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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

KEITH BORGE,

Defendant.

19 Civ. 2787 ()
ECF Case

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendant Keith Borge (“Borge” or “Defendant”), alleges as follows:

SUMMARY OF ALLEGATIONS

1. This action concerns a fraudulent scheme, including numerous fraudulent misrepresentations and omissions by Borge to misrepresent the financial condition of the College of New Rochelle (the “College”), to, among others, the investing public in the College’s

publicly-filed, fiscal year 2015 (“FY15”)¹ audited financial statements.

2. Like many small private colleges, prior to 2013 the College came under considerable financial stress as student enrollment declined and tuition revenues decreased, leading to chronic cash flow issues. Starting as early as 2013, Borge improperly withdrew funds designated for the College’s endowment to fund various operational expenses at the College.

3. Borge then took a series of actions in FY15 and FY16 intended to produce financial statements which obfuscated the true financial condition of the College and hid the consumption of its assets. Borge published the falsified financial figures contained in the FY15 audited financial statements, making them available to investors through the online repository in connection with the College’s continuing disclosure obligations stemming from a 1999 bond issuance for which the College served as obligor. As a result of Borge’s misconduct, the secondary market purchases and sales of the bonds were made based on false and misleading financial information.

4. To conceal his misconduct, Borge knowingly provided false information about the College’s finances to his supervisors at the College and its Board of Trustees, including fabricated statements given to his direct supervisor.

5. The cumulative impact of Borge’s misconduct was significant: Borge prepared the College’s FY 2015 financial statements that falsely reported approximately \$25 million in net assets when actual net assets were approximately negative \$8.8 million – an overstatement of approximately \$33.8 million.

6. When Borge’s fraudulent activity was discovered in late 2016, the College was nearly forced to cease operations.

¹ The College’s fiscal year begins on July 1 and ends on June 30.

VIOLATIONS

7. By engaging in the conduct set forth in this Complaint, Borge violated or, in the alternative, aided and abetted the College's violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5(a)-(c) thereunder [17 C.F.R. § 240.10b-5(a)-(c)].

8. Unless Borge is permanently restrained and enjoined, he will again engage in the acts, practices, and courses of business set forth in this Complaint and in acts, practices, and courses of business of similar type and object.

NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

9. The Commission brings this action pursuant to the authority conferred upon it by Sections 21(d)(1) and 21(d)(3) of the Exchange Act [15 U.S.C. §§ 78u(d)(1) and (3)].

10. The Commission seeks to restrain and permanently enjoin the Defendant from engaging in the acts, practices, transactions and courses of business alleged herein pursuant to Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)].

11. The Commission also seeks a final judgment ordering the Defendant to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

12. Finally, the Commission seeks any other relief the Court may deem just and appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa]. Borge, directly or indirectly, made use of the mails or the means or instrumentalities of interstate commerce, certain of which occurred in this District.

14. Venue is proper in this district pursuant to Section 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa]. Borge, directly or indirectly, made use of the mails or the means or instrumentalities of interstate commerce, in connection with transactions, acts, practices, and courses of business alleged in this Complaint.

15. Certain of these transactions, acts, practices, and courses of business constituting the violations alleged herein occurred within this District. For example, a substantial portion of Borge's transactions, acts, practices, and courses of business constituting the violations alleged herein occurred in connection with his work performed in New Rochelle, New York, where the College is located.

DEFENDANT

16. **Borge**, age 62, resides in Valley Cottage, New Jersey. Borge spent his professional career working at the College. From 1979 to 2010 he served as the Assistant Controller and then Controller. In 2010, he was promoted to Vice President for Financial Affairs, the chief financial officer of the College. In August 2014, Borge was demoted back to Controller but remained responsible for, among other tasks, preparing the College's financial statements, overseeing the College's budget, and recording entries in the College's financial ledger. Borge left the College in June 2016.

OTHER RELEVANT ENTITY

17. **The College of New Rochelle** is a private, not-for-profit education corporation based in New Rochelle, New York, with additional locations in New York City. The College is expected to cease operations in August 2019 as a result of financial difficulties.

DEFENDANT’S VIOLATIVE CONDUCT

Background

18. In 1999, the City of New Rochelle Industrial Development Agency (“NRIDA”)² issued \$24 million in revenue bonds with varying maturities payable through FY 2028 (the “1999 Bonds”) intended to finance renovations at the College. As an obligor of the 1999 Bonds, the College was legally committed to support repayment of such bonds.

19. As part of the 1999 Bonds issuance, the College entered into a continuing disclosure agreement requiring the College to provide annually to central repositories—which, post-2009 was the Electronic Municipal Market Access (“EMMA”) online system operated by the Municipal Securities Rulemaking Board (“MSRB”)—notice of material events and certain annual financial information and operating data, including audited financial statements, for the benefit of bondholders in the secondary market.

20. Borge exercised control over nearly all aspects of the College’s preparation of its FY15 financial statements and was its primary author. Borge also served as the main point of contact on behalf of the College with the outside auditor throughout the FY15 audit: he met with the audit team on numerous occasions, answered questions from the audit team, provided documents and information to them, and he was the individual at the College who sent the financial statements as prepared and approved by him to the outside auditor for their review.

21. Borge also signed (along with the College’s President and Vice President for Finance and Administration) the November 30, 2015 management representation letter to the College’s outside auditor in connection with the FY15 audit. In that letter, Borge represented that he had “fulfilled [his] responsibilities . . . for the preparation and fair presentation of the

² NRIDA is a component unit of the municipal government of New Rochelle, New York.

financial statements” and confirmed that he was “responsible for the fair presentation in the financial statements of financial position, changes in net assets and cash flows, and the related notes in accordance with U.S. generally accepted accounting principles.” Borge also represented in this letter that he was “not aware of any uncorrected financial statement misstatements.”

22. Borge further falsely misrepresented in the management representation letter that there were no other liabilities required to be accrued or disclosed; that there were no material transactions that had not been properly recorded in the accounting records underlying the financial statements; that there were no uncorrected financial statement misstatements; that the College had complied with all aspects of grants and donor restrictions that may affect the financial statements; and that receivables were valid and had been appropriately reduced to estimated net realizable value. Borge knew, or at least recklessly disregarded, that his misconduct alleged herein rendered each of these representations false.

23. Borge also participated in the September 2015 meeting of the Audit Committee of the College’s Board of Trustees during which the outside auditor to the College presented the draft financial statements, and he attended the Board’s Finance/Investment Committee meeting the same day during which the draft audited financial statements were accepted by the Committee.

24. In connection with the College’s continuing disclosure obligations from the 1999 Bonds, Borge personally submitted the College’s audited FY15 financial statements in December 2015 to EMMA, making them publicly available to investors. In advance of his submission, Borge obtained a user account in order to make the College’s submission and received email confirmation of his submission. Borge is publicly identified by name as the submitter, along with

his contact information, on EMMA.

Borge's Misrepresentation of the College's Assets

25. To bridge the increasing gap between the College's revenues and expenses, starting as early as spring 2013, Borge improperly used certain College assets that were designated as restricted funds in the College's endowment to pay for various operational expenses. Although the College's bylaws gave the Finance Committee of the Board of Trustees authority to manage the endowment, Borge unilaterally withdrew funds from the endowment without the requisite approval from the Board.

26. The consumption of these funds resulted in a rapid decrease in the College's actual net assets, from approximately \$30.5 million at the conclusion of FY 2012 to negative \$8.8 million at the conclusion of FY 2015.

27. As described below, Borge took numerous steps to both conceal the precipitous decline in the College's net assets and report an inflated net asset value for FY15. Borge's deception included improper accounting entries that resulted in the recording of approximately \$25 million in net assets in the FY15 financial statements as opposed to the actual figure of negative \$8.8 million. The actual figure reflected the fact that the College's recurring operating deficits had consumed the endowment and left the College with liabilities in excess of its net assets.

28. Borge also took numerous actions to prevent the College's Board of Trustees from learning the truth about the depletion of the College's endowment.

29. When Borge first began liquidating investments in the College's endowment fund to pay for operational expenses, he did not report the decreases in the endowment fund to the Board. Instead, as certain decreases in the endowment fund were identified by others throughout

the relevant period – activity that Borge referred to as “borrowing” from the endowment fund – Borge took numerous steps to conceal, obfuscate, and delay discovery of the full extent of the decreases by the Board and its relevant subcommittee that oversaw the College’s finances and investments.

30. For example, even after the Board learned that Borge had liquidated a \$4.5 million endowment investment, Borge subsequently told a subcommittee of the Board that the College had paid back the “borrowed” \$4.5 million to the endowment. In reality, Borge had merely transferred funds back to the endowment account temporarily and then immediately transferred the funds back out to the relevant operating accounts to pay the College’s operational expenses. In this manner, he was able to deceptively present records to the Board that showed the funds as having been returned to the account.

Borge’s Failure to Record Unpaid Payroll Tax Liabilities

31. For each payroll period, an outside vendor to the College calculated the requisite amount of federal, state, and local payroll taxes owed by the College based on payroll information provided by the College. This information was transmitted to the payroll department at the College and ultimately to Borge. Borge intentionally withheld the College’s required payroll tax payments several quarters, including eight consecutive quarters from the College’s Q1 FY15 through Q4 FY 2016.

32. Borge was aware of the amounts that were required to be paid but intentionally decided not to do so.

33. Borge did not record the payroll tax liabilities in the College’s general ledger and did not inform the President, the VPFA, or the College’s Board of Trustees that payroll taxes were not being paid between July 2014 (Q1 FY15) and his departure in June 2016, and instead

covered up his actions on numerous occasions.

34. In order to perpetuate these misrepresentations, Borge concealed from his superiors the outstanding payroll tax liabilities on the general ledger and the College's financial statements. To accomplish this task, Borge recorded a series of improper and unsupported journal entries which reclassified the outstanding payroll tax liabilities into smaller amounts across various other general ledger accounts. Borge then prepared misleading financial statements and other financial information that omitted the increasing tax liability which he then presented to the College's leadership, Board, and ultimately investors in the FY15 financial statements that he published on EMMA. Borge's obfuscation and lies regarding payroll taxes continued even after he left the College. Among other things, even after the College had obtained IRS tax transcripts showing that federal payroll taxes had not been paid from July 2014 to June 2016, Borge falsely maintained to the College's President, VPFA, and its new Controller that he had, in fact, filed and paid the FY15 taxes. Borge then provided the VPFA with fabricated documents in late August 2016 that purportedly contained proof of filing and payment.

35. As a result of Borge's actions, Borge concealed in the College's FY15 financial statements that he prepared the College's actual outstanding payroll tax liabilities, resulting in an understatement of liabilities for the College and his corresponding overstatement of net assets in the amount of approximately \$11.7 million.

Borge's Failure to Accurately Record Receivables

36. Borge also intentionally, or at least recklessly, recorded numerous improper and unsupported journal entries which artificially inflated the balance of the College's receivables. For example, Borge failed to take into account the fact that donors were becoming increasingly

disgruntled with the operations of the College and were no longer following through on their pledged donations. Even after a donor stopped contributing amounts that had earlier been pledged, Borge never reduced the corresponding journal entries to take into account the non-payment, as required under Financial Accounting Standards Board (“FASB”) Statement No. 5, which sets forth the requirements of financial accounting and reporting for loss contingencies. Taking into account the decreasing collectability of donations as required under FASB Statement No. 5 would have resulted in only \$2.1 million of the \$4.4 million of pledges in FY15 being deemed collectible. In other instances, Borge also recorded revenue twice for the same donation: once when a pledge was made and a second time when it was collected.

37. As a result of Borge’s improper journal entries, Borge concealed in the FY15 financial statements he prepared that there were overstated receivables and a corresponding overstatement of net assets in the amount of approximately \$13 million.

Borge’s Failure to Accurately Record Accounts Payable and Accrued Expenses

38. Borge was the primary person responsible for recording financial transactions in the College’s subsidiary journals and general ledger. Borge also determined the College’s actions with respect to its vendors: he selected which parties were to be paid and which checks were to be “held” in his office indefinitely.

39. Borge improperly prevented numerous vendor invoices from being recorded in the accounts payable system. Instead, Borge kept stacks of unrecorded invoices in his office and then decided to record and pay these bills only when funds were available rather than when the expenses were incurred as was required.

40. As a result of Borge’s decision not to record vendor invoices when they were received, Borge concealed in the FY15 financial statements that he prepared understated

expenses and a corresponding overstatement of net assets in the amount of approximately \$4.4 million.

Borge's Other Misleading Journal Entries

41. Borge engaged in additional misconduct relating to several other financial statement categories, including:

a. Refundable US Government Grants: Borge failed to accurately account for liabilities due to the federal government related to the College's Perkins Loan Program. Borge did not account for certain of these funds that were required to be returned to the government, and also did not take into account certain non-performing loans. As a result of Borge's actions, Borge concealed in the FY15 financial statements that he prepared that liabilities were understated and his corresponding overstatement of net assets by approximately \$2.6 million.

b. Investments: Borge failed to record the purchase and sale of certain investments on the College's general ledger, a fact which went undetected in part because Borge also failed to reconcile the College's investment balances to the College's actual brokerage statements. As a result, Borge recorded artificially inflated investment account balances for the College in the FY15 financial statements he prepared, a corresponding overstatement of net assets of approximately \$2,204,802.

c. Other Assets: Borge recorded various other miscellaneous assets on the College's general ledger, such as assets related to certain insurance policies, donor estates and "major gifts," for which there were no accompanying records that support the existence of such transactions. At the very least, the large number of such unsupported assets demonstrates extreme recklessness by Borge. As a result of these unsupported assets, the FY15 financial

statements contained overstated assets and a corresponding overstatement of net assets of \$1.6 million.

The College's Internal Investigation and Restatement

42. Following Borge's departure in June 2016, the College discovered several of the financial problems that had resulted from Borge's misconduct. The College hired a forensic accountant and an outside law firm to investigate the matter and tasked a Special Committee of the College's Board of Trustees with oversight of the inquiry.

43. The investigation ultimately determined that the College's FY15 financial statements had significantly overstated the College's assets and understated the liabilities of the College. These financial misstatements were caused by Borge's misrepresentations discussed above. The College ultimately restated its FY15 financial statements in March 2017 to correct these previous material misstatements. The restatement decreased total assets by \$13.7 million and increased total liabilities by \$20.1 million, which resulted in a decrease in total net assets of \$33.8 million.

44. The failure to accurately present the College's assets and liabilities was material to the investment decisions of bondholders in the 1999 Bonds. Following the initial disclosure of the true extent of the College's financial challenges in December 2016, the market value of the 1999 Bonds significantly decreased and yields for the 1999 Bonds doubled from approximately 5% to 10%.

FIRST CLAIM FOR RELIEF

**Violations of Section 10(b) of the Exchange Act
and Rule 10b-5(a)-(c) Thereunder**

45. The Commission realleges and incorporates by reference paragraphs 1 through 44 of this Complaint.

46. By virtue of the foregoing, Defendant, directly or indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities, knowingly or recklessly, employed devices, schemes, or artifices to defraud, made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in acts, practices, and courses of business which operate or would operate as a fraud or deceit.

47. By virtue of the foregoing, Defendants violated, and unless restrained and enjoined will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a)-(c) [17 C.F.R. § 240.10b-5(a)-(c)], promulgated thereunder.

SECOND CLAIM FOR RELIEF
**Aiding and Abetting Violations of Section 10(b) of the Exchange Act
and Rule 10b-5(a)-(c) Thereunder**

48. The Commission realleges and incorporates by reference paragraphs 1 through 44 of this Complaint.

49. As a result of Borge's conduct described above, the College directly or indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities, with scienter, employed devices, schemes, or artifices to defraud, made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in acts, practices, and courses of business which operate or would operate as a fraud or deceit. By virtue of the foregoing, the College violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a)-(c) [17 C.F.R. § 240.10b-5(a)-(c)] promulgated thereunder.

50. By engaging the conduct described above, Borge knowingly or recklessly provided substantial assistance to the College in furtherance of the College's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a)-(c) [17 C.F.R. § 240.10b-5(a)-(c)] promulgated thereunder.

51. By reason of the foregoing, Borge aided and abetted, and unless enjoined, will again aid and abet violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a)-(c) thereunder [17 C.F.R. § 240.10b-5(a)-(c)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court grant the following relief, in a Final Judgment:

I.

Permanently restraining and enjoining Borge, his agents, servants, employees, attorneys, and other persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise from future violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

II.


Ordering Borge to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)]; and

III.

Granting such other and further relief as this Court deems just and proper.

Dated: March 28, 2019
New York, New York

By:



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