

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, By
LETITIA JAMES, Attorney General of the State of
New York,

Plaintiff,

v.

NYCHARITIES.ORG, INC. and CRISTINE
CRONIN,

Defendants.

Index No.

Summons

Date Index No. Purchased:

October 4, 2019

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

New York County is designated as the place of trial because a substantial part of the events or omissions giving rise to the claim occurred in New York County, the county in which NYCharities has had its principal office.

Dated: October 4, 2019
New York, New York

LETITIA JAMES,
Attorney General of the State of New York

By: 

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COMPLAINT

The People of the State of New York, by Letitia James, Attorney General of the State of New York (the “Attorney General”), as and for their Complaint, respectfully allege the following.

PRELIMINARY STATEMENT

1. The Attorney General brings this action to protect the assets of the charitable community in New York endangered by the failure of Defendant NYCharities.org, Inc. (“NYCharities”) to distribute to over 125 charities over \$750,000 that it collected on their behalf. NYCharities is a Delaware corporation that operates an online fundraising portal through which it receives donations from the public who designate specific charities as recipients of their contributions. NYCharities promises to process the donations made by credit card through its website, taking a small administrative fee, and then to pass on the donations to the intended recipient charities.

2. The Attorney General's interest in this case is two-fold: it is both to ensure that not-for-profit organizations, such as NYCharities, comply with their legal obligations as well as to protect the charitable organizations that NYCharities was set up to serve.

3. For years, NYCharities did exactly what it promised. However, in the spring of 2019, the Office of the Attorney General (the "Attorney General" or "OAG") began receiving complaints from charities operating in this State alleging that NYCharities had ceased turning over charitable contributions to them and had stopped responding to their inquiries. The complaints alleged that since May 2019, NYCharities has failed to turn over hundreds of thousands of dollars in contributions it owed to charitable organizations. As a result, over 125 charitable organizations in this State have been deprived of funds necessary to carry out their charitable programs. An initial investigation by the Attorney General's Charities Bureau (the "Charities Bureau") confirmed that the complaints had merit.

4. NYCharities was established as a nonprofit nonstock corporation under the laws of Delaware in or about 2002 and, in 2005, the Internal Revenue Service ("IRS") granted it exemption from income tax under Section 501(c)(3) of the Internal Revenue Code ("Code"). Its principal function was to process online contributions from donors to other charitable organizations, a program it conducted for many years.

5. Upon information and belief, three or four years ago, a number of the long-time members of the NYCharities' Board of Trustees (its "Board") retired and/or resigned from the Board and were not replaced. Around the same time, NYCharities fell out of compliance with regulatory authorities, including the OAG and the IRS. In particular, for the last three years, NYCharities has failed to comply with its obligation to file annual financial reports with the

Charities Bureau. It also failed, for three consecutive years, to file its annual tax returns with the IRS, resulting in the automatic revocation of its tax-exempt status effective on August 8, 2018.

6. Despite the revocation of its tax-exempt status in 2018, NYCharities continued to collect and process donations designated to be turned over to other charitable organizations.

7. In June 2019, the NYCharities' website went offline. In or around July 2019, the website was restored briefly and resumed processing contributions for charities. Since the end of May, however, NYCharities has not passed on any funds it collected to the other charitable organizations for which those funds were intended. At the same time it stopped turning over contribution, NYCharities also ceased responding to inquiries from the charities it serves.

8. As described above, in the spring of this year, the Charities Bureau began receiving complaints from charities about NYCharities and its processing of donations. In July 2019, the rate of complaints increased dramatically and now number over 125. The complaints indicate that NYCharities failed to distribute over \$750,000 to recipient charities.

9. To address NYCharities' governance failures and protect the charitable assets it holds, NYCharities must be barred from conducting any activities in this State and the funds it holds must be protected so that they may be paid to the intended beneficiaries. In addition, because there is no one remaining at NYCharities who is capable of overseeing its affairs, a temporary receiver should be appointed to administer the organization and, after a proper accounting, to distribute to the intended beneficiaries the funds it holds for their benefit.

10. The Attorney General also seeks to hold Ms. Cronin liable for her breaches of fiduciary duty in overseeing the organization. As the sole remaining trustee or officer of NYCharities, she is responsible for ensuring that NYCharities administers charitable assets

properly and serves the charitable organizations that entrusted it to collect donations on their behalf. She has failed to do so.

11. Ms. Cronin has breached her fiduciary duties to NYCharities by failing to ensure that the organization timely files: (i) annual financial reports with the Charities Bureau as required by the New York Estates, Powers and Trust Law (the “EPTL”) and Article 7-A of the New York Executive Law (“Article 7-A”) and (ii) annual returns with the IRS. Her breaches of fiduciary duty also include the failure to ensure that all donated funds reach their intended recipients and that NYCharities’ assets, and the assets it holds for the benefit of other charities, are not wasted. In addition, the Attorney General has obtained evidence that Ms. Cronin, the President of NYCharities, breached her fiduciary duty of loyalty by using its charitable assets to pay for thousands of dollars in personal expenses.

THE PARTIES

12. The Attorney General is responsible for overseeing the activities of charitable organizations and the conduct of their officers and directors, in accordance with the Not-for-Profit Corporations Law (“N-PCL”), the EPTL, the New York Executive Law (“Executive Law”) and her common law *parens patriae* authority.

13. Upon information and belief, Defendant NYCharities was formed as a Delaware nonstock nonprofit corporation in or about 2002 with the name Charitywave.org, Inc. In 2003, it changed its name to NYCharities.org, Inc. and registered with the Charities Bureau. Its principal place of business is in New York, New York. NYCharities is, as it describes itself on its webpage, an “online contributions portal, which is dedicated to increasing charitable dollars from donors to New York causes.”

14. NYCharities permitted the charities it works with to set up an information page on the NYCharities' website that allowed donors to submit contributions electronically through that page. NYCharities charged a 4% fee to process the donations (which donors could agree to cover so that the recipient charity receives the full contribution amount) and promised that all amounts collected would be transferred to the designated charities by no later than the 15th day of the following month (except if the 15th is a holiday). NYCharities also promised to deactivate any charities' account at any time if a request is made by email. In audited financial statements filed with the Charities Bureau, NYCharities described itself as an "agent for nonprofit organizations" for whom it receives "pass-through contributions."

15. Upon information and belief, Defendant Cristine Cronin ("Cronin") is the President of NYCharities and the only remaining member of its Board. Upon information and belief, Cronin is a resident of New York County, New York.

JURISDICTION AND VENUE

16. The Attorney General brings this action on behalf of the People of the State of New York under the EPTL, the N-PCL, the Executive Law, and under her *parens patriae* authority.

17. Charitable organizations operating in New York must register and file annual reports with the Charities Bureau, pursuant to EPTL §§ 8-1.4(d) and (f), subject to certain exceptions not applicable here. EPTL § 8-1.4(f) requires charitable organizations to register and file annual reports with the Charities Bureau concerning the assets they hold for charitable purposes.

18. Pursuant to EPTL § 8-1.4(m), the Attorney General also has the power to institute appropriate proceedings to secure compliance with EPTL Article 8 and to ensure the proper administration of charitable assets, including by seeking an accounting for a trustee's breach of fiduciary duty and by seeking a court order barring any officer or trustee who breaches his or her

fiduciary duties from future service as a fiduciary of any entity holding charitable assets in New York.

19. Pursuant to Executive Law § 172-b, organizations soliciting charitable contributions in this State must file an annual financial report with the Charities Bureau and, if they fail to do so, their registration may be cancelled.

20. Registration with the Charities Bureau is required, in part, to enable the Attorney General to exercise her statutory oversight of organizations that conduct charitable activities and/or solicit charitable contributions in New York to ensure that funds and other property entrusted to those organizations are administered properly. The registry also serves as an important source of information for members of the public concerning charitable organizations. The failure of an organization to comply with the EPTL's and the Executive Law's registration and reporting requirements impedes the Attorney General's exercise of her statutory authority to oversee charitable organizations and deprives New Yorkers of access to valuable information.

21. Pursuant to N-PCL § 112(a), the Attorney General is authorized to bring an action or special proceeding: "(6) To restrain a foreign corporation or to annul its authority to carry on activities in this state under section 706."

22. Pursuant to N-PCL § 1202(3), the court may appoint a "receiver of property of a domestic or foreign corporation" in an "action brought by the attorney-general under section 112 . . . or brought by the attorney-general . . . to preserve the assets of a corporation, which has no officer within this state qualified to administer them."

23. Pursuant to N-PCL § 1303, "[t]he attorney-general may bring an action or special proceeding to . . . annul the authority of any foreign corporation which within this state contrary to law has done or omitted any act which if done by a domestic corporation would be a

cause for its dissolution under [N-PCL] section 1101 (Attorney-general's action for judicial dissolution)”

24. Pursuant to N-PCL § 1101, the Attorney General may bring an action for judicial dissolution if a corporation “has violated any provision of law whereby it has forfeited its charter, or carried on, conducted or transacted its business in a persistently fraudulent or illegal manner, or by the abuse of its powers contrary to the public policy of the state has become liable to be dissolved.”

25. Pursuant to N-PCL § 520, the willful failure to file required reports “as required by law” with the Charities Bureau “shall constitute a breach of the directors’ duty to the corporation and shall subject the corporation, at the suit of the attorney-general to an action or special proceeding for dissolution under article 11 (Judicial dissolution) in the case of a domestic corporation, or under section 1303 (Violations) in the case of a foreign corporation.” The reports required under EPTL § 8-1.4 and Article 7-A of the Executive Law are “expressly included as reports required by the laws of [New York]” as that term is used in N-PCL § 520.

26. Pursuant to CPLR § 6401, “[u]pon motion of a person having an apparent interest in property which is the subject of an action in the supreme . . . court, a temporary receiver of the property may be appointed . . . at any time prior to judgment . . . where there is a danger that the property will be . . . lost, materially injured or destroyed.”

27. Venue is properly laid in New York County pursuant to CPLR § 503 because a substantial part of the events or omissions giving rise to the claim occurred in New York County, the county in which NYCharities has had its principal office.

FACTUAL BACKGROUND

NYCharities' Failure to File Annual Reports with the Charities Bureau and the IRS

28. As a not-for-profit corporation holding and administering charitable assets in this state, pursuant to EPTL § 8-1.4, NYCharities was required to register with the Charities Bureau and to file annually a copy of its IRS form 990 and the Attorney General's form CHAR 500 (Annual Filing for Charitable Organizations). In addition, because it solicits donations in this State, it is also required to register and file a CHAR 500 pursuant to the Executive Law.

29. Although it registered with the Charities Bureau in or about 2003, NYCharities has failed to file any annual reports with the Charities Bureau since February 2016, when it filed an annual report for the fiscal year-ending March 31, 2015.

30. As a trustee and officer of NYCharities, Defendant Cronin was responsible for ensuring the NYCharities complied with the reporting requirements of EPTL § 8-1.4 and Executive Law § 172-b (*see, e.g.*, N-PCL § 520). Defendant Cronin breached her fiduciary duties to the organization and its charitable beneficiaries by failing to ensure that NYCharities complied with its annual reporting requirements to the Charities Bureau.

31. In addition, as a trustee and officer of NYCharities, Defendant Cronin was responsible for ensuring that the organization file annual returns with the IRS, but no such returns have been filed since February 2016. As a result of her failure to ensure that NYCharities filed annual returns with the IRS, the IRS has revoked NYCharities' tax exemption under section 501(c)(3) of the Code.

NYCharities' Failure to Turn Over Funds to Charities for Which It Collects Donations

32. The principal charitable purpose of NYCharities is to assist other charities in the processing of credit card donations. NYCharities also provides limited information about each

charity on a webpage and provides certain related services such as selling tickets to and highlighting events, particularly fundraising events, for charities.

33. NYCharities charges a 4% fee on all transactions and promises charities it works with that all funds received in a given month will be transferred to the charity by no later than the 15th day of the following month. When a contribution is made to a particular charity, the charity receives an electronic notification and, as a result, each charity knows in real time the amount it is owed and when it should receive the funds donated to it.

34. Each month, NYCharities processes hundreds of thousands of dollars in donations. In particularly busy giving months, such as December, the monthly donations that it processes may exceed one million dollars.

35. In the spring of 2019, charities first started to contact the Charities Bureau claiming that they had not received funds donated to them via NYCharities' online portal. The initial complaints were sporadic and involved relatively small amounts. One complaint was received in late March and another in May, with the total amount at issue less than \$3,000. In June, two additional complaints were made, again for relatively small amounts.

36. Donations for May 2019 received by NYCharities should have been turned over to the charities for which they were intended by no later than June 15th. But, NYCharities failed to make the required payments to charities in June and, in fact, has failed to make any distributions to charities after May 2019.

37. Beginning on July 1, 2019, the Charities Bureau began receiving complaints about NYCharities at a rapidly increasing rate. To date, over 125 charities have contacted the Charities Bureau to report that they had not received the donations due to them. The amount owed to these charities currently totals over \$750,000.

38. Based on documents obtained by the Attorney General, the total amount donated to charitable organizations through NYCharities for the months May, June and July 2019 is in the range of approximately \$900,000 to \$1,000,000. NYCharities transferred approximately \$675,000 to other charitable organizations in May 2019, but no transfers have been processed since that time. It is unclear, however, how much of the \$675,000 that was transferred in May 2019 represented donations received in May and how much represented donations received earlier in 2019. Thus, although NYCharities currently has approximately \$439,000 in the account from which it transfers funds to other charities, it is not clear if this is sufficient to cover all the pass-through contributions that it must transfer to organizations to which the contributions were made.

39. Two charities have reported to the Charities Bureau that they received overpayments from NYCharities. Attempts by these charities to contact NYCharities about these overpayments have gone unanswered.

40. Defendants NYCharities and Cronin have failed to respond to communications from the Charities Bureau as well as numerous inquiries from charities seeking information about contributions they had not received.

41. NYCharities' sole employee, other than Defendant Cronin, left its employ in May 2019. Since that employee's departure, NYCharities has not made any payments to the charities for whom it collects donations. Without the assistance of that employee, Defendant Cronin is incapable of running the organization and, among other things, forwarding contributions to the intended recipients.

Defendant Cronin's Misuse of Charitable Assets

42. Beginning no later than 2018, ATM and debit cards issued to Cronin for bank accounts held by NYCharities were used to purchase personal items. Although charges for personal items were made before then, starting in December 2018, dozens of charges each month were made for personal items. The total amount of such charges is in the thousands of dollars. Cronin, as the card holder, is responsible for any improper use of the debit card issued to her.

FIRST CAUSE OF ACTION**FOR BREACH OF FIDUCIARY DUTY TO NYCHARITIES.ORG****(Against Defendant Cronin)**

43. The Attorney General repeats and re-alleges paragraphs 1 - 42, as though fully set forth herein.

44. Section 8-1.4 of the EPTL, entitled "Supervision of trustees for charitable purposes" gives the Attorney General oversight of trustees of charitable assets, and Section 8-1.4(a)(3) defines the term "trustee" to include "any non-profit foreign corporation organized for charitable purposes, doing business or holding property in this state."

45. NYCharities is a trustee as that term is defined under the EPTL.

46. Section 8-1.4(m) of the EPTL authorizes the Attorney General to "institute appropriate proceedings" to secure the proper administration of any charitable entity to which that section applies, including proceedings to hold trustees of "non-profit foreign corporation[s]" liable for their breaches of fiduciary duty.

47. Defendant Cronin failed to fulfill her fiduciary duties with respect to the administration of NYCharities by, among other things: (i) failing to ensure that NYCharities filed all required annual reports with the Charities Bureau and the IRS; (ii) failing to ensure that

NYCharities maintained its tax exemption under Section 501(c)(3) of the Code; (iii) failing to ensure that the donations NYCharities collected for the benefit of other charities were turned over in a timely manner to the charities for which they were intended; and (iv) failing to ensure that the assets of NYCharities, as well as the assets that NYCharities holds for the benefit of other charities, were not wasted.

48. Defendant Cronin's use of NYCharities' debit cards to pay for goods and services provided to her violated her duty of loyalty and she must account for the misused funds and make full restitution of all assets improperly used for her benefit.

49. The foregoing breaches of fiduciary duty by Defendant Cronin: (i) have impeded the Attorney General's ability to oversee NYCharities' activities and to ensure that it is properly utilizing its assets for charitable purposes; (ii) have thwarted the public's ability to obtain information concerning NYCharities' operations; (iii) have wasted NYCharities' charitable assets and assets that it collected from donors as the agent of other charities; and (iv) in violation of its contractual arrangement with other charities and the intent of the donors, illegally deprived over 125 other charities of hundreds of thousands of dollars intended to be used for their benefit.

50. But for the Defendant Cronin's breaches of fiduciary duty, NYCharities' charitable assets would not have been wasted and the other charities that it serves would have received the funds to which they were entitled.

51. Accordingly, Defendant Cronin is liable for the waste caused by her breaches of duty and, under EPTL § 8-1.4, must account and pay restitution and/or damages, plus interest at the statutory rate of 9%, for the harm NYCharities and the charities it served suffered as a result of their breaches. In addition, Defendant Cronin should be barred permanently from serving as an officer, director or trustee of any not-for-profit or charitable organization incorporated or

authorized to conduct business, or any other entity holding charitable assets, in the State of New York.

SECOND CAUSE OF ACTION
TO ANNUL THE AUTHORITY OF
NYCHARITIES.ORG TO ACT IN THIS STATE
(Against NYCharities)

52. The Attorney General repeats and re-alleges paragraphs 1 - 51, as though fully set forth herein.

53. N-PCL § 520 requires that New York not-for-profit corporations file all reports required by the laws of this State, expressly including the reports required to be filed pursuant to EPTL § 8-1.4 and Article 7-A of the Executive Law. Pursuant to the express language of N-PCL § 520, the willful failure to comply with these filing requirements subjects the corporation to an action to annul the authority of a foreign corporation to act in this State pursuant to N-PCL § 1303.

54. N-PCL § 1303 authorizes the Attorney General to bring an action “to annul the authority of any foreign corporation which within this state contrary to law has done or omitted any act which if done by a domestic corporation would be a cause for its dissolution under section 1101 (Attorney-general's action for judicial dissolution).” N-PCL § 1101(a)(2) provides that the Attorney General may bring an action to dissolve a not-for-profit corporation that carries on “its business in a persistently fraudulent or illegal manner, or by the abuse of its powers contrary to public policy of the state has become liable to be dissolved.”

55. In addition to its willful failure to submit annual reports as required by the EPTL and the Executive Law, which, pursuant to N-PCL § 520, provides a sufficient basis for dissolution,

by failing to turn over to other charities contributions received on their behalf and failing to respond to inquiries from those organizations and the Attorney General, NYCharities has carried on its business in a fraudulent and illegal manner and has abused its powers contrary to the public policy of this state.

56. NYCharities has also carried on its business in a persistently illegal manner by, in violation of Section 172-d(4) of the Executive Law, repeatedly failing to turn over to specific charities contributions it received on their behalf. As a result of the foregoing, NYCharities' authority to act in this State should be annulled pursuant to N-PCL §§ 1101 and 1303. In addition, NYCharities should be preliminary enjoined from conducting activities in this State, including but not limited to, soliciting charitable contributions, maintaining a website for the collection of such contributions and transferring or withdrawing funds from its bank accounts.

THIRD CAUSE OF ACTION

FOR THE APPOINTMENT OF A TEMPORARY RECEIVER

57. The Attorney General repeats and re-alleges paragraphs 1 - 56, as though fully set forth herein.

58. Pursuant to N-PCL § 1202(a), the Court may appoint a receiver where, as here, the Attorney General brings a proceeding under N-PCL § 112. In addition, pursuant to CPLR § 6401, the Court may appoint a temporary receiver to protect property during the pendency of an action.

59. Appointment of a temporary receiver of NYCharities during the pendency of this proceeding is appropriate because there are no trustees or officers who are currently capable of managing its affairs. Ms. Cronin is purportedly the sole trustee of NYCharities; the last remaining employee of the organization, other than Ms. Cronin resigned in or about May 2019.

Since that time, Ms. Cronin has failed to operate the organization or distribute funds to charities. Indeed, not a single payment has been made to any charitable organization since May 2019, causing serious hardships for charities whose contributions were collected by NYCharities.

60. As a result, a temporary receiver should be appointed, during the pendency of this proceeding, to protect the charitable assets held by NYCharities and to ensure that the funds it collected are distributed appropriately.

WHEREFORE, Plaintiff requests that the Court grant a judgment as follows:

- a) Directing Defendant Cronin to furnish an accounting of all assets and property received by or used in the operation of NYCharities, including contributions it collected on behalf of other charities, and to pay restitution and/or damages, plus statutory interest at the rate of 9%, for the harm suffered by the charitable organizations as a result of her breaches of fiduciary duty;
- b) Ordering Defendant Cronin to account for and pay restitution to NYCharities for the value of the charitable assets used for her benefit, plus statutory interest at the rate of 9%;
- c) Permanently barring Defendant Cronin from serving as an officer, director or trustee of any not-for-profit or charitable organization incorporated or authorized to conduct business, or any other entity holding charitable assets, in the State of New York;
- d) Ordering that the authority of NYCharities to act in this State be annulled and that, after an appropriate accounting, all funds collected by NYCharities for the benefit of other charities be distributed to those organizations;

- e) Enjoining NYCharities from conducting activities in this State, including but not limited to, soliciting charitable contributions, maintaining a website for the collection of donations to charitable organizations and transferring or withdrawing funds from its bank accounts;
- f) Appointing a temporary receiver to operate and manage NYCharities during the pendency of this proceeding or until such time at the Court shall determine; and
- g) Granting Plaintiff such other and further relief as this Court may deem just and proper, including injunctive, monetary and declaratory relief as may be required in the interest of justice.

DATED: New York, New York
October 4, 2019

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