

# Commission on Quality of Care

and Advocacy for Persons with Disabilities

## An Investigation into the Financial Practices of HOMEE Clinic, Inc.

June 2013

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JOHN RYBALTOWSKI  
ACTING CHAIR

STATE OF NEW YORK  
COMMISSION ON QUALITY OF CARE AND ADVOCACY  
FOR PERSONS WITH DISABILITIES  
161 DELAWARE AVENUE  
DELMAR, NY 12054  
1-800-624-4143 (Voice/TTY/Spanish)  
[www.cqc.ny.gov](http://www.cqc.ny.gov)

BRUCE BLOWER  
PATRICIA OKONIEWSKI  
MEMBERS

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## **Executive Summary**

This report details the diversion of up to \$100,000 of funds intended for the care of individuals with mental illness from HOMEE Clinic, Inc. (HOMEE), to the personal benefit of its executive director, Eleanor Clarke. During its review, the Commission found that Ms. Clarke repeatedly failed to separate her own finances from those of HOMEE. Personal expenses of Ms. Clarke were either paid directly by HOMEE or reimbursed to her using HOMEE funds.

During the period reviewed, over \$55,000 was taken from an off-the-books bank account maintained by HOMEE and deposited directly into Eleanor Clarke's personal checking account. Ms. Clarke claimed these funds represented payment for vacation time she had accrued and for reimbursements of HOMEE program expenses she had paid personally. The Commission's review, however, found Ms. Clarke had no accrued vacation time at the time the payment was made and the expenses she claimed belonged to HOMEE were in fact related to a personal business venture of hers called New Horizons Cyber Café. Not only was HOMEE unable to provide evidence of board approval of any of these transactions, none of the transactions were even recorded on the agency's accounting records.

The Commission also found over \$36,000 in unsupported, unreimbursed credit card charges made by Ms. Clarke, many of which appear to be personal in nature, including charges from such vendors as Perfume Bar; Atlantis Hotel-Nassau, Bahamas; Westchester Wine; Nine West Outlet; Mercedes Tel-Aid; Delta Air-Nice, France; Duty Free-Singapore; Mohegan Sun; Daytona Beach Resort; and Salty Dog Surf Shop. While Ms. Clarke claimed that she reimbursed HOMEE for all personal credit card charges, she could only provide records supporting less than \$24,000 in reimbursements for more than \$60,000 of charges questioned by the Commission.

HOMEE also paid the insurance premiums for Ms. Clarke's Mercedes Benz E-350. For the three-year period reviewed by the Commission, HOMEE paid over \$10,000 in insurance premiums on this personal automobile.

In addition to misappropriation of agency funds, the Commission had serious concerns relating to the overall management of HOMEE by both Ms. Clarke and the board of directors. For example, in November 2007, HOMEE borrowed \$50,000 to develop a supportive housing project to be built on a parcel of land adjacent to its headquarters. However, HOMEE was unable to move the project forward. In January 2010, the loan became due and, even though over \$46,000 of the original loan proceeds was sitting in another of HOMEE's off-the-books accounts, the agency defaulted on the loan. The loan remains unpaid and is accruing interest at 10 percent per annum. Despite documentation including a board resolution authorizing the borrowing, a signed promissory note, and correspondence from the lender stating the loan is in default, Ms. Clarke contends the \$50,000 is not a loan but rather a grant that HOMEE is not obligated to repay.

The existence of multiple unrecorded bank accounts combined with unrecorded payments to Ms. Clarke as well as the tens of thousands of dollars in personal credit card charges and other personal expenses raise serious questions relating to the oversight by the agency's board of directors. Although Ms. Clarke's claims that these transactions were approved by HOME's board, not a single board minute or other piece of contemporaneous evidence was produced to support her position.

Based on the weight of its findings, the Commission is recommending that the Office of Mental Health move to terminate its contracts with HOME and revoke its operating certificate. The Commission has referred its findings to the Bronx County District Attorney's office for whatever action it deems appropriate. HOME's independent accountant will be referred to the NYS Office of Professional Discipline for his failure to adhere to professional standards in the conduct of his audits of HOME. Finally, the Commission's findings will be forwarded to both Federal and State taxing authorities for potential under reporting of income by Eleanor Clarke.

This report was first issued in draft to the HOME board of directors on March 1, 2013, along with a request for a written response. On April 3, 2013, the board replied with over 700 pages of material, all prepared by Ms. Clarke with the exception of a two page cover letter prepared by the agency's attorney. Although, the cover letter states "the Board is of the opinion that there has never been misappropriation by Ms. Clarke, of HOME assets, for her personal gain," the response consistently provided irrelevant information that was incoherent and unresponsive to the findings. After each section in this report, the Commission briefly summarizes HOME's response and then offers its rationale as to why the draft report was essentially left unchanged after consideration was given to the material provided. The entire HOME response is appended at the end of this report, with redactions to protect private information.

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## **Background/Scope of Review**

H.O.M.E.E. Clinic, Inc. (HOMEE), is a not-for-profit corporation headquartered at 695 East 170th Street, Bronx, New York. Incorporated on October 1, 1980, the agency currently operates three programs in the Bronx: a 24-bed supervised community residence, a 24-bed supported apartment program and a 34-bed single room occupancy (SRO) residence.

The supervised community residence and supported apartment program are licensed by the New York State Office of Mental Health (OMH) and receive a combination of State contract funds, Medicaid and client rents. The 34-bed Ilene R. Smith SRO receives its funding from the City of New York and the U.S. Department of Housing and Urban Development.

For the fiscal year ended June 30, 2011, HOMEE had an operating deficit of \$61,000 on revenues of \$2.2 million. The agency has a long history of annual deficits dating back to at least 1998<sup>1</sup> and, as of June 30, 2011, it had an accumulated deficit totaling \$530,000.

The agency's executive director is Eleanor Clarke, RN, MS. Ms. Clarke has been the executive director of HOMEE since its inception and is responsible for the day-to-day operations of the agency and its programs. Dr. Vanda Johnston is the current board chairman

The Commission began its involvement with HOMEE in June 2010, when it received a complaint alleging the improper discharge of a HOMEE resident from its supervised community residence program. The subsequent investigation found that a HOMEE resident was improperly discharged without explanation or a required discharge plan; flown -- accompanied by HOMEE staff -- to Florida and left in the care of a family member. After a short and unsuccessful stay, the individual returned to New York and was found residing in a homeless shelter after HOMEE refused to readmit the person into its residential program.

The Commission's findings were relayed to Ms. Clarke, who disagreed in whole with the Commission's conclusions and refused to provide the requested plan of correction. Based on this refusal, the Commission referred the matter to OMH which conducted its own investigation into the individual's discharge, resulting in findings consistent with those of the Commission.

During the course of its initial investigation, Commission staff became concerned about the overall management of the agency and Ms. Clarke's expansive role in HOMEE's operations. Based on these additional concerns, the Commission decided to launch a more comprehensive investigation involving a thorough examination of the agency's finances for the fiscal years ending June 30, 2008, 2009 and 2010.

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<sup>1</sup> Based on a review of IRS Form 990 for the fiscal years ending June 30, 1998 through 2011.

## **COMMISSION FINDINGS**

### **A. Intertwining of Not-for-Profit and Personal Finances**

Several of the findings described in this report demonstrate the blurred lines between the finances of the not-for-profit corporation and its founder, Eleanor Clarke; lines that should have been clearly delineated. The Commission found many instances where the finances of HOME E and the personal finances of Ms. Clarke were inappropriately comingled. Furthermore, the accounting of corporate activity was convoluted and often incomplete, with off-the-books bank accounts hiding transfers of funds from HOME E to Eleanor Clarke. Based on its investigation, the Commission has concluded that HOME E funds were used for the personal benefit of Eleanor Clarke. These transactions were not reported anywhere on the books of HOME E, nor were they approved by the board of directors, and may represent unreported taxable income to Eleanor Clarke.

#### **1. Misappropriation of \$55,145 Through an Off-the-Books Bank Account**

When the Commission began its financial review in June of 2011, investigators found that rather than maintaining one set of books to account for all of the Corporation's activities, HOME E maintained four separate and distinct general ledgers to account for its various programs. Transactions between the four general ledgers, including payroll costs and administrative cost allocations, were handled using a series of intra-company "Due To/From" accounts. This use of multiple general ledgers to account for HOME E programs struck Commission staff as not only unusual but also unnecessarily complex.

In the process of analyzing the voluminous activity in these intra-company general ledger accounts, investigators found a significant number of transactions in a series of accounts titled "Due To/From Safekeeping." Upon further investigation, it was determined that the activity in these accounts related to the transfer of HOME E funds to and from a bank account which was not recorded anywhere on the books of the agency. Based on this finding, the Commission subpoenaed HOME E bank records which revealed six instances totaling \$55,145, in which HOME E funds were moved from an off-the-books bank account called Client Safekeeping into a personal bank account of Eleanor Clarke.

Interestingly, the timing of the payments to Ms. Clarke coincided with large disbursements from her personal checking account indicating that she needed these funds to cover personal obligations. For example, a \$15,000 payment from the off-the-books bank account to Ms. Clarke corresponded with a \$15,713.95 personal check from her to the US Treasury. The memo on the check noted "1040 12-31-2008" indicating it was a payment of her personal income taxes.

After learning of these payments from the off-the-books bank account, the Commission inquired about their purpose and was told by Ms. Clarke that \$15,000 was for unused vacation time and the other \$44,145 pertained to reimbursements for a

vocational program she was running personally. At a March 12, 2012 meeting with Commission staff, HOMEE board members Claudia Nesbitt, Stephanie Perdue and Chairperson Dr. Vanda Johnston (Dr. Johnson participated via telephone) stated that they were unaware of such payments.

**a. Payment for Vacation Time - \$15,000**

On December 11, 2009, \$15,000 was paid to Ms. Clarke from the off-the-books Client Safekeeping account. Although Ms. Clarke stated the payment was compensation for unused vacation time, the only document HOMEE was able to provide to the Commission to support the transaction was an internal record signed by Eleanor Clarke claiming the funds represented a payment for eight weeks of unused vacation time. The Commission, however, questions the appropriateness of this transaction for several reasons:

- The \$15,000 transaction was not processed through the agency's payroll system and therefore not reported to the IRS on Eleanor Clarke's W-2, avoiding all required payroll taxes and income tax withholdings;
- The payment was not recorded as an expense anywhere on the books and records of HOMEE;
- The amount did not correlate to Eleanor Clarke's pay rate at the time of the transaction;
- There was no evidence that the HOMEE board of directors had any knowledge of or approved of this transaction; and
- Accounting records indicated Eleanor Clarke had no accrued vacation time owed to her as of June 30, 2009 and therefore could not have had eight weeks accrued vacation time on December 11, 2009. Additionally, the HOMEE personnel policy manual limits accrual of vacation leave to a maximum of four weeks.

***HOMEE Response/Commission Reply***

*HOMEE asserts the \$15,000 payment for unused vacation was reported on IRS Form 1099. No copy of this alleged form was contained in the response, nor was a copy included with all the other Forms 1099 made available to the Commission during the course of its investigation.<sup>2</sup>*

*Ms. Clarke asserts that the board approved the vacation payment but the response does not explain the board's lack of knowledge expressed during its meeting with Commission staff. Furthermore, no record of board approval was provided. Instead, the HOMEE response contains board minutes from 1994 which state that an increase in her salary was approved.*

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<sup>2</sup> If HOMEE filed a Form 1099 it would be an inappropriate filing as the 1099 is supposed to be used for non-employee compensation. Proper reporting of a vacation payout is done on Form W-2 which would require payroll taxes and income tax withholdings.

*HOMEE's response did not discuss the avoidance of payroll and withholding taxes; it did not cover why the \$15,000 payment conflicted with accrual records; and, the response did not explain why the payment did not correlate with her pay rate.*

**b. Payments for Ms. Clarke's Personal Business Venture - \$40,145**

Five payments totaling \$40,145 were made to Ms. Clarke from the off-the-books Client Safekeeping account to cover costs pertaining to her failing business venture, New Horizon Cyber Café, as follows:

**Table 1**

**Funds Transferred From Client Safekeeping Account to Eleanor Clarke**

<i>Date</i>	<i>Purpose per Ms. Clarke</i>	<i>Amount</i>
June 11, 2007	New Horizon Cyber Café lease	\$10,000
July 11, 2007	New Horizon Cyber Café lease	8,400
August 1, 2007	New Horizon Cyber Café lease	7,745
October 4, 2007	New Horizon Cyber Café lease	6,000
May 19, 2009	Sale of 10 used Computers to HOMEE	8,000
<b>Total</b>		<b>\$40,145</b>

Ms. Clarke explained that in 2005 after New York City stopped funding a HOMEE-operated psycho-social club at 509-13 Tremont Avenue, she decided to renew the lease personally to open the New Horizons Cyber Café. The purpose of the Cyber Café, she claimed, was to provide computer training to individuals in the community. Unable to find a government funding source for the Cyber Café, Ms. Clarke claims she paid all of the expenses personally, and some of those expenses were reimbursed by HOMEE.<sup>3</sup> This nebulous relationship is one of many instances where the lines between HOMEE and Ms. Clarke had become blurred. The Cyber Café is either a HOMEE program, authorized by the agency's board of directors, or a personal business venture of Eleanor Clarke; it cannot be both.

In this regard, the Commission investigators found no evidence that HOMEE's board of directors authorized or approved any of these transactions and because the payments were made through an off-the-books account, these "expenses" were never recorded on HOMEE's books nor disclosed in the annual financial statements. Additionally, a search of New York State Corporation records revealed that New Horizons Cyber Café, Inc. was incorporated by Eleanor Clarke on November 14, 2002, as a for-profit corporation. Given these facts, it appears that Ms. Clarke misappropriated HOMEE funds to help cover her personal business expenses.

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<sup>3</sup> Ms. Clarke stated that the 2007 payments to her helped cover some of the rent charges while the 2009 payment of \$8,000 was for 10 computers she sold to HOMEE because she did not need them after the Cyber Café shut down.

## ***HOMEE Response/Commission Reply***

*HOMEE's response appears to confirm the Commission's finding that HOMEE made payments to cover expenses of Ms. Clarke's failing business, the New Horizon Cyber Cafe. The board of directors approved a motion assigning the Clubhouse lease to Eleanor Clarke effective July 2002 and then after the lease expired in November 2004, Eleanor Clarke personally negotiated a new five year lease as the tenant; HOMEE was not a party to this new lease. The new lease stated the tenant would operate "a first class sit down restaurant." The New Horizons Cyber Café was incorporated and operated by Eleanor Clarke as a personal for-profit business.*

*HOMEE has offered no contemporaneous evidence to document that its board of directors knew of or approved any of the payments from HOMEE to cover costs of the cafe; nor does it make sense that the not-for-profit corporation had any obligation to cover those costs incurred for the years after Ms. Clarke took over the lease.*

*Regarding the payment of \$8,000 to Ms. Clarke for computers, HOMEE failed to provide any documentation supporting the assertion that computers with a market value of \$8,000 were needed or actually received by HOMEE.*

## **2. Unsupported Credit Card Charges of \$36,387**

In addition to the transfer of funds into her personal account, the Commission found that Ms. Clarke used a HOMEE credit card for personal expenses. HOMEE maintained a corporate credit card account with American Express with Eleanor Clarke as the sole card holder. As part of its review, the Commission analyzed all American Express credit card charges made by Eleanor Clarke for the period July 22, 2007, through June 21, 2011. During this four-year period, the Commission identified \$60,158 in questionable or unsupported charges.

Records provided by HOMEE show that Ms. Clarke reimbursed the agency \$23,771 of the questionable charges leaving \$36,387 unreimbursed and thus consequently paid for by HOMEE.<sup>4</sup> Based upon the vendor listing on the credit card statements, the unreimbursed charges appear to be personal in nature including charges from such vendors as Perfume Bar; Atlantis Hotel-Nassau, Bahamas; Westchester Wine; Nine West Outlet; Mercedes Tel-Aid; Delta Air-Nice, France; Duty Free-Singapore; Mohegan Sun; Daytona Beach Resort; and Salty Dog Surf Shop. There were no receipts or expense reports documenting the business purpose of any of these charges and HOMEE did not conduct business at these locations as they exclusively provided services in the Bronx.

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<sup>4</sup> Reimbursements from Ms. Clarke were sometimes made directly to HOMEE and at other times checks were written directly to American Express for a portion of the outstanding balance.

In defense of these charges, Ms. Clarke told the Commission that the American Express card was her personal credit card and did not belong to HOMEE. However, this assertion not only is incorrect but also irrelevant as it was a HOMEE corporate card and regardless of the fact that Ms. Clarke reimbursed some of the charges, HOMEE funds were used to pay for the remaining \$36,387 in questioned charges. This is yet another example where the line between Ms. Clarke's personal finances and the finances of HOMEE were blurred, leading to an apparent misappropriation of corporate funds for personal purposes.

### ***HOMEE Response/Commission Reply***

*After reviewing the information submitted by HOMEE relating to questionable American Express charges incurred during the period July 22, 2007, through June 21, 2011, the Commission noted one additional reimbursement of \$478 which was previously not supplied. Therefore, the Commission has adjusted the total of unsupported credit card charges described in this final report to \$36,387.<sup>5</sup>*

*Despite repeated requests, HOMEE has not offered any documentation other than the representations made by Ms. Clarke, to support the charges questioned by the Commission. Furthermore, in some instances, Ms. Clarke stated that some of these charges were in fact personal but were reimbursed; however, the reimbursements she identified were already applied to other charges. As a result, Ms. Clarke double-counted some of the reimbursements.*

### **3. HOMEE Paid Over \$10,000 in Insurance for Eleanor Clarke's Personal Automobile**

As part of its review, Commission staff obtained a listing of all vehicles registered to HOMEE. Among these vehicles was a 2007 Mercedes-Benz E-350.<sup>6</sup> When asked about the car, Ms. Clarke stated that this was her personal car and she personally made all of the payments on the related lease. A subsequent review of her checking account confirmed that Ms. Clarke did in fact make the approximately \$770 monthly payments using her own funds. However, she never addressed why the car was registered in the name of HOMEE. The Commission questions the practice of registering Ms. Clarke's personal automobile through HOMEE as it raises serious issues of legal liability, as well as sales tax liability on the lease.

An analysis of the agency's insurance coverage for the three-year period ending June 30, 2010, revealed that HOMEE paid the insurance premiums on the 2007 Mercedes-Benz E-350. For the three years examined, HOMEE paid premiums totaling \$10,262

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<sup>5</sup> The \$40,000 reimbursement figure stated in HOMEE's response is higher than the \$24,000 reimbursement total cited in this report because HOMEE included payments made on charges incurred through January 2013 while this report covers only the period through June 21, 2011. The difference has no effect on the total of unsupported credit card charges.

<sup>6</sup> Department of Motor Vehicles records indicate that HOMEE registered in succession, a 2000 Mercedes-Benz E-320, a 2004 Mercedes-Benz E-320, a 2007 Mercedes-Benz E-350 and a 2010 Mercedes-Benz E-3504M.

for this car. Further, according to the independent auditor's work sheets, these premiums were charged in full to HOME E's OMH certified residential programs. This situation is another example of improperly intertwined finances between Ms. Clarke and HOME E. While Ms. Clarke may on occasion use her personal car for business purpose, the direct payment of her insurance premiums by HOME E is not an acceptable business practice nor is it allowable under IRS regulations as the payment of personal expenses gives rise to unreported taxable income to Ms. Clarke.

#### ***HOMEE Response/Commission Reply***

*The HOME E response states that it is not unusual for an organization to pay the insurance premiums for the executive director, especially when the vehicle is used by staff or clients and business purposes. The Commission agrees that it is not unusual for an organization to pay for a car that is used for business purposes, but contrary to the HOME E response, it is unusual for an organization to pay the insurance premiums for a personal automobile belonging to its executive director. If an organization pays for the insurance premiums, it is a taxable event to the individual and HOME E failed to address the issues of income and sales tax liability as well as legal liability arising from registering Ms. Clarke's personal vehicle in the name of the agency.*

*Regarding board authorization, the HOME E response states that the previous board chairman approved the payment of insurance premiums. By asserting that one board member unilaterally approved the payments, HOME E has again failed to provide any documentation regarding prior knowledge and approval by the full board.*

#### **4. HOME E Defaulted on a \$50,000 Loan While Retaining Unspent Loan Proceeds**

On November 26, 2007, HOME E entered into a loan agreement with the Corporation for Supported Housing, Inc. (CSH), whereby HOME E would receive a \$50,000 interest-free loan to assist in the development of a 45-bed supportive housing project to be built at 1405 Boston Road.<sup>7</sup> The loan proceeds were disbursed by CSH on December 12, 2007, and deposited into one of HOME E's "off-the-books" bank accounts titled "HOME E Clinic, Inc. for 1405 Boston Road" on January 3, 2008.

After spending \$3,845 in the first few months, the project stalled for years while the loan remained unpaid. Below is a chronology of loan extensions and defaults.

- In March 2009, according to CSH, the original "development team" pulled out of the project and the loan, already overdue, was extended from January 15, 2009, to January 15, 2010, in order to allow HOME E time to assemble a new development team and move the project forward.

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<sup>7</sup> The documents received directly from CSH refer to a 45 unit housing project with a total budget of just under \$10 million. The project was to be financed with a combination of loans from the City of New York and the sale of low income housing tax credits to private investors.

- In January 2010, the loan again became due and when HOMEE failed to repay the \$50,000, the loan went into default.<sup>8</sup>
- In September 2010, HOMEE wrote CSH requesting yet another extension. At this time, CSH offered an extension until July 15, 2012, contingent upon an upfront payment of \$5,000 from HOMEE. However, the new loan agreement was never signed by HOMEE and no payment was made even though HOMEE still retained \$46,000 of the loan proceeds.<sup>9</sup>
- As of April 5, 2012, the loan remained in default and the outstanding balance including accrued interest was \$61,070.

Beginning in August 2010, HOMEE began to transfer money from the 1405 Boston Road bank account back and forth to various HOMEE checking accounts in an apparent effort to help with cash flow issues. While at first, these cash flow transfers were “repaid,” over time less and less of the funds were returned to the Boston Road account and by June 2012, only \$5,800 of the original \$50,000 loan remained.

When interviewed, Ms. Clarke claimed that the loan from CSH, “[had] nothing to do with HOMEE” and for that reason it was not recorded on HOMEE’s books. She further stated that the 1405 Boston Road property, while deeded to HOMEE, was in fact purchased by her for “\$30,000 or \$31,000” using her own money. The Commission, however, has a number of documents contradicting her assertions including:

- a Board of Directors resolution authorizing the \$50,000 loan from CSH to HOMEE;
- a signed loan agreement between CSH and HOMEE;
- a copy of the 1405 Boston Road deed listing HOMEE as the property owner; and
- a copy of a mortgage recorded with the City of New York showing that HOMEE borrowed \$29,576.68 to fund the \$32,000 purchase price.

Based on these documents, it is clear that this loan was an obligation of HOMEE and should have been recorded on the agency’s books. By failing to do so, the \$50,000 was effectively hidden from State regulators and other users of HOMEE’s financial statements, thus allowing the proceeds to be expended for purposes other than those spelled-out in the loan agreement.

### ***HOMEE Response/Commission Reply***

*The HOMEE response states “CSH was not a loan rather it was a \$50,000 grant.” This is completely at odds with the underlying documents provided to and reviewed by the Commission. None of the documents obtained from HOMEE or CSH state that this was a grant. The Commission obtained copies of the loan agreement between*

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<sup>8</sup> In accordance with the loan agreement, upon default the outstanding balance began to accrue interest at 10 percent per annum.

<sup>9</sup> As of the end of September 2010, the balance in the 1405 Boston Road bank account was just over \$46,000.

*CSH and HOMEE as well as the HOMEE board resolution authorizing the borrowing. The Commission also has correspondence with CSH indicating the loan is in default and accruing interest. It is inexplicable why HOMEE maintains that this was not a loan.*

*The HOMEE response states that currently \$46,000 remains in the account. This ignores the finding that the account had been depleted to just \$5,800. Now that the account has been replenished, the Commission believes these funds should be immediately returned to CSH and HOMEE should pursue a settlement agreement relating to the remaining principle balance as well as interest, currently accruing at 10 percent per annum.*

*Finally, statements made by Ms. Clarke during the course of the investigation, as well as statements written in the HOMEE response imply that the property located at 1405 Boston Road was purchased in 1986 by Ms. Clarke even though the deed was in the name of HOMEE. There is no explanation as to why it would have been structured in such a fashion, but possibly it may have been to circumvent a restriction placed in the deed which stated “[the] use of this property is restricted and limited to not-for-profit health related use...in effect for 10 (ten) years.” The fact remains that all available records show the 1405 Boston Road property was transferred from the City of New York to HOMEE in September 1986, and to this day the property is still deeded to HOMEE, not Ms. Clarke.*

## **B. HOMEE’s Board of Directors Failed in its Fiduciary Duty**

The board of directors of a not-for-profit corporation has an obligation to protect the public interest by establishing policies and procedures to ensure the corporation fulfills its mission. Boards have a duty of loyalty and a duty of care to the corporation. Typically, their responsibilities include:

- Evaluating executive performance
- Setting executive compensation
- Approving budgets, and
- Monitoring financial performance.

During its review of HOMEE, the Commission found the agency’s board of directors had little role in the financial management of the agency. A review of the agency board minutes showed no evidence that the board ever reviewed Eleanor Clarke’s performance or set her annual compensation, reviewed agency financial statements, or even reviewed and approved agency budgets. And, despite Ms. Clarke’s statements claiming board knowledge, the board minutes contained no discussion or approval of any of the transactions involving transfers of HOMEE funds from the Client Safekeeping account, nor could board members recall any

discussions regarding these matters. Finally, when several board members were interviewed, including the board president, none could even state Ms. Clarke's current annual salary.<sup>10</sup>

### ***HOMEE Response/Commission Reply***

*The response includes three performance evaluations of Eleanor Clarke. Yet this is just one of the many monitoring responsibilities of a not-for-profit board of directors. The Commission believes, based on the totality of its findings relating to HOMEE, that the board of directors failed in its duty to oversee the financial operations of the agency.*

*The HOMEE response concludes that, in hindsight, corporate policies should have been conducted with increased formality and more effective disclosure, and places some of the blame on the advice of its accountants. Besides the previous actions described in the report, even the board's current action in responding to the Commission's findings shows a failure to act in a manner suggesting an understanding of the seriousness of allegations against Ms. Clarke or the board's fiduciary obligations to the corporation. Rather than addressing the Commission's findings themselves as requested, HOMEE's board of directors instead allowed Eleanor Clarke to prepare her own response which does little to refute the findings presented in this report. And, without conducting any independent investigation relating to the Commission's findings, HOMEE's board of directors has concluded that Ms. Clarke did not misappropriate any agency funds and will remain as the executive director.*

### **C. Other Off-the-Books Financial Activity**

In addition to the off-the-books activity described above (i.e., the CSH loan, the Boston Road bank account, and the Safekeeping account), there were two other HOMEE bank accounts that were also not included in the HOMEE books. One of the two accounts, the "HOMEE Clinic, Inc. Clubhouse Money Market," contained a significant amount of activity. During the three-year period ending June 30, 2010, HOMEE received almost \$1.2 million in electronic deposits from the City of New York for contract funding from the Department of Homeless Services (DHS), the Department of Health and Mental Hygiene (DMH), and the HIV/AIDS Services Administration (HASA). This money, once received, would typically be transferred within a day or two to a bank account on the books of HOMEE. However, on a few occasions, the funds would sit in the Clubhouse account for up to a week before being moved. In one instance, over \$32,000 was moved from the Clubhouse account to the Client Safekeeping account and it was almost two full weeks before the funds were deposited into the proper account and the revenue was recorded on HOMEE's books.

While the Commission found that all of the deposits were eventually transferred to HOMEE bank accounts and recorded on the agency's books and records, the Commission questions the purpose for this convoluted and improper accounting practice. The agency's CFO claimed that the Clubhouse account was simply used as a "clearinghouse" account and because the funds were subsequently transferred to program accounts, there was, "nothing to

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<sup>10</sup> HOMEE board members Claudia Nesbitt, Stephanie Perdue and Chairperson Dr. Vanda Johnston were interviewed on March 12, 2012. Dr. Johnston participated by telephone.

record on the ledger.” This argument ignores the misreporting taking place while funds sit in an off-the-books account. Proper accounting procedures require that all transactions of an entity be recorded on its general ledger. As the funds received from the City were an asset of HOME E, the general ledger should have immediately reflected the receipt of cash as well as a corresponding reduction in accounts receivable.

### ***HOME E Response/Commission Reply***

*The HOME E response states the Clubhouse account is a clearing house for receipts and that once the money is received it is then transferred into the prospective accounts. This does not address the substance of the Commission’s findings including the questionable purpose for the separate bank accounts and the failure to report the bank activity on the books and ledgers of HOME E.*

## **D. HOME E’s Independent Auditor Failed to Comply with Professional Standards**

For the years ended June 30, 2008, 2009 and 2010, HOME E’s independent accountant, Solomon Ballard expressed an unqualified opinion on the agency’s financial statements which states, “We conducted our audit in accordance with auditing standards generally accepted in the United States of America.” Generally Accepted Auditing Standards (GAAS) cover three broad areas: general standards, standards of fieldwork, and standards of reporting. It is important to note that GAAS represent the *minimum* standards for conducting financial statement audits. The Commission’s examination of Mr. Ballard’s audit working papers concluded that he violated a number of provisions of GAAS particularly those standards related to field work.

The first standard of field work states, the auditor must adequately plan the work and must properly supervise any assistants. In order to comply with this standard, the auditor must prepare a set of written audit programs containing reasonably detailed procedures for the steps to be performed. The Commission’s review of Mr. Ballard’s working papers found no written audit programs.

The second standard of field work states that the auditor must obtain a sufficient understanding of the entity and its environment, including its internal controls, to assess the risk of material misstatement of the financial statements whether due to error or fraud, and to design the nature, timing, and extent of further audit procedures. Again, Commission investigators found no documented evaluation of internal controls or risk assessment in the auditor’s working papers. Without these components, the auditor would be unable to properly determine the nature and extent of the procedures necessary to properly support his or her opinion on the financial statements.

Another professional standard violated by Mr. Ballard pertains to deficiencies in his examination of the “due to/from” accounts. As previously discussed, these accounts were used to reflect intra-company transfers in the four separate ledgers maintained by HOME E. When combining these ledgers for financial statement representation,

the intra-company “due to” and “due from” amounts should have been netted against each other because they do not reflect amounts owed to/from outside parties. However, they were not netted to zero and, as a result, the financial statement assets and liabilities were grossly overstated. Furthermore, while the liability of \$287,530 was separately disclosed on the 2010 financial statement as “Due to Affiliates,” the corresponding asset was hidden within \$321,865 of “Other receivables.” The notes to the financial statements also merely referred to amounts due to affiliates and did not discuss the asset. As such, the financial statement figures and note for related party transactions were clearly in violation of professional standards.<sup>11</sup>

The sheer number and size of the “due to/from” transactions involving off-the-books bank accounts were almost immediately noticed by Commission staff. Yet, the substandard work performed by Mr. Ballard failed to shed light on those hidden bank accounts and the related undisclosed loan and unreported compensation discussed in this report.

### ***HOMEE Response***

*HOMEE responded by stating that its internal accountant shall no longer perform services for HOMEE and the external independent accountant, Solomon Ballard, will be replaced.*

## **RECOMMENDATIONS**

### **1. Issues Related to Eleanor Clarke**

Based on its findings, the Commission believes that HOMEE should immediately terminate the services of its executive director, Eleanor Clarke. Additionally, HOMEE should seek reimbursement for the funds misappropriated by Ms. Clarke and refer the matter to local law enforcement.

### **2. Financial Management**

Due to the numerous off-the-books accounts and unrecorded transactions, HOMEE’s board of directors should request a complete forensic examination of the agency’s accounting records. This review should be conducted by an independent accountant and include a thorough search for unrecorded assets and liabilities of HOMEE.

Further, the Commission believes that many of the findings described above demonstrate the failure of the agency’s CFO, Donovan Murray, CPA, and its independent auditor, Solomon Ballard, CPA. Both of these individuals are licensed Certified Public Accountants and therefore, based solely on the size and volume of the transactions between HOMEE and the off-the-books bank accounts, both individuals should have questioned the nature of these transactions. This failure to even question the nature of the large number of transactions with an unnamed

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<sup>11</sup> See Financial Accounting Standards Board ASC 850 Related Party Disclosures

“affiliate” raises disturbing questions regarding just what these two individuals knew about the transactions. The Commission recommends that the board consider terminating the services of both these individuals. Additionally, the board should evaluate the ability of HOME’s accounting department to perform the required functions.

## **REFERRALS**

### **1. New York State Office of Mental Health**

Based on the findings discussed above, we recommend that the Office of Mental Health move to terminate its contracts with HOME and move toward revocation of its license and operating certificate. It is the opinion of this Commission that HOME and its board of directors lack the internal capacity to effectively address and correct the findings enumerated above.

### **2. Bronx County District Attorney**

Information uncovered by the Commission’s investigation has been referred to the Bronx County District Attorney’s Office for whatever action is deemed appropriate within its jurisdiction.

### **3. New York State Education Department**

Solomon Ballard, CPA will be referred to the NYS Office of Professional Discipline for his failure to adhere to professional standards in the conduct of his audits of HOME for the three years ended June 30, 2008, 2009 and 2010.

### **4. Internal Revenue Service/New York State Department of tax and Finance**

The Commission’s findings will be forwarded to both Federal and State taxing authorities for potential under reporting of income by Eleanor Clarke.

**APPENDIX**  
**HOMEE's Response**

**ONORATO LAW LLC**  
www.OnoratoLaw.com  
ponorato@onoratolaw.com

New York, New York

Manalapan, New Jersey

April 3, 2013

**OVERNIGHT DELIVERY**

State of New York Commission  
on Quality of Care and Advocacy  
for Persons with Disabilities  
401 State Street  
Schenectady, New York 12305-2397  
Attn: Richard Cicero, Director

Re: H.O.M.E.E. Clinic, Inc.

Dear Ms. Cicero:

You are aware that I am general counsel to H.O.M.E.E. Clinic, Inc. ("HOMEE"). Pursuant to our previous discussions, this letter is being timely submitted in response to your letter to Dr. Vanda Johnston, Chairman of HOMEE's Board of Directors, and the enclosed preliminary findings and recommendations.

First, your agency is assured and I attest that your findings and recommendations have been received and treated by the Board with utmost seriousness and objectivity. The Board has reviewed the preliminary findings and recommendations, shared them with Ms. Clarke and requested her response. Ms. Clarke's responses and supporting documents are attached. Moreover, the Board held an emergency meeting on April 2, 2013, outside of the presence of Ms. Clarke, to discuss the preliminary findings, recommendations and the issues that they present.

In summary, the Board concludes that, in hindsight, corporate policies and practices could have and indeed should have been conducted with increased formality and more effective disclosure. Such policies and practices were based in part upon reliance on the advice, or lack of advice by financial professionals such as the CPA's. The accounting methods of those CPA's fall outside the knowledge and expertise of the Board and me, and judgment on this issue is reserved. However, the Board is of the opinion that there has never been misappropriation by

112 West 34th Street, N.Y., N.Y. 10120; Tel: (212) 502-7062; Fax: (212) 946-2808  
23 Shira Lane, Manalapan, N.J. 07726; Tel: (732) 567-9435; Fax (732) 358-0290

## ONORATO LAW LLC

www.OnoratoLaw.com  
ponorato@onoratolaw.com

New York, New York

Manalapan, New Jersey

Ms. Clarke, of HOME E assets, for her personal gain. Based upon the foregoing, the Board concludes and has resolved as follows:

1. Ms. Clarke shall remain as Executive Director.
2. Donovan Murray has not and no longer shall perform services for HOME E.
3. Solomon Ballard will be replaced as CPA's for HOME E.
4. HOME E shall cooperate in an independent financial audit.

In closing, the Board is perfectly aware of the evolving and increased responsibilities, duties and expectations they, as members of the board of a not-for-profit corporation assume. They are working responsibly and feverishly to educate themselves and to improve their diligence as prescribed by the State and as described in numerous corrective action plans previously submitted to you. For these reasons among many others, the Board welcomes your trust that they are evolving and shall oversee and steer this most worthwhile organization called, H.O.M.E.E Clinic, Inc.

Thank you, and please contact me should you have any questions regarding this matter.

Very truly yours,



Philip J. Onorato, Esq.

cc: Dr. Vanda Johnston  
Ms. Eleanor Clarke  
Murray Richman, Esq.

112 West 34th Street, N.Y., N.Y. 10120; Tel: (212) 502-7062; Fax: (212) 946-2808  
23 Shira Lane, Manalapan, NJ. 07726; Tel: (732) 567-9435; Fax (732) 358-0290



ELEANOR CLARKE, RN, MS  
EXECUTIVE DIRECTOR

RESPONSES TO

COMMISSION ON QUALITY OF CARE AND ADVOCACY  
FOR PERSONS WITH DISABILITIES

REPORT

**Deficit**

H.O.M.E.E. is a non-profit organization whose mission is to serve the forgotten, poor and indigents of the Borough.

Our grants are governmental, which are subjected to political/sociological transgressions. These grants do not cover program costs, in result, creating an operational deficit.

In addition, for example, a grant was awarded in 1998-2011 but \$109,000 was taken by pillaging \$400,000 from the top of the payments.

**Bond Recoupmnt** - The amount of money that is being recouped by OMH every quarter is \$54,747 and \$29,000 is being taken off the top. At one time, the amount was \$109,000. The amounts that are being recouped every quarter are continuing to contribute to the deficit. (Refer to Tab 1)

SSA (Scatter Site Apartment) HIV Program – A deficit was due to the fact that clients were supposed to pay 30% of their income towards rent, \$20.00 for the phone and \$40.00 for electricity. When billing was done to HASA, it would take 90 days before money would be received. Waiting for the money to come in the rents, phone and electricity bills were late. In addition, some of the clients at SSA were selling off their furniture. Subsequently, HOME E had to borrow money from FUND of NYC to pay bills which was approved by Board Members. (Refer to Tab 1)

The SRO has been running at an annual deficit of approximately \$35,000, due to the fact that 7 units are for needy and 7 are community. This brought the funding down to 20 clients instead of 34 unbeknown to anyone at the time of the change.

Rents have been raised at Phase II, which also contributes to the deficits.

Some clients did not receive SSI for approximately 2 years and we still continued to provide them with services, which also causes a deficit.



Being affected by the bed bug endemic contributed to the deficit whereas, paying for exterminators to come in, throwing away furniture, and purchasing new furniture. During this period, our organization still provided services as expected to our clientele.

As stated above our organization is to serve it's our clientele not to generate a profit.

██████████

██████████ was properly discharged on May 28, 2010. Attached is a copy of a letter that ██████████ signed discharging herself from HOME E Clinic to go live with her mother in Florida.

██████████, who is the mother of ██████████ was sent all the documentation she would need in Spanish and English to refer her to the Florida Social Security Administration. ██████████ Psychiatric doctor provided ██████████ with her daughter's psychiatric assessment and medication. (Refer to Tab 2)

The Mental Health Association of Central Florida was notified that ██████████, an Axis, I diagnosed individual will be moving to the Florida area and was in need of services & housing. They reached out to ██████████ (Refer to Tab 2). The mother changed her mind after two or three days after her arrival and would not allow her to live with her.

██████████, South Bronx Mental Health Counseling (the person that was stated as an anonymous caller) contacted ██████████ and informed her that she can sue HOME E and OMH. It was at that point that ██████████ called OMH directly.

On July 2, 2010, a package was emailed and faxed to Mr. Peter Behm, addressing the entire discharge procedure of ██████████ (Refer to Tab 2).

**Client Safekeeping**  
HOME E was approved and received a contract from the Department of Mental Health in 1994 to open a Clubhouse. The lease agreement was between HOME E Clinic Inc, and Matrix. The lease term was from December 1994 until November 2004. (Refer to Tab 3).

The clubhouse provided training to the clients, including: filing, answering the phone and cooking lessons. In addition, the clubhouse had a thrift shop and contract with the Yankees to put emblems on hats. This generated money for the clubhouse and funding for clients based upon the census.

After several years, the clubhouse was not generating enough clients to maintain their census and lost funding. In addition, the contract with the Yankees was not renewed.



Clients were split between the Clubhouse, Fordham Tremont, Bronx Lebanon, FECS and Post Graduate. With the census being low, the clubhouse started running a deficit in 2002. HOMEE could not break the lease with Matrix and thus Ms. Clarke asked the Board if she could take over the clubhouse. The Board agreed. (Refer to Tab 3)

In 2002, Ms. Clarke started making the rent payments using her own personal money because she did not want HOMEE to lose the clubhouse.

The Board agreed to allow her to change the name from the clubhouse to the New Horizon Cyber Café. She was approved for the New Horizon Cyber Café and HOMEE Care. All city funding was halted, which affected opening of New Horizon Cyber Café. In addition, the funding for HOMEE Care would have involved a third party which she did not want. (Refer to Tab 3).

Considering the existence of the kitchen and it being commercial, she decided to open up a restaurant which brought in revenue which helped out the deficit and helped HOMEE not to default on the lease agreement with Matrix.

In 2005, the lease was put in Ms. Clarke's name, and she continued to make the payments under the lease.

After some years, Ms. Clarke found it difficult to continue making the lease payments due to the increased rent to \$10,000 per month and therefore, she needed HOMEE's help with some of the payments. (Refer to Tab 3).

After everything closed she still had the new computers from the New Horizon Cyber Café. Since HOMEE was in need of computers, and could afford them, Ms. Clarke sold them to HOMEE at a reduced price.

#### **Client's Savings**

The Executive Director would save money for clients for burial, or if they wanted to go shopping for themselves. The client safekeeping account has been closed, and the clients received their savings. To ensure the security of the clients' money, family members were called and informed that they had savings, and that it was being turned over to the clients. The clients were given cashier's checks and signed for their savings. (Refer to Tab 4)

#### **Executive Director's Vacation**

Ms. Clarke received a 1099 for eight weeks of unused vacation time (\$15,000.00), which was approved by the Board. The Executive Director's compensation package does not fall under the employee manual and is governed by the Board of Trustees. (Refer to Tab 5)



Throughout the years and to this day, Ms. Clarke has worked long hours as well as spent the night at HOMEE without additional compensation. (Refer to Tab 10)

#### **American Express**

The American Express card belongs to the Executive Director, which she allowed all the programs to use because they could not get any credit.

HOMEE Clinic's credit is poor due to the SSA (Scatter Site Apartment) HIV/AIDS program. Clients were supposed to pay 30% of their income towards rent, \$20.00 for the phone and \$40.00 for electricity. When billing was done to HASA, it would take 90 days before money would be received. Waiting for the money to come in the rents, phone and electricity bills were late. In addition, some of the clients at SSA were selling off their furniture. Subsequently, HOMEE had to borrow money from FUND of NYC to pay the bills which was approved by Board Members. This caused the credit to be ruined due to late payments and a financial deficit. (Refer to Tab 1 & 6)

Spreadsheets and canceled checks for purchases made on the American Express card will show that the Executive Director paid over \$40,000 to American Express for her purchases, and that HOMEE Clinic has never paid her bills. (Refer to Tab 6)

#### **Auto Insurance**

The yearly auto insurance premium is \$2,500.00. (Refer to Tab 7)

It is not unusual for an Organization to pay the insurance premiums for the Executive Director, especially since the vehicle is used by staff for clients and business purposes. Dr. Sirmans, previous Board Chairman did approve that the insurance premiums will be paid by the organization.

#### **CSH Grant**

CSH was not a loan rather it was a \$50,000 grant which was used for the appraisal, borings, and architect fees for 1405 Boston Road. Currently, \$46,000 remains in the account. (Refer to Tab 8)

#### **1405 Boston Road**

1405 Boston Road was purchased in December 1986. Ms. Clarke used her personal funds as a down payment and Mr. Rafalsky found an investor (Goldspiel) to put up \$29,576.68. Even though the agreement has HOMEE's name on it, HOMEE did not pay for the property.

On February 12, 2001, a Board Resolution authorized the sale of 1405 Boston Road to Eleanor Clarke. The board members signed ratifications in March 2001 approving the sale. (Refer to Tab 9)

#### **Board of Director**

Current list of Board Members and Old Board Members (Refer to Tab 10)



The Executive Director's evaluation is to be completed by the Board every 5 years.  
March 1, 2011 by Vanda Johnston, DPM, Board Chairman  
February 8, 2010 by Professor Charlotte Bishop, Acting Chairman of the Board  
October 16, 2008 by Meredith F. Sirman, MD, Board Chairman. **(Refer to Tab 10)**

During the Board meeting held on May 7, 2001, Program Evaluation was discussed.  
**(Refer to Tab 10)**

**Off-the Books Financial Activity – Clubhouse Money Market**

The Clubhouse money-market account is a clearing house for the monies received from DMH and DHS, and it comes from the PIP (the New York City Comptroller's Office, where the checks are generated from.) When the Clubhouse was in operation, the money use to go into the money-market account also. Once the money is received from DMH and DHS, the money is then transferred into the prospective accounts.



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