*. Respondents did not notify the First Department of the tainted record created by Respondent Ellenhorn's lies in at least one of those cases.

Respondents' conduct constitutes clear abuse of their public office, and violations of the public trust. Respondent Schneiderman is the chief law enforcement officer of the State of New York; Respondent Sanchez is one of the

¹ *People of the State of New York v. Greenberg et al.*, Index No. 401720/05 (Sup. Ct. N.Y. Cnty.) and *People of the State of New York v. Ernst & Young LLP*, Index No. 451586/10 (Sup. Ct. N.Y. Cnty.).

most senior non-elected officials of NYAG, and Respondent Ellenhorn's direct supervisor. It is clear that Respondents and NYAG, by their acts and omissions, have discredited NYAG and compromised the public's right to trust their government. Therefore, Complainants respectfully submit that the Commission should take immediate disciplinary and corrective action to address Respondents' misconduct and restore the public's confidence in the fair and even-handed administration of justice in our State.

JURISDICTION OF THE COMMISSION

The Commission is authorized by Executive Law § 94(13)(a) to commence inquiries into credible violations of Public Officers Law § 74. Pursuant to Executive Law § 94(17)(c), the Commission is authorized to conduct any investigation necessary to carry out the provisions of Executive Law § 94, including through: (i) requesting oaths or affirmations; (ii) subpoenaing witnesses; (iii) compelling the attendance of targets or witnesses; and (iv) requiring the production of any books or records that it may deem relevant or material.

Where the Commission determines there has been a violation of Public Officers Law § 74, it is authorized to assess a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Public Officers Law § 74(4) ("In addition to any penalty contained in any other provision of law any such officer, member or

employee who shall knowingly and intentionally violate any of the provisions of . . . [§ 74] may be fined, suspended or removed from office or employment in the manner provided by law.”). Complainants respectfully submit that Respondents’ conduct constitutes infractions that the Commission has jurisdiction to both investigate and remedy.

This Complaint refers to the Commission for its review and investigation Respondents’ violations of the Public Officers Law, the Judiciary Law and the New York Rules of Professional Conduct. Respondents’ violations of the Judiciary Law – one of the very laws that they are sworn to enforce – undermine the public’s trust in public officers, and accordingly, constitute *per se* violations of the Public Officers Law.

STATEMENT OF THE CASE AND RESPONDENTS’ MISCONDUCT

I. Respondents’ Ratification of Respondent Ellenhorn’s Misconduct

The Ellenhorn Complaint alleges, and establishes through documentary evidence and the opinions of independent experts, that Respondent Ellenhorn violated the Public Officers Law and the Judiciary Law by knowingly and deliberately misrepresenting facts to both Supreme Court, New York County and the Appellate Division, First Department. Specifically, in an attempt to justify the continued prosecution of a civil litigation seeking to bar Complainants from serving as an officer or director of a public company, Respondent Ellenhorn lied to

Supreme Court, New York County and the Appellate Division, First Department by clearly and unambiguously asserting that Mr. Greenberg intends to take public the Starr Companies, the private businesses that he currently leads as chairman and chief executive officer.

There is no basis in fact for Respondent Ellenhorn's lie, which was repeated to two different tribunals. Complainants submitted overwhelming direct sworn evidence contradicting Respondent Ellenhorn's own sworn statements. The factual materials that Respondent Ellenhorn relied on to support his misrepresentations do not address Mr. Greenberg's intentions with regard to the Starr Companies, and those materials certainly do not support Respondent Ellenhorn's assertion that Mr. Greenberg intends take public the private companies that he leads.² Respondent Ellenhorn's misrepresentations constitute violations of Judiciary Law § 487³ and Public Officers Law § 74 *et seq.*

NYAG's original, sweeping complaint against Messrs. Greenberg and Smith asserted nine claims and sought \$6,500,000,000 in damages. In the intervening years, NYAG has dropped seven of those claims and the entirety of its request for billions of dollars in damages. The shell of NYAG's case survives today only on

² For a detailed recitation of Mr. Ellenhorn's misrepresentations, *see* Ellenhorn Complaint at 10-12.

³ Judiciary Law § 487 makes it both a misdemeanor and a civil infraction for an attorney to be "guilty of any deceit or collusion, or consent[] to any deceit or collusion, with intent to deceive the court or any party"

the strength of Respondent Ellenhorn's lies and misconduct. The Honorable Joseph W. Bellacosa, a former Associate Judge of the New York Court of Appeals, noted that "[Respondent] Ellenhorn's frustration with the fate of this deflated case [has] manifested itself" in ways that suggest that he is "attempt[ing] to save face over [the] withered prosecution of [Complainants]." Judge Bellacosa also noted that Respondent Ellenhorn's "personal interest and agenda are most inappropriate and surely provide no excuse for flouting of professional norms and a persistent misuse of public resources . . . to achieve and justify [his] misguided ends." *See* Ellenhorn Complaint, Ex. B at ¶¶ 18, 19.

While the outcome of NYAG's litigation against Complainants will be decided by the courts, Complainants respectfully assert that Respondents' Public Officers Law violations must be addressed by the Commission. Respondent Schneiderman has issued statements that clearly suggest that he questions the importance and authority of the Commission. Further, Respondent Schneiderman has publicly referred to the Commission's investigations as a "distraction," dismissing the need for robust ethics oversight of the state's employees. *See* First Schneiderman Complaint. Respondent Schneiderman's statements and conduct undoubtedly raise suspicions among the public that Respondents are engaging in acts that are in violation of their trust.

Respondents and NYAG have been on notice of Respondent Ellenhorn's misrepresentations for over a month but have taken no action to correct the tainted records with Supreme Court, New York County and the Appellate Division, First Department. Respondents have an affirmative obligation to notify the courts of Respondent Ellenhorn's misrepresentations. New York Rule of Professional Conduct 3.3(a), provides, in relevant part, that "a lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal or *fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer*; or . . . offer or use evidence that the lawyer knows to be false. *If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.*" (emphasis added).

Respondents' awareness of these lies and their failure to correct them is nothing short of their clear consent to, and approval of, Respondent Ellenhorn's plainly unethical and potentially illegal conduct. Respondents have failed to meet their fundamental ethical duty of candor and truthfulness to the courts. Their failure to discharge this duty is a clear violation of the Public Officers Law.

JUDICIARY LAW § 487

Judiciary Law § 487 makes it both a misdemeanor and a civil infraction for an attorney to be "guilty of any deceit or collusion, or consent[] to any deceit or

collusion, with intent to deceive the court or any party” Judiciary Law § 487(1). Respondents, who are aware of Mr. Ellenhorn’s misrepresentations to Supreme Court, New York County and the Appellate Division, First Department, have failed to take corrective action. This acquiescence constitutes consent to “deceit or collusion, with intent to deceive the court or any party” *See id.* Accordingly, Respondents have violated Judiciary Law § 487(1).

NEW YORK’S PUBLIC OFFICERS LAW

I. Section 74(3)(h)

Public Officers Law § 74(3)(h) requires that a state official “should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.” As noted above, the complaint demonstrates a clear violation of this provision.

Respondents’ failure to correct Respondent Ellenhorn’s misrepresentations of fact to two different tribunals – Supreme Court, New York County and the Appellate Division, First Department – undermines the public’s trust in prosecutors. Respondent Schneiderman is the chief law enforcement officer of the State of New York. Respondent Sanchez is the Executive Deputy Attorney General for Economic Justice, one of the most senior non-elected officials of NYAG. Respondent Sanchez is Respondent Ellenhorn’s direct supervisor and she is unquestionably aware of Respondent Ellenhorn’s misrepresentations.

Respondents' failure to take swift and public action to remedy Respondent Ellenhorn's violations of the Public Officers Law and the Judiciary Law leaves the public with the unmistakable impression that officials and officers of NYAG are not expected to comply with the Public Officers Law and/or the ethical rules that govern the conduct of attorneys in New York. An attorney's duty of honesty and candor is one of the most fundamental obligations of the members of the bar in this State; that duty ensures the fair administration of justice in our courts. Undermining the public's faith in NYAG's willingness to meet this obligation is a serious offense and it must be addressed accordingly.

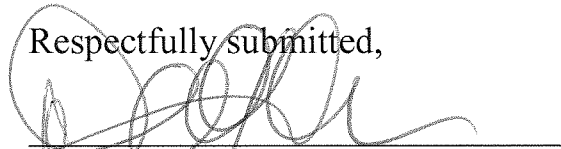
NYAG is a law enforcement office trusted by the public to administer justice in a fair and even-handed manner. Instead, Respondents' conduct gives the impression that NYAG will go to great lengths – including violating fundamental ethical norms – to protect themselves and avoid public accountability for ethical breaches. In light of Respondents' conduct, defendants in lawsuits brought by NYAG have reasonable grounds to suspect – or, in fact, believe – that NYAG and its officials will violate ethical norms and engage in potentially criminal conduct to facilitate their prosecutions.

CONCLUSION AND PRAYER FOR RELIEF

In light of the foregoing, Complainants respectfully submit that this matter warrants the Commission's immediate consideration and a thorough investigation of all of NYAG's conduct since the filing of the Ellenhorn Complaint.

Dated: January 24, 2014
Niskayuna, New York

Respectfully submitted,



David Grandeau & Associates
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January 24, 2014

New York State
Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207

To Whom It May Concern:

Please be advised that as an attorney admitted to the practice of law before the courts of the State of New York, I hereby affirm under penalty of perjury that I have read the attached complaint against New York Attorney General Eric T. Schneiderman, Executive Deputy Attorney General for Economic Justice Karla G. Sanchez and Assistant Attorney General David N. Ellenhorn in its entirety and that to the best of my knowledge and based on information and belief, believe it to be true.

Very truly yours,

David Grandeau

