

## Lessons Learned – Changes Made

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*The Case of Evelyn Douglin Center for Serving People in Need, Inc.*

New York State Commission on Quality of Care and Advocacy  
for Persons with Disabilities

February 2008

## Preface

In delivering community-based services to individuals with mental disabilities, the State of New York has committed itself to a network of not-for-profit corporations with the goal of becoming less reliant on institutional care. In doing so, the state relies on the mission and commitment of these agencies to provide quality care at a reasonable cost; upon their boards of directors to set policy and maintain vigilance in carrying out their mission; upon the competence and integrity of executive and direct care staff; and upon the professionalism of independent accountants who perform annual audits and express opinions on the financial statements of these agencies, which are predominately funded through public monies. Unfortunately, over the past two decades, the Commission has periodically documented cases of financial fraud, waste and abuse in the mental hygiene field. In each and every case, common threads can be found which contributed to the diversion of funds away from care for the individuals with disabilities:

- Boards of directors who fail in their fiduciary duty to properly oversee the corporation;
- Executive directors who place their self-interest above that of the corporation;
- The lack of sufficient regulations to allow state regulatory agencies to take meaningful corrective actions; and,
- The inadequacy of independent audits to find and/or report cases of misuse of funds.

The conduct of the executive director of the Evelyn Douglin Center for Serving People in Need, Inc. (SPIN), is yet another example of fraud, waste and abuse in the mental hygiene system. This investigation documents how the agency's executive director, who started the corporation, ran the facility as if it were his own private business. As a result, internal controls that were in place at the agency were routinely circumvented by the executive director to personally enrich himself and others. The investigation also documents how the executive director placed his self-interest above that of SPIN and concealed critical information from the board of directors, including entering into a three-year contract with an employee that the executive director had a personal relationship with and who for the last two and one-half years of the contract was a "no-show" employee; paid himself for unauthorized vacation and sick leave; misrepresented his academic credentials; and appeared to allow the use of a corporate credit card by his son, who had no working relationship with the agency. There was a "corporate culture" at SPIN in which the executive director exerted complete control over the agency without proper oversight by the board.

Finally, the investigation points to weaknesses in the existing regulatory system, where almost complete reliance is placed on a board of directors to correct the financial abuses brought to their attention. In a system that relies heavily on not-for-profit corporations to provide services, one of the essential checks is the determination by the State certifying agency that an applicant for an operating certificate possesses the requisite character and competence to be granted the opportunity to provide services for people who are mentally disabled. If provider behavior is not monitored adequately, this initial determination of character and competence becomes a static one, impervious to change no matter how inconsistent with such a determination the provider's subsequent behavior proves to be. However, if a board fails to act, there appears to be little the state can do short of revoking the agency's license or completely shutting off funding, which ultimately could be detrimental to client care.

Fortunately, in the case of SPIN, the Board of Directors, upon recognizing the vulnerable position in which the agency was placed as a result of fiscal mismanagement by the executive director detailed in the Commission's draft report, acted vigorously to correct the problems and have taken numerous steps in an on-going effort to improve the agency. These efforts include: replacing the executive director; conducting an audit and risk assessment; implementing a Corporate Compliance Program; adopting new Board Governance and Corporate Compliance Policies; and, implementing tighter internal controls at the agency. The Commission commends the SPIN Board for the steps that they have taken and their continuing efforts to assure that the agency remains true to its mission. If properly implemented, the actions of the Board could serve as a model of best practices for other agencies to replicate.

## Commission Findings

- SPIN's executive director, Seibert Phillips, placed his self-interest above that of SPIN by hiring someone for a highly paid senior position with whom he was having a personal relationship. When the relationship soured, Mr. Phillips entered into a three-year contract with the employee. The Commission found no evidence that the employee worked the last two and one-half years of his contract. The Commission also found that the agency's board did not approve the contract, nor were they aware of how much the employee was being compensated during this time (pp. 2-5).
- On April 15, 2004, a complaint was filed by the same employee with the NYS Division of Human Rights charging SPIN and Seibert Phillips with unlawful discriminatory practices. Mr. Phillips concealed this complaint from the Board of Directors. Eight days later, the employee withdrew the complaint because, according to him, Mr. Phillips offered to privately settle the complaint. The Board knew nothing of the complaint or of the "private settlement" (pp.5-9).
- For the three-year period, January 2003 to December 2006, a SPIN corporate credit card was used to purchase \$17,924 in gas in the Atlanta, Georgia area where Seibert Phillips' son lives. SPIN's internal investigation acknowledged that, while there was no "direct evidence" that the card was used by Mr. Phillips son, they conceded that the "circumstantial evidence" identified by the Commission was compelling (pp. 9-11).
- SPIN, without Board knowledge, transferred \$5,000 of agency funds to a related corporation run by Mr. Phillips. The money was used to start a new organization "to promote, encourage, foster and advance...the common interests and goals of multicultural agencies" (pp. 11-12).
- SPIN paid Seibert Phillips more than \$140,000 above what was approved by the Board of Directors. Most of the payments were in the form of unauthorized bonuses and unused vacation and sick leave benefits which were against agency policies. Mr. Phillips' compensation also appeared to be in excess of what other executives at comparable agencies earned (pp.12-16).

- Numerous compensation issues were noted, which ranged from select employees receiving bonus payments in violation of company policy to several employees receiving payments but not having their incomes properly reported to the IRS (pp. 16-18).
- The Commission’s review found numerous examples of waste of corporate assets. These included: the leasing of luxury cars for administrative staff; purchases of alcoholic beverages with agency funds; the payment of personal expenses for employees attending conferences; exorbitant purchases for “staff appreciation day”; and, improper payments for political fundraisers (pp. 18-24).
- The agency’s Board of Directors failed in its fiduciary duty to closely monitor the executive director and hold him accountable for the management of the agency. However, this failure appears due, at least in part, to the executive director’s failure to share critical information with the Board. Upon receipt of the Commission’s draft report, the Board moved quickly to address the issues identified (pp. 24-25).
- Seibert Phillips’ official resume, filed at SPIN, documents that he has a bachelor’s and master’s degree in social work. Mr. Phillips also represented at various times to state agencies that he was a Certified Social Worker. None of these credentials were valid (p. 25).
- In an application to the State Education Department, SPIN included the names of five professionals who were either working or were going to work for the program. The application listed the credentials for each of the five professionals. The Commission contacted each professional and none of them ever heard of SPIN, let alone authorized the agency to use their name or license number in the application (p. 26).

On May 3, 2007, the Commission sent its draft report to SPIN’s Board of Directors. The Board responded to the draft report on August 24, 2007. For the most part, the response agreed with the Commission’s findings. After meeting with Commission staff, SPIN subsequently submitted a supplemental response. As a result of this exchange of information, revisions were made to the Commission’s draft report. The full responses of SPIN’s Board (hereinafter referred to as SPIN) are on file at the Commission and are available for review upon request.

# Table of Contents

Introduction/Scope of Review .....	1
Background .....	1
Commission Findings .....	2
No Show Employee .....	2
Division of Human Rights Complaint .....	5
Inappropriate Use of Corporate Credit Card .....	9
Transfer of Agency Funds.....	11
Executive Compensation .....	12
Executive Director’s Compensation from SPIN .....	12
Executive Director’s Compensation from Children’s Services .....	13
Determining a Comparable Compensation .....	15
Other Compensation Issues .....	16
Expenditure Review .....	18
Vehicles .....	18
Travel and Conference Expenses .....	19
Other Credit Card Charges .....	20
Improper Political Expenditures .....	21
Other Findings .....	22
Board of Directors .....	24
Executive Director Credentials and Other Matters .....	25
Executive Director’s Credentials .....	25
Hiring of Carlos Ortiz .....	26
SED Applications .....	26
Recommendations .....	27
Attachment 1:           Agency Vehicles	
Attachment II:         Initial SPIN response dated August 24, 2007	
Attachment III:        Supplemental SPIN response dated January 24, 2008	
Attachment IV:         Chronology of Events	

## Introduction/Scope of Review

The Commission's review of the Evelyn Douglin Center For Serving People In Need, Inc. (SPIN) began in the fall of 2006 when it received a complaint regarding the misuse of agency funds. Specifically, the complaint raised three allegations: SPIN was paying an ex-employee \$100,000 per year even though the employee had not worked at the agency for at least two years; another former employee who resided in Atlanta, Georgia had access to a corporate credit card, an agency vehicle and an agency cell phone; and, SPIN had diverted agency funds to another unrelated not-for-profit corporation. The Commission conducted an investigation into the allegations, and a limited review of agency expenditures for the three-year period July 1, 2003 to June 30, 2006. The results of that review follow.

## Background

SPIN and its sister agency, Evelyn Douglin Center for Children's Services, are located at 241 37<sup>th</sup> Street, Brooklyn, New York. SPIN was incorporated on November 20, 1996 as a Type B corporation pursuant to Section 201 of the Not-for-Profit Corporation Law.<sup>1</sup> According to its Certificate of Incorporation, the purpose of the agency was to provide "comprehensive services to individuals who are mentally retarded, developmentally disabled, and disabled in need persons." SPIN operates a number of programs, including Individual Residential Alternatives (IRAs) and Intermediate Care Facilities (ICFs), Day and At Home Habilitation Services, Individual and Family Support and Medicaid Service Coordination Programs, all of which are either funded or certified by the Office of Mental Retardation and Developmental Disabilities (OMRDD). In July of 1999, The Evelyn Douglin Center for Children's Services, Inc. (Children's Services) was established as a State Education Department-approved Special Education Itinerant Teachers (SEIT) services provider. While SPIN and Children's Services are technically two separate corporations, for all intents and purposes, the two corporations operate under the corporate umbrella of SPIN. The two corporations have the same executive director and share administrative staff, and common board members sit on the boards of both corporations.<sup>2</sup> For the period ending June 30, 2005, SPIN and Children's Services had combined revenues of approximately \$11.4 million and earned a surplus of about \$148,000. The president of the SPIN Board of Directors is Ms. Judy Jones. Mr. Merrith Hockmeyer is president of the Children's Services Board of Directors. Mr. Seibert Phillips was the executive director of both corporations. He was replaced by the Board in November 2007. The current executive director is Charles Archer.

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<sup>1</sup> Children's Services was subsequently incorporated on July 29, 1999, also as a Type B not-for-profit corporation.

<sup>2</sup> For purposes of this report, SPIN and Children's Services will be considered as one entity unless specifically noted otherwise.

## Commission Findings

### 1. No Show Employee

The first allegation brought to the Commission's attention was that an ex-employee had been on the agency's payroll for the past two and one-half years, receiving an annual salary of \$100,000. The complainant stated that the employee's name was Carlos Ortiz, who was first hired in 2002 because he had a personal relationship with SPIN's executive director, Seibert Phillips. The complainant alleged that Mr. Ortiz worked at SPIN from 2002 until the middle of 2004, but remained on the payroll until September 2006.

The Commission reviewed numerous records of the agency for the time period January 2002 to December 2006 in an attempt to determine whether the allegation was true. Additionally, in December 2006, the Commission issued a subpoena to SPIN requesting any and all documents, including agency e-mails, related to Mr. Ortiz for the time period 2002 through December 2006. SPIN complied with the Commission's subpoena by providing more than two boxes of documents and hundreds of e-mails. Although numerous records were provided, very few related specifically to Mr. Ortiz. In December 2006 and March 2007, Commission staff interviewed Mr. Ortiz, SPIN's executive director, Seibert Phillips, other SPIN employees, and SPIN's Board of Directors to determine the nature of Mr. Ortiz's employment with SPIN. Based on a review of the records and the interviews, the Commission has determined:

- Mr. Ortiz applied to SPIN for a full-time position on May 1, 2002. The application did not list what position he was applying for. Rather, Mr. Ortiz checked off a box that reflected "other" and then left blank what that "other" position was.
- Mr. Phillips stated that he first learned of Mr. Ortiz from a colleague who handed him Mr. Ortiz's resume. Mr. Phillips could not remember the name of the colleague.
- On May 18, 2002, Mr. Ortiz completed several agency-required documents, such as a pre-employment questionnaire, an employee conduct statement and an employee's tax withholding certificate (W-4). It appears that his starting date with SPIN was on May 18, 2002.<sup>3</sup> Although there was no appointment letter stating the actual date of hire, his initial starting salary or even what position he was hired for, it appears that Mr. Ortiz was hired as the Employee Relations Manager at a starting annual salary of \$60,000. Mr. Phillips confirmed that this was Mr. Ortiz's first position with the agency.

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<sup>3</sup> Included in Mr. Ortiz's personnel file was a cover letter from Mr. Ortiz to SPIN's executive director, Seibert Phillips, which sought employment with SPIN. The cover letter states "Dear Seibert: Enclosed is my resume in regard to a position within the Evelyn Douglin Center..." The cover letter was dated May 18, 2002, the same date that Mr. Ortiz began employment with the agency.

- Based on his resume, Mr. Ortiz had no experience in the MR/DD field or employee relations in general.<sup>4</sup> Yet, over the next 17 months, Mr. Ortiz would rise quickly through the ranks of management.<sup>5</sup> In December 2002, seven months after he was hired, he was promoted to become the Director of Residential Services and received a 42% pay increase to \$85,000. This promotion occurred shortly after he received his first performance evaluation which rated him “Doing a good job;” a rating that placed him between SPIN’s other performance ratings - - “Definitely unsatisfactory” and “Outstanding.” In October 2003, Mr. Ortiz received another promotion to Director of Operations at an annual salary of \$100,000, a 17.6% pay raise. In summary, over a 17-month period, Mr. Ortiz was promoted twice and his annual pay increased by 67% from his initial starting salary, despite his limited experience in the field and having received one satisfactory performance evaluation.
- Mr. Ortiz’s last promotion in October 2003 was formalized by a written employment contract. The contract extended his employment for three years with an option to renew for an additional three years with the mutual consent of both parties. According to the contract, if SPIN terminated him prior to the end of the initial three years, Mr. Ortiz would be entitled to full payment for the remaining time left on the three-year contract. In addition to the \$100,000 annual salary, Mr. Ortiz was to receive a company car (a \$51,000 Lincoln Aviator), health and dental coverage, four weeks vacation and the right to participate in the agency’s pension plan. No other SPIN employee, including the executive director, had ever executed such a favorable contract, and no other SPIN employee, other than the executive director, has a contract.<sup>6</sup> Importantly, the contract was signed by SPIN’s executive director and Mr. Ortiz, although SPIN’s by-laws specifically state that “contracts an (sic) written agreements may be signed on behalf of the corporation upon approval of the Board of Directors, by any two (2) of the following officers: President, Vice President(s), Secretary, Treasurer or Executive Director.” There is no indication that SPIN’s Board was aware or approved of Mr. Ortiz’s contract.<sup>7</sup>
- Based on a review of all documents supplied by SPIN, it does appear that Mr. Ortiz worked until the middle of 2004. The following documents support this conclusion:

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<sup>4</sup> Mr. Ortiz’s resume reflects his past experience as an editor, producer and freelance writer for various media organizations.

<sup>5</sup> Throughout 2003, according to various documents provided by SPIN, Mr. Ortiz held several different titles - - Employee Relations Manager, Director Residential Services, Director of Operations, Privacy Officer and Director Residential Habilitation Services.

<sup>6</sup> In October 2003, Mr. Ortiz replaced the former Assistant Executive Director. This employee executed a “Letter of Agreement” with SPIN in April 2003 that provided for an annual salary of \$91,500 and a company car. The agreement was executed for a 24-month period. However, if the employee or the agency terminated the agreement, the employee was entitled to six weeks severance pay. The employee left the agency in October 2003 to start his own not-for-profit organization, but remained with SPIN as its part-time Development Department director.

<sup>7</sup> On March 30, 2007, the Commission met with members of SPIN’s Board. At that meeting, members stated they were aware that SPIN had a contract with Mr. Ortiz but were not aware of any of the details of the contract including Mr. Ortiz’s salary and that he was given a company vehicle.

- The last “Employee Sign-In/Sign-Out Sheet” submitted by Mr. Ortiz was on March 29, 2004.
  - SPIN’s last reimbursement to Mr. Ortiz for employee-incurred expenses was on May 6, 2004.
  - Although one of his responsibilities was to be a member of a couple of internal agency committees, the last committee meeting that he was present at was in February 2004.
- However, there is no evidence of any work past mid-2004 as demonstrated by the following:
  - The last e-mail written in 2004 to Mr. Ortiz was on October 22, 2004 when SPIN’s executive director e-mailed Mr. Ortiz’s private e-mail account and stated that “Your office is open and the lock have not been change nor is the door ever lock (sic). When you are ready to resume you (sic) work responsibilities, I remain always ready to communicate.”<sup>8</sup>
  - Documents which support the annual calculation of SPIN’s vacation accruals for financial statement purposes do not include Mr. Ortiz. If he were an employee in good standing, his name and the appropriate calculation should have appeared on the documents.
  - While his name appeared on agency phone lists in 2004, a similar list for 2005 does not include his name.
  - Only one e-mail written in 2005 was provided. This e-mail, dated April 11, 2005, was sent from Mr. Ortiz’s private e-mail account to SPIN’s executive director and related to a “Yoga, Pilates & Fitness” business that Mr. Ortiz was operating.
  - Only one e-mail in 2006 was provided. This e-mail, dated June 20, 2006, again from Mr. Ortiz’s private e-mail account to the executive director, did not relate to SPIN but rather to another not-for-profit corporation that Mr. Phillips was starting – the New York Association of Emerging & Multicultural Providers, Inc.
- On September 15, 2006, SPIN’s Employee Relations manager wrote to Mr. Phillips stating that Mr. Ortiz was applying for unemployment. The manager wrote, “Carlos has applied for unemployment. Do we want to protest this? If so, then I need to know when his last day of employment was and why he is no longer here. Written statements are best, however not always necessary.” Mr. Phillips’ reply was “Last day of contract 8/30/06”.<sup>9</sup>
- Commission staff interviewed Mr. Ortiz on December 14, 2006. Despite the paucity of records provided, Mr. Ortiz claimed that he was working from home over the past couple of years and that he didn’t make it into the office very often.

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<sup>8</sup> According to Mr. Phillips, this e-mail related to Mr. Ortiz’s failure to complete the agency newsletter. Mr. Phillips stated that the newsletter was usually two pages long and did not include any by-line for Mr. Ortiz.

<sup>9</sup> Mr. Phillips and SPIN’s current HR director stated that this request was not unusual as the HR department needs to know the status of all employees applying for unemployment.

He said that he held many positions with SPIN and that he communicated via e-mail with SPIN's executive director. He said that over the past year, he worked on various proposals to start new programs and conducted site visits to the agency's programs to ensure they were complying with the appropriate regulations. Mr. Ortiz said that his contract was up in September 2006, and he left the agency because someone else at the agency got a job for which he was applying.

- The Commission attempted to interview SPIN employees who might have known Mr. Ortiz or knew of his visits to the various SPIN programs. Few employees knew Mr. Ortiz. Of those who did recall him, most stated that they recalled him working at the agency but then suddenly "disappearing." They did not know the reason for his leaving the agency.
- Finally, on March 30, 2007, Commission staff interviewed SPIN's executive director, Seibert Phillips. Mr. Phillips stated that Mr. Ortiz had a continuous working relationship with the agency until his contract expired in August 2006. Mr. Phillips stated that Mr. Ortiz mainly worked at home on numerous projects for the agency and that he reported directly to him (Mr. Phillips).

Based on the available documentation, the Commission has seen no evidence that Mr. Ortiz performed work for the agency from mid-2004 through the end of his contract in September 2006.

*SPIN Response: SPIN acknowledges that Mr. Ortiz stopped working at the agency's headquarters during the Spring of 2004, yet continued to receive a paycheck through the end of August 2006. They state that Mr. Ortiz was unable to get along with his co-workers and he was becoming a distraction in the workplace. As a result, Seibert Phillips reportedly concluded that Mr. Ortiz was no longer productive in his role as Employee Relations Manager. However, Mr. Phillips (in consultation with SPIN's attorney) also reportedly concluded that he could not fire Mr. Ortiz because of his three-year contract. Consequently, Mr. Phillips decided to allow Mr. Ortiz to work from home. SPIN provided numerous documents which purportedly reflected the work completed by Mr. Ortiz while under this arrangement, but SPIN admits that "there is no way to independently confirm that Ortiz actually did the work since only Phillips interacted with him during this time period." SPIN also admits that there is no electronic evidence substantiating that Mr. Ortiz worked from home.*

*CQCAPD Rebuttal: The Commission believes that Mr. Ortiz essentially was a no-show employee for the last two and one-half years of his three-year contract and Seibert Phillips' decision to continue salary payments to Mr. Ortiz was a misuse and waste of corporate assets.*

## 2. Division of Human Rights Complaint

The complainant stated that Mr. Ortiz had filed a discrimination complaint against Seibert Phillips. When the Commission asked, Mr. Phillips stated that he was "unaware" of any discrimination complaint filed against either SPIN or himself.

Upon further investigation, the Commission learned that Mr. Ortiz filed a complaint with the NYS Division of Human Rights (DHR) on April 15, 2004, charging the Evelyn Douglin Center and Seibert R. Phillips, CEO/Executive Director, as aider and abettor, with unlawful discriminatory practices in violation of the NYS Human Rights Law. The complaint alleged that Mr. Phillips was harassing Mr. Ortiz and stated that “To date, although I remain employed with Respondent, I have no duties. I believe because I refuse to continue the personal relationship with Mr. Phillips that he has orchestrated this hostile work environment to **force me to resign** (emphasis added). Other directors or managers are not treated this manner.” Mr. Ortiz stated that he did not initially complain of the harassment because Mr. Phillips is “the owner & CEO & Executive Director of the agency I work for, and when I told him I was going to tell the board, he told me do what you want, I supervise you, and the President of the board is his Godmother’s Daughter, & has no authority according to Seibert R. Phillips.”

DHR faxed the complaint to SPIN on April 16, 2004, the day after it was filed. Four days later on April 20, 2004, DHR received a call from Mr. Ortiz stating that “Respondent, Mr. Phillips, offered a **private settlement** with him (emphasis added).” On April 23, 2004, eight days after the complaint was originally filed, Mr. Ortiz went to DHR to formally withdraw the complaint, stating that the matter “had been resolved to his satisfaction and he no longer wanted to pursue this matter.” The file states that “Seibert R. Phillips and I (C. Ortiz) agreed to adhere to my contract, and ensures that I will work in a productive and harassment free environment and if not I will pursue a retaliation complaint with NYSDHR.” Included in the DHR file are 60 separate emails from January 5, 2004 to February 2, 2004 between Seibert Phillips and Carlos Ortiz which discuss their relationship, Mr. Ortiz’ contract and his work responsibilities at SPIN.

The matter is of concern to the Commission and relevant to its investigation for several reasons. First, although the Commission issued SPIN a subpoena for all documents and emails related to Mr. Ortiz, it was never provided the DHR complaint or any of the 60 emails included in the DHR file. Second, as noted above, Seibert Phillips stated to Commission staff that he was “unaware” of any discrimination complaint filed against either SPIN or himself. Third, there is no indication in agency Board minutes that the Board, although named in the complaint, was advised or aware that such complaint had been filed.

The DHR file and 60 emails shed more light on the circumstances surrounding Mr. Ortiz. For the most part, the emails reflect the tension between Messrs. Phillips and Ortiz. This tension appeared to reach a peak in late January, early February 2004, when the discussion centered on Mr. Ortiz’ job performance and his perception that Mr. Phillips was trying to nullify his three-year contract. For instance, on January 27, 2004, the following exchange occurred between Mr. Phillips and Mr. Ortiz:

Mr. Phillips:                    “The level of supervision that is being exercise (sic) over the ER department is not satisfactory in meeting EDC

needs. The most recent unemployment hearing shows that you (sic) direct input is needed. Irregardless of your sentiment you (sic) input is needed.”

Mr. Ortiz: “I do not (sic) what you are talking about, EDC has won all of its unemployment cases, & ER had nothing to do with (SPIN employee’s) termination, which if (sic) is the case you are speaking on, you are to blame for removing ER from the equation... And I hope in the near future that you question yourself before you place the blame upon another, especially me, for I find it offensive & degrading. I am in need of my job for monetary reasons and have no intent of jeopardizing it for anyone or any reason, but in the end you are the boss, and you decided to terminate (SPIN employee) on poor, unfair & un-judicial grounds.”

Three days later on January 30, 2004, Mr. Phillips sent the following message to Mr. Ortiz:

“Is what I hear you say, just give me the money and you are out?”<sup>10</sup>

There was no response from Mr. Ortiz in the DHR file.

Two days later on Sunday, February 1, 2004 a series of emails were exchanged from Messrs: Phillips’ and Ortiz’ private email accounts. The following are excerpts from those emails:

Mr. Phillips: “Carlos, I need a detail plan from you on what you plan to do to ensure that the departments you have be (sic) contracted to supervise improve. Failure to see improvement within 30 days will result in violation of your contract thus resulting in nullification.”

Mr. Phillips: “Carlos: The after school program and Saturday recreation program continues to be out of control. You have 30 days to show improvement in this area. My continued spot checks have revealed no improvement and consumers being left unattended...Res hab continue to loose (sic) money, ER loses cases at Administrative hearings. You have no control over programs that you have been charged to supervised (sic). As a result, you have violated your contract. If I do not see improvement in 30 days I will be making significant changes. You have failed to visibly monitor the programs after consistent directives from me.”

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<sup>10</sup> While several emails occurred prior to this email, they do not appear to be related. Thus, the record which was supplied by Mr. Ortiz appears to be incomplete.

Mr. Ortiz: “This is just a way for you to fire me, this is bull\_\_\_ & as expected...This is bull\_\_\_ & your false attempt to terminate me as a result of us no longer personally being involved. And if this is the tactic you wish to take, do so. We are all entitled to our perspective & if this is your choice of weapon, I will choose mine too.”

Mr. Phillips: “I am not interested in firing you. I want you to take responsibility for what you are being paid for. You need to spend time monitoring the programs. Whether staff call out sick or not is not acceptable to me for not having coverage. You need to have a back-up plan. Don’t threaten me Carlos. You are not the only one who don’t (sic) take threats lightly.”

Mr. Ortiz: “I am threatening you, as you have threatened me. I am finding difficult (sic) to do my job...Consider this an official, professional email that will be cc to my attorney...There have been staff that have failed to do there (sic) job and are still receiving the same salary & in the same position, yet I am harassed!”

The next day on Monday, February 2, 2004, writing from his SPIN email account, Mr. Ortiz responded to Mr. Phillips in a two and one-half page email stating that he did not plan to write a detailed plan as requested because it was a “bogus plan to justify your false allegations.” Mr. Ortiz made it clear that his contract required SPIN to pay him his salary whether he worked or was fired. He stated that he had the SPIN contract reviewed by the NYS Department of Labor and his attorney and said: “Therefore, even removal of my position and salary is termination, of thus position & contractual agreement, meaning you must pay in full even if you believe I am in void of fulfilling the contract. I will not come up with a false plan of action because your attempt to null my contract is based on our personal relationship being terminated. **As you stated, you would not have paid me such if I was not with you** (emphasis added).” Most of the remaining email defends Mr. Ortiz’ work and explains why he believes he is being discriminated against - - “I have asked to be left alone by you on several occasions, I have asked to please let me do my job, and that I will keep my professionalism despite your...harassment attempts, but to no avail it has not ceased. You try to sway me with company credit cards that you have paid for & it did not work, you have fired me twice and asked me to return, and I have because I needed a job & need a job, but your harassing is beginning to create a disgruntle work environment...” Mr. Ortiz concludes by stating that he has no one else to turn to but that if the harassment continues, he will be forced to report the matter to the Board of Directors and various state agencies. This was the last email in the DHR file.

The Commission does not know what actually occurred between Mr. Phillips and Mr. Ortiz. However, it does appear that:

- Messrs. Phillips and Ortiz were involved in a personal relationship and that personal relationship influenced Mr. Phillips in making business decisions to the detriment of SPIN.
- At some point, the personal relationship soured, causing Mr. Ortiz to file the discrimination complaint.
- A “private settlement” was reached between Mr. Phillips and Mr. Ortiz, resulting in withdrawal of the complaint.
- After the settlement was reached in April 2004, there is no evidence that documented that Mr. Ortiz had a continuous working relationship at SPIN. Indeed, the evidence, as noted in this report, is to the contrary.
- There is no evidence in the record to conclude that SPIN’s Board of Directors was made aware of the complaint, even though they were a named party.

Under the NYS Not-for-Profit Corporation Law (Section §717), “Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions.” Moreover, directors and officers cannot exercise the corporate powers for their private or personal advantage and must serve the corporation over any self-interest. It is the Commission’s opinion, for the reasons noted in this report, that Mr. Seibert Phillips, acting as an officer and CEO of SPIN placed his self-interest above that of the corporation when it related to the business dealings of Mr. Ortiz.

*SPIN Response: The agency reports that Mr. Phillips told the SPIN Board that he was not aware of the DHR complaint until recently, but the Board has reason to doubt his claim. The Board does not comment any further regarding the DHR complaint.*

*CQCAPD Rebuttal: The Commission believes that Mr. Phillips placed his self-interest above that of SPIN; i.e., he hired Mr. Ortiz because of a personal relationship and, when that relationship soured, he permitted Mr. Ortiz to collect a salary and benefits without actually working for SPIN. Mr. Phillips did not alert the Board of the DHR complaint, even though they were a named party in the Complaint; and when confronted by the Commission, he continued to cover-up his involvement by denying any knowledge of it. This is indicative of the “corporate culture” which pervaded SPIN in which the executive director exerted complete control over the agency and concealed critical information from the Board.*

### 3. Inappropriate Use of Corporate Credit Card

The second allegation was that an individual not related to the agency had the use of a corporate vehicle, credit card and agency cell phone. The individual purportedly lived in Atlanta, Georgia. The Commission’s investigation found that a corporate credit card indeed was being used by an individual in Georgia. However, no evidence was found that this individual had the use of a company vehicle or cell phone.

The complainant told Commission staff that the corporate credit card was being used by the executive director’s son – Ron Davis. Although the Commission issued a subpoena

to SPIN for all records related to Mr. Davis, virtually no documentation was provided other than the following:

- A dental insurance enrollment request dated August 19, 1999 which reflected that the executive director had listed Mr. Davis as his son.
- Agency payroll registers indicated Mr. Davis was on SPIN's payroll but had resigned in August 2002. The payroll register recorded Mr. Davis' salary as having been \$800 semi-monthly and listed the agency's corporate address as his home address.
- Two payroll records for June 2002 indicated that Mr. Davis worked at SPIN's day habilitation program on a part-time basis. The records reflect that Mr. Davis worked eight days in June 2002 for a total of 49.25 hours.
- A one-time payment to Mr. Davis on August 8, 2002 for \$1,700 was made from SPIN's payroll account. SPIN was unable to provide any explanation for the \$1,700 payment. If the payment was for the time spent at the day habilitation program, Mr. Davis would have been paid approximately \$34 per hour, approximately three times the typical day habilitation hourly salary.

Regarding the corporate credit card, the Commission found that SPIN has an Exxon/Mobil account for its fleet of vehicles. Three of the cards (card #01, card #06 and card #34) list Antoinette Williams, a project manager at SPIN, as the "driver" assigned to the cards. Card #01, however, was used almost exclusively for gas purchases occurring in or near Atlanta, Georgia.

For the period reviewed, January 2003 to December 2006, a total of \$17,924.24 was charged to card #01 for gasoline purchases. Most of the charges were for gasoline purchased within a 20 mile radius of Atlanta, Georgia. The monthly charges to the credit card began in December 2002 at a nominal amount - \$37.51. However, as time progressed, so did the charges. By the end of December 2006, the average monthly charge was approximately \$685.00 with the highest monthly charge occurring in June 2006 for \$969.08. A close examination revealed that some of the charges were highly unusual. For instance, gas was purchased under Ms. Williams name in Georgia and Brooklyn, NY on the same date; card #01 was used to purchase 25 gallons of gas on December 8, 2006 in Atlanta, Georgia and on that same day, card #34 was used to purchase 21 gallons of gas in Brooklyn, New York. Both cards listed Ms. Williams name as the "driver." Another questionable practice related to the frequency of the purchases using card #01. On December 2, 2006, at 7:26 p.m., \$30.28 was charged to the credit card to purchase 13.23 gallons of gas. Two minutes later, at 7:28 p.m. another \$28.10 was charged to the card to purchase 12.28 gallons of gas. This pattern occurred numerous times over the three-year period reviewed. Coincidentally, the last purchase using card #01 was on December 14, 2006, one day before the Commission issued a subpoena to SPIN officials to obtain all records related to Mr. Davis.

Commission staff interviewed Ms. Williams on March 28, 2007. She stated that she does have the use of a corporate credit card which requires the use of a "PIN" number in order to use the card. She said that she uses the card for business purposes only and has never used the card in Georgia, nor has she ever been in Georgia.

Seibert Phillips told Commission staff that he first learned of the inappropriate use of the card from Ms. Williams the day the Commission interviewed her.<sup>11</sup> Mr. Phillips acknowledged that Ron Davis is his son and that Mr. Davis lived in Atlanta, Georgia, but he denied that his son used SPIN's credit card to purchase gas. According to Mr. Phillips, the card must have been stolen. He said that if he knew of the use of the card prior to this time, he would have put a stop to it.

*SPIN Response: The agency admits that the "circumstantial evidence identified in the CQC Report...is compelling." Also, even though it is suspicious that the last time the card was used was one day before the issuance of CQC's subpoena, there is no direct evidence that the corporate credit card was used by Mr. Davis. The agency also found that Mr. Phillips should have been aware of the misuse of the card, as the Georgia charges were evident on the monthly credit card statements.*

*CQCAPD Rebuttal: The Commission believes that Mr. Davis had access to SPIN's corporate credit card and that its use was a misappropriation of corporate assets. Other than claiming that there was no direct evidence as to Mr. Davis' use, SPIN has no other explanation as to why the card together with the associated PIN number was used in Georgia, and could not explain why the use of the card stopped only one day prior to the Commission issuing a subpoena seeking all records related to Mr. Davis.*

#### 4. Transfer of Agency Funds

According to Section §16.32 of the Mental Hygiene Law, "No provider...shall make any charitable contribution of any state moneys, medical assistance payments or social security or supplemental security income or any interest or other income earned thereon, except as authorized by the commissioner." Without any authorization from the OMRDD Commissioner, SPIN made a donation to a not-for-profit corporation founded and controlled by the executive director.

On April 11, 2006, SPIN made a \$5,000 contribution to the "New York Association of Emerging & Multicultural Providers, Inc." (Association). The donation was to pay for "membership initiation dues." The Association was incorporated in February 2006 to, among other purposes, "create, form and establish a trade association...to promote, encourage, foster and advance in every lawful manner, the common interests and goals of multicultural agencies..." The Association's initial Directors were SPIN's executive director, Seibert Phillips, Lorenzo Brown, a former SPIN assistant executive director, and a third person, Waffa Abboud.

A review of the books and records of the Association revealed there were six agencies that paid dues to the agency. However, only four of the six paid the \$5,000 membership fee. The other two agencies paid \$2,000 and \$1,000, respectively. The records reflect

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<sup>11</sup> The Commission alerted SPIN's controller, Eugene Brandon, of the inappropriate use of the card in December 2006. Either Mr. Brandon failed to inform Mr. Phillips of the Commission's finding or Mr. Phillips is mistaken about when he first learned of the unauthorized use of the credit card.

that, other than some minor start-up costs, the Association's only other expense was a \$9,562 down payment to a resort hotel for an upcoming conference to be held in September 2007. It appears that the planning for this conference was being done by the employees of SPIN and one other member agency. There is no indication that the Association was reimbursing the respective agencies for the time spent in making these arrangements.

According to SPIN Board members, they were aware of the Association and were supportive of its purpose, but were unaware that SPIN had donated funds to start-up the Association.

*SPIN Response: SPIN asserts that the \$5,000 was a proper payment because it was for "dues" rather than a contribution, and that the Board supports SPIN's decision to be involved with the Association even though there is no record documenting approval of the payment.*

*CQCAPD Rebuttal: SPIN failed to respond to the Commission's finding that SPIN employees were providing services for the Association without being properly reimbursed. The fact that Mr. Phillips was able to make such a payment without either Board knowledge or approval, as well as have SPIN employees provide non-SPIN related services for another agency, reflected the poor internal controls prevalent at SPIN and the unfettered control Mr. Phillips had over the agency. SPIN's implementation of tighter internal controls should prevent this type of incident from occurring in the future.*

## 5. Executive Compensation

### **a. Executive Director's Compensation from SPIN**

One of the responsibilities of a not-for-profit board of directors is to set the compensation of its executive director. According to the New York State Not-for-Profit Law (§202(a)(12)), the executive's compensation must be reasonable and commensurate with the services performed. The Commission's review, however, found that the SPIN Board failed in its duty for several reasons.

Since SPIN began operating in 1997, the executive director, Seibert Phillips, has received a total of \$899,952 in compensation.<sup>12</sup> Over this nine-year period, Mr. Phillips received more than \$143,000 above what was approved by the SPIN Board as documented in their minutes. This occurred because extra salary payments were made of which the Board was either unaware or did not approve (see Chart I).

According to SPIN records, effective May 1, 1999, SPIN entered into an employment agreement with the executive director. The agreement appointed Mr. Phillips as the executive director/CEO of the agency and provided him with an annual salary of

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<sup>12</sup> For the first two years of operation, 1997 and 1998, it appears that Mr. Phillips received no compensation from SPIN. This is probably explained by the fact that SPIN only had approximately \$27,000 in total revenue for these two years.

\$40,000. The salary was to be reviewed by the Board in six months and thereafter on an annual basis in accordance with the annual budget. Further, recognizing that Mr. Phillips was the founding director of SPIN, it was agreed that the employment agreement be extended for a period of 15 years subject to an annual review. If the Board determined to terminate the agreement, Mr. Phillips would be entitled to 18 months severance pay. In addition to his salary, Mr. Phillips was to receive the use of a company car, a pension, and four weeks paid vacation which could be carried over each year for **up to three months during the first five years with Board approval** (emphasis added). The agreement did not address either bonuses or longevity pay for the executive director.

Over the next seven years (from 1999 to 2006), according to Board minutes, the Board discussed an increase to Mr. Phillips' salary only four times, even though Mr. Phillips' employment agreement stated the Board would review the executive director's compensation on an annual basis. As reflected in Chart I, the salary increased from the initial \$40,000 in May 1999 to \$145,000, approved in August 2005. Yet, as Chart I also reflects, in all but one year since the employment agreement was signed, Mr. Phillips received more than what was approved. The difference between what was received and what was approved can, in most instances, be attributed to additional payments for bonuses, longevity pay and paid vacation. The Commission was unable to find Board approval for any of these extra payments.<sup>13</sup>

**Chart I**

<b>Date</b>	<b>Actual Salary</b>	<b>Bonus</b>	<b>Longevity</b>	<b>Vacation B/O</b>	<b>Total</b>	<b>Board Approved Salary</b>	<b>Difference</b>
5/1/99	\$ 20,983				\$ 20,983	\$ 26,667 <sup>14</sup>	\$ - 5,684
2000	\$ 71,199			\$ 2,708	\$ 73,907	\$ 60,000	\$ 13,907
2001	\$ 66,500				\$ 66,500	\$ 65,000	\$ 1,500
2002	\$104,972				\$104,972	\$ 65,000	\$ 39,972
2003	\$110,000			\$ 21,923	\$131,923	\$125,000	\$ 6,923
2004	\$131,667	\$5,208	\$ 5,000		\$141,875	\$125,000	\$ 16,875
2005	\$161,875				\$161,875	\$145,000	\$ 16,875
2006	\$190,000	\$7,917			\$197,917	\$145,000	\$ 52,917
<b>Total</b>	<b>\$857,196</b>	<b>\$13,125</b>	<b>\$5,000</b>	<b>\$24,631</b>	<b>\$899,952</b>	<b>\$756,667</b>	<b>\$143,285</b>

**b. Executive Director's Compensation from Children's Services**

In addition to being paid by SPIN, Seibert Phillips also received a salary from Evelyn Douglin Children's Services. From 2000 to 2006, Mr. Phillips received total

<sup>13</sup> The June 10, 2003 Board minutes reflect a request by Mr. Phillips to be paid for 12 weeks of accrued vacation for the period 1997 to 2000. Other than the Board discussing the agency's By-Laws and Mr. Phillips employment agreement, there was no evidence that the Board approved of this additional pay.

<sup>14</sup> Pro-rated for 7/12 of one year based on Board approval of \$40,000 annual salary.

compensation of \$468,716 for serving as its executive director. The Commission found, similar to the SPIN findings, that during this seven-year period Mr. Phillips received more than \$98,000 in excess of what was approved by the Board. This additional pay also can be attributed to bonuses, longevity pay and payment for accrued vacation (see Chart II). However, unlike the SPIN arrangement, there was no employment agreement with Children’s Services. The only reference to Mr. Phillips’ salary for Children’s Services was a Board approval on October 24, 2000 that established his salary at \$60,000, a salary he had already been receiving since June 2000. Since that time, there is no other reference in the Board minutes or any other document of approval of increases in Mr. Phillips’ salary, or for bonuses, longevity pay or payment for accrued vacation.

**Chart II**

<b>Date</b>	<b>Actual Salary</b>	<b>Bonus</b>	<b>Vacation B/O</b>	<b>Total</b>	<b>Board Approved Salary</b>	<b>Difference</b>
7-12/00	\$ 32,296			\$32,296	\$ 10,000 <sup>15</sup>	\$ 22,296
2001	\$ 60,000			\$60,000	\$ 60,000	
2002	\$ 57,500			\$57,500	\$ 60,000	\$ - 2,500
2003	\$ 60,000		\$ 13,920	\$73,920	\$ 60,000	\$ 13,920
2004	\$ 76,250	\$ 3,125		\$79,375	\$ 60,000	\$ 19,375
2005	\$ 75,000			\$75,000	\$ 60,000	\$ 15,000
2006	\$ 75,000	\$ 3,125	\$ 12,500	\$90,625	\$ 60,000	\$ 30,625
<b>Total</b>	<b>\$436,046</b>	<b>\$ 6,250</b>	<b>\$ 26,420</b>	<b>\$468,716</b>	<b>\$370,000</b>	<b>\$ 98,716</b>

*SPIN Response: The agency stated that they were aware of the requirement that the executive director’s salary must be reasonable and commensurate with the services provided and that, following receipt of the CQC report, the Board reviewed all compensation received by Mr. Phillips and confirmed that all compensation paid, including bonuses, longevity pay and accrued vacation pay, was approved, though not always documented properly. The agency agreed that it did not take into account the compensation Mr. Phillips was receiving from Children’s Services when it determined his SPIN salary and that the Board would take this into consideration when it reviews whether or not to consolidate the two corporations.*

*CQCAPD Rebuttal: The agency’s response is contradictory. On the one hand, they claim that the evidence uncovered by their own internal investigation is not consistent with the Commission’s conclusion that the Board failed in this regard; but also admit that there is no documentation to support that the compensation was approved at the levels being paid. Most striking is the purported approval of Mr. Phillips salary in 2006. When the Commission first sought documentation approving of this salary, SPIN provided a copy of “recreated” board minutes reflecting approval at \$145,000 per year.*

<sup>15</sup> Pro-rated for 2/12 of a year based on Board approval of \$60,000 annual salary.

*The Board subsequently reported that the “recreated” minutes were incorrect and that the correct amount was \$190,000 per year, which is consistent with the Board’s recollection. The agency also did not address the compensation paid to Mr. Phillips under the Children’s Services program, other than mentioning that it would take this into account when considering whether to consolidate the two corporations. Two members of the SPIN Board, including its president, are also on the Children’s Services Board. As such, they were presumably aware that Mr. Phillips was being paid by both corporations. The fact remains that, with regard to the Children’s Services program, Mr. Phillips received a salary, bonuses and vacation buy-backs that were never approved by the Board, another example of poor Board oversight and total control by the executive director. In its supplemental response, SPIN reports implementing a new policy whereby the Board has appointed a “Joint Committee” to ensure that the executive director’s salary is reasonable and commensurate with his duties.*

### **c. Determining a Comparable Compensation**

In determining the executive director’s compensation, the SPIN Board twice utilized compensation surveys published by the Interagency Council of Mental Retardation & Developmental Disabilities Agencies (IAC).<sup>16</sup> The two surveys (one in 2000 and one in 2004) compared executive compensation in similar agencies in the New York City area. The SPIN Board used these surveys to increase Mr. Phillips salary in 2003 when they approved of his salary at \$125,000 and again in 2005 and 2006 when they approved of his salary for two years at \$145,000 (or, as the Board later claimed, \$190,000). While it is commendable to use the IAC surveys to determine the executive director’s compensation, the Board’s method was flawed because in both cases they never took into account Mr. Phillips’ salary from Children’s Services. As a result, the approved salaries were inflated when compared to other similar agencies because only part of Mr. Phillips’ salary was considered.

Additionally, when Mr. Phillips’ salary for 2005 and 2006 was increased to \$145,000, the Board used agencies in the IAC survey with revenues in the \$20 to \$60 million range as comparables, even though the combined revenue of SPIN and Children’s Services was only about \$11.0 million. The Board justified using these larger agencies because they expected that by the end of the 2006-2007 fiscal year, SPIN’s revenue would be over \$20 million.<sup>17</sup> The Board approved of this higher salary in an August 19, 2005 Board meeting. These Board minutes are unusual in two respects. First, even though the Board had approved of the higher salary for Mr. Phillips in August 2005, he actually started receiving this higher salary level in August 2004, over a year prior to the approval. This was not addressed in the Board minutes. Second, the minutes approving this higher salary level were not included in the Board minutes provided to the Commission when

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<sup>16</sup> The IAC is a membership organization of not-for-profit providers of service to individuals with mental retardation and developmental disabilities. The IAC provides technical assistance in program development and rate setting, representation in contract negotiations, regulatory affairs, and rate methodology.

<sup>17</sup> For the fiscal year ending June 2006, the combined revenue for SPIN and Children’s Services was approximately \$14.0 million.

the Commission began its review. Instead, the Board later produced a “recreation” of the minutes for that date which reflected the approval.

Finally, the Commission conducted its own comparability study of similar agencies in the New York City area for the fiscal year ending June 30, 2005. A total of 29 agencies were reviewed. This listing was obtained not only from those agencies listed as part of the IAC survey, but also, other agencies identified by OMRDD as having revenue between \$5.0 and \$20.0 million. For the period reviewed, the Commission study reflected that the mean compensation for an executive director in this peer group was \$171,906, while Mr. Phillips’ salary for the same time period was \$236,875 or about 38% higher than the average.

*SPIN Response: The Board stated that they relied heavily on the IAC Surveys of Executive Compensation to determine the executive director’s compensation, setting his compensation above the average compensation of agencies with a similar budget, but never at or above the highest salary level.*

*CQCAPD Rebuttal: The Commission acknowledged that the agency utilized the IAC surveys but found that their process was flawed for two reasons: first, the Board never took into account that Mr. Phillips was also being paid by the Children’s Services; and second, when utilizing the surveys, the Board compared SPIN to agencies in the \$20 to \$60 million range which was far above SPIN’s revenue at the time.*

#### **d. Other Compensation Issues**

The Commission noted several other problems related to compensation:

- According to the October 19, 2004 Board minutes, the Board approved a 3% to 7% increase for management staff salaries. On June 20, 2006, the Board approved another 3% to 5% increase in staff salaries. Yet, the salaries of SPIN’s two assistant executive directors – Marcelle Bailey and Melvin Wynne – increased from \$70,000 to \$120,000, a 71% increase, during this two-year period.
- Both Ms. Bailey and Mr. Wynne sold-back vacation time to the agency in violation of the agency’s policy. According to SPIN’s Employee Policies and Procedures Handbook, vacation time can be accrued up to a set amount, but employees may not “cash out” accrued vacation time. In 2005, Ms. Bailey, Mr. Wynne and Gerard Lightburn sold-back vacation time amounting to \$8,076, \$6,923 and \$5,770, respectively.
- At the end of the year, SPIN provided bonuses to its employees. Usually, the bonus equated to one additional pay check. There is no indication that the Board had approved of these bonuses.
- Certain management staff receive the benefit of a company car (see infra pp.18-19). According to Internal Revenue Service (IRS) rules, the value of this fringe benefit must be included as income on the employee’s W-2. This benefit had been provided to employees for several years; yet SPIN never included the benefit on the employee’s W-2 until the Commission made note of it when its review

began. In certain instances, the benefit was significant. For example, Seibert Phillips had the use of a 2007 GMC Denali, valued at \$51,000. According to the IRS rules, SPIN should have added an additional \$13,250 plus fuel costs to Mr. Phillips 2006 W-2. Instead, because SPIN used an inappropriate method to calculate the benefit, only \$8,868 was added to Mr. Phillips W-2. Attachment 1 reflects the employees who have the use of a company vehicle, the amount added to each employee's W-2 and the amount that should have been added according to IRS rules.

- SPIN was not paying employees who work more than 40 hours per week the proper amount for overtime. Section 142-2.2 of the NYS Labor Law mandates that an employer pay an employee for overtime at a wage rate of one and one-half times the employee's regular rate. The Commission found that in certain instances, SPIN violated this section of the law. For example, one employee worked more than 93 hours one month over the standard work period without receiving any overtime. SPIN officials claimed that they did not have to pay the overtime because the employee worked at two different jobs within the agency and thus, the overtime rules did not apply.
- The Commission found two employees (Monique Bailey and Bonnie Schwartz) who received lump-sum payments totaling \$5,000 and \$4,000, respectively; but the payments were not included on their W-2.
- One employee, Sekou Smith, received \$1,583 for 10 sick days in violation of SPIN's employee policy of not allowing employees to "cash out" sick days.

*SPIN Response: For the most part, the agency agreed with the Commission's findings and stated that they would be reevaluating SPIN's policies and procedures to address these problems. The agency, however, disagreed with the Commission's position regarding reporting the personal use of corporate vehicles on an employee's W-2 form. SPIN claims that the Commission's method was flawed because it assumes that the employee's use of vehicles was 100% for personal use, and that the proper reporting method was used by SPIN. As a result, the agency concluded that it is unnecessary to revise the W-2's previously issued regarding car usage.*

*CQCAPD Rebuttal: First, it is important to note that the Commission's review covered the three-year period 2004 to 2006. It was only in 2006 (because the Commission brought it to their attention), that SPIN reported **any** personal use on an employee's W-2. Prior to that time, **no amount** was ever reported on an employee's W-2 and SPIN failed to respond to this finding. Second, regarding the proper method being used, SPIN claims that the proper method to use is the "working benefit condition."<sup>18</sup> The Commission agrees that the Working Condition Benefit method is the correct method to use and this is the method that the Commission incorporated in its findings. The difference, however, is*

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<sup>18</sup> According to IRS guidelines, the proper title for this method is "Working Condition Benefit." It is interesting to note that while SPIN claims that this is the proper method to use, the agency used another method to report personal use in 2006. It appears that SPIN utilized the "cents per mile rule" to calculate personal use for 2006. However, this is improper because this rule can only apply to vehicles valued at less than \$14,000. Given that all of SPIN's vehicles are valued at amounts much higher than this, the rule does not apply.

*not in which method to use but rather in how much to report. The Commission stands by its position that the full lease value should have been recorded on an employee's W-2 in accordance with the IRS guidelines because SPIN had no documentation to reflect the business use of the corporate vehicles as required by the IRS guidelines.*

## 6. Expenditure review

The Commission also performed a review of expenses generally for the three-year period January 2003 to December 2006. This included examining cancelled checks, invoices, and other documents supporting expenditures. Although SPIN's own policy regarding business expenses states that the Company expects personnel to: "Exercise discretion and good business judgment with respect to these expenses. Be cost conscious and spend the Company's money as carefully and judiciously as the individual would spend his/her own funds. And, report expenses, supported by required documentation, as they were actually spent,"<sup>19</sup> the Commission found numerous examples where SPIN violated its own policy. These include: poor documentation practices to support expenditures; inappropriate allocation of expenses; lavish or extravagant spending; improper expenditures; and, related-party dealings. Generally, it was SPIN's poor internal controls and lax oversight of expenditures that allowed these expenses to be incurred.

### a. Vehicles

SPIN leases an array of vehicles used by both program and management staff. For the fiscal year ending June 30, 2006, SPIN incurred expenses totaling \$446,140 to lease 51 vehicles with a value approaching \$1.5 million. Thirty-eight of the vehicles are assigned to SPIN's 14 residential or day programs which equates to about 3.5 vehicles per site. The vehicles include 36 mini-vans for the residential and day programs and two vehicles for service coordination. An additional 13 vehicles are assigned to management staff. These 13 vehicles range in value from \$21,000 (2005 Ford Taurus) to \$62,000 (2006 Lincoln Navigator). The 13 vehicles provided to management staff include:

<b>Employee</b>	<b>Title</b>	<b>Vehicle</b>	<b>Vehicle Cost</b>
Seibert Phillips	Executive Director	2007 GMC Denali	\$51,475
Marcelle Bailey	Ass't. Ex. Dir.	2005 GMC Denali	\$54,195
Melvin Wynne	Ass't. Ex. Dir.	2005 GMC Denali	\$57,275
Cliff Datys	Dir. Childrens Svcs	2004 Jeep Cherokee	\$22,338
Gerard Lightburn	Ass't. to Ex. Dir.	2005 Ford Explorer	\$29,698
Lisa Hardy	Residential Director	2005 Ford Explorer	\$29,698
Raymond Wynne	Property Manager	2006 Lincoln Navigator	\$62,370
Ray Soto	Day Svcs. Coordinator	2004 Ford Expedition	\$44,674
Antoinette Williams	Project Manager	2005 GMC Denali	\$57,275
Tanique Bigelow	QA Coordinator	2005 Ford Taurus	\$21,145

<sup>19</sup> Evelyn Douglin Center's "Travel and Other Expense Reimbursement Policy", Undated.

Sekou Smith	Development Specialist	2006 Ford Explorer	\$33,040
Carlos Ortiz	Ex-Employee	2005 Lincoln Aviator	\$51,240
In-Lot Vehicle	Floater Vehicle	2005 Lincoln Aviator <sup>20</sup>	\$51,240

While the need for vehicles at the day and residential programs is justifiable, the Commission questions both the need for the number of vehicles and the propriety of supplying management with what appear to be luxury vehicles. The 13 vehicles listed above have a total list price of more than \$500,000. This appears to be well in excess of what is necessary, and inconsistent with proper stewardship of taxpayer funding. When questioned about the need for so many luxury vehicles, Mr. Phillips replied that it costs only marginally more to lease these vehicles than more modest ones.

*SPIN Response: The Board ordered that those vehicles be replaced with less expensive alternatives.*

*CQCAPD Rebuttal: The new vehicles being leased continue to be high-end vehicles, such as a 2007 GMC Trailblazer costing \$858.00 per month or a 2007 Dodge Mountainair which cost \$799.00 a month to lease. The Commission again sees no reason why SPIN needs to lease so many vehicles for administrative staff in the absence of documentation of actual client benefit, especially considering that each residence has either one or two vans assigned to the residence to transport residents. In its supplemental response, SPIN states it will undergo a continuing assessment of the use of its fleet of vehicles to ensure use strictly for business purposes. As part of this evaluation SPIN has determined that two vehicle leases which expire at the end of January 2008 will not be replaced.*

#### **b. Travel and Conference expenses**

A review of the travel expenses paid by SPIN shows charges to the agency which were against agency policy and in the Commission’s opinion inappropriate for a not-for-profit corporation and highlight the agency’s lax control on expenditures. Examples of inappropriate expenses include:

- SPIN employees charged \$686 worth of in-room movies on their corporate credit card during the period July 2003 through June 2006. In at least one case, five movies were charged to the same room on one day. The amount may be higher since not all charges to the credit card had corresponding invoices or other supporting documentation.
- Over this same period, phone charges to hotel rooms amounted to \$1,287, despite the fact that SPIN provides cell phones to management staff.
- In some cases, laundry services were billed to the room and paid by the agency.

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<sup>20</sup> The 2005 Lincoln Aviator, parked at a lot close to the agency, is reportedly used as a back-up when other vehicles are not available.

- Occupancy taxes appear to have been paid on many occasions. As an agency that is exempt from such taxes, SPIN should ensure that employees have proper documents and do not pay sales taxes while traveling in NYS.

SPIN also incurred significant expenditures for conferences over the last several years to the benefit of executive staff.

- Labor Strategy – Pittsburgh, Pennsylvania, June 9&10, 2004. SPIN paid out at least \$16,146.01 for six employees to attend this conference (Seibert Phillips, Marcelle Bailey, Christopher Jones<sup>21</sup>, Melvin Wynne, Raymond Wynne, and Dennis Boyd).<sup>22</sup> Airfare and hotel costs for this conference exceeded \$8,600 or more than \$1,400 per person. Hotel room charges included in-room movies, room service, and internet access. This same conference was held three weeks earlier in New York City.
- Black Enterprise Women of Power – Phoenix, Arizona. February 1-4, 2006. SPIN expended \$7,863.48 for three staff members (Marcelle Bailey, Wendy Collins, and Miriam Bissainthe) to attend this conference. Charges for this conference included hotel rooms at \$280 per night, an in-room movie, and room service.
- NYSACRA – Bolton Landing, NY, May 24–28, 2006. \$9,692.45 in charges at the Sagamore Hotel for 11 people. Hotel charges included: movies, room service, dry cleaning, and in-room games. Other costs like transportation and meals were not available due to SPIN’s poor record-keeping.
- World Business Summit – Chicago, Illinois, June 6&7, 2006. Total expenses were \$11,634.23 for this two-day conference attended by three people (Seibert Phillips, Marcelle Bailey, and Melvin Wynne). Airfare was \$2,761.50 for the three. Lodging of \$3,502.73 included room service, internet access, and over \$130 in long distance calls.

*SPIN Response: A cornerstone of SPIN’s efforts has been its commitment to promote employee growth through extensive and ongoing training programs. SPIN’s new financial controls will better assure that personal charges are not reimbursable.*

*CQCAPD Rebuttal: The Commission intends to conduct a follow-up review of SPIN’s new internal control policy to determine how effective it is in preventing abuses from occurring in the future.*

### **c. Other Credit Card Charges**

In addition to travel-related expenses, corporate credit cards are used for what appear to be other than business purposes with, again, little oversight. For the period July 2002 to June 2006, more than \$361,000 was charged on the agency’s American Express credit card. The process of collecting invoices and receipts in support of credit card charges is seriously flawed, leaving many charges unsupported by proper documentation. The use

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<sup>21</sup> Mr. Jones is the son of SPIN’s Board president, Judy Jones. At the time of the conference, Mr. Jones was a QA specialist.

<sup>22</sup> Neither Carlos Ortiz nor Jovannah Rodriguez from the SPIN’s Human Resource Department attended.

of credit cards circumvents proper internal controls, and there does not seem to be a process in place to document approval for expenditures prior to the use of the credit card or review when the statements are received. Most importantly, many of these transactions appear not to be business-related. No documentation of the business purpose for the expenses cited below was available.

- Two tickets to the Metropolitan Opera totaling \$231 were charged by Carlos Ortiz.
- In February 2005, the agency was charged \$1,874 for a function held at the Marriott Hotel in Brooklyn. There was no explanation as to how this was a business-related function. Of the total amount charged, approximately \$500 was for alcoholic beverages.
- Numerous parking violations were paid for management staff. SPIN's own vehicle operation policy states that staff may not incur fines. This does not appear to be enforced, therefore, making the policy ineffective.
- A 12/16/2005 charge at the City Hall restaurant included food in the amount of \$99 and \$6,090 for liquor and other drinks. The Consolidated Fiscal Report (CFR) manual and SPIN's own policy explicitly states that alcoholic beverages are not a reimbursable expense.
- Gifts of wine to OMRDD regional officials during the December holidays totaled \$335.84 in December 2004 and \$379.80 in December 2005.
- On 7/28/2005, \$73.55 was charged to Seibert Phillips' corporate credit card for a stay at the Accra Beach Hotel in Barbados.
- In October 2004, the agency paid \$175 for four employees and the Board president to attend a fund raising fashion show for another not-for-profit agency in Queens.

*SPIN Response: SPIN confirmed that there were significant problems in this area. As a result, the Board intends to implement a new "Policy on Financial Controls." The Board will encourage employees to report violations of the Policy and will protect employees who do so from any retaliation.*

#### **d. Improper Political Expenditures**

Under the Internal Revenue Code, all Section 501(c)(3) not-for-profit corporations are "absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes."<sup>23</sup> Additionally, the CFR manual considers costs incurred by a provider for making political contributions or dues paid to any professional association whose primary function is of a political or lobbying nature "unallowable." Finally, SPIN's own policy prohibits political or charitable contributions.

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<sup>23</sup>Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations, [www.irs.gov/charities/charitable/article/0,,id=137015,00.html](http://www.irs.gov/charities/charitable/article/0,,id=137015,00.html), 8/18/2006.

The Commission found instances where SPIN may have violated these policies, rules or regulations.

- SPIN made several payments to the “Friends of Vivian Cook” organization. On their surface, these appear to be political donations and are classified as campaign donations on New York State Assemblywoman Cook’s Board of Elections website. Checks were also drawn to “The Egg” for concerts in Albany sponsored by Assemblywoman Vivian Cook. This also appears to be a political fundraiser. The list of paid attendees of the concert includes Mr. Ron Davis, who was not employed by SPIN at the time.

*SPIN Response: SPIN agreed that it made improper political contributions in violation of its own policy, as well as the IRS and CFR regulations, and agreed not to do so in the future.*

## 7. Other Findings

- Under Not-for-Profit Law (§717(a)), board directors are to have undivided loyalty to the corporation. As such, board directors must subordinate their personal interests to the interest of the corporation. Best practices dictate that board directors fully disclose to the board when they are also doing business with the corporation. The Commission found that three SPIN Board Directors were doing business with the agency; yet this was not disclosed in the Board minutes. One Board director, Merrith Hockmeyer, provided psychological services to consumers. For the three-year period March 2003 to May 2006, SPIN paid Mr. Hockmeyer’s company, MHH Clinical Services, more than \$90,000.
- A SPIN internal document estimates that the cost of “Staff Day 2005” exceeded \$60,000. The Staff Day included awarding staff 11 flat panel wide-screen televisions costing \$21,000, 34 Apple I-Pods costing \$7,600 and cash awards of \$8,000. Although the Commission agrees that such events can be good for employee morale, the purchase and awarding of the wide-screen televisions and other expensive gifts are clearly an appropriate use of taxpayer funds. Some of the prizes awarded appeared to exceed IRS “de-minimus” award regulations and should have been included on employee W-2s. Furthermore, any cash awards must be included as income. The Commission, however, found that no amount was included on employee W-2s filed with federal and state taxing authorities.
- SPIN paid \$2,700 in January 2006 to the NYS Association of Black and Puerto Rican Legislators, for 18 dinner tickets at the “35<sup>th</sup> Annual Caucus Exhibition Conference Weekend.” This may be an inappropriate use of government funding. Included among the 18 guests that SPIN paid for were at least two people who were not SPIN employees.
- The majority of SPIN’s programs are reimbursed based on rates established by either OMRDD or the State Education Department (SED). These rates, in turn, are based on information supplied to the state agency by SPIN. Because the rate methodology employs controls to limit administrative costs, it is essential that costs be properly allocated among the various programs. Our expenditure review

revealed that some expenses, which appear to be administrative in nature, are charged directly to programs rather than to administration, thus potentially circumventing the rate methodology controls. In addition, the amount charged to each program does not appear to follow a rational allocation method, but rather is simply split evenly among programs. As an example, attendance at a Labor Relations seminar should be treated as an administrative expense. Instead, expenses are spread evenly across a number of programs without regard to the attendees or other rational reasons for allocation.

- Iris Shorin, an attorney who does legal work for SPIN, was enrolled in SPIN's health insurance plan even though she was not a SPIN employee. Ms. Shorin paid for the coverage but her non-employee status may have put SPIN in violation of their contract with their health insurance carrier.<sup>24</sup>
- Our general review of expenditures revealed that late payment fees are paid on many recurring bills, including credit cards. We were unable to determine whether this was caused by poor cash flow or inefficiency in processing payments.
- In December 2004, SPIN paid \$3,500 for a custom desk, bookcase and file cabinets at the 758 Greene Avenue residence. There is no documentation of the reason for the need for custom furniture.
- It appears that SPIN paid for a passport for an employee, Melvin Wynne. There is no compelling reason why a SPIN employee would need to travel overseas on program business.
- SPIN paid \$1,700 tuition for an employee to attend Medgar Evers College. The courses paid for were: College Composition I, Post Secondary Math, and Fundamentals of Speech. Again, while assisting in an employee's education in theory is laudable, SPIN did not have a comprehensive policy covering the amount available or which employees were eligible for tuition reimbursement.

*SPIN Response: SPIN responded to each of the findings as follows:*

- a. the Board is aware of the services provided by Dr. Hockmeyer*
- b. the Board is satisfied that the "staff day" was an effort to improve staff morale. Nonetheless, future gifts will be more modest.*
- c. Payment to the NYS Association of Black and Puerto Rican Legislators was neither a political fundraiser nor a contribution, but rather for a weekend conference.*
- d. SPIN is in the process of reviewing and improving on the allocation of costs among programs.*
- e. Ms. Shorin (the agency's attorney) was on the agency's health insurance plan in violation of the health insurance plan. SPIN will no longer permit non-employees to enroll in their health insurance plan.*
- f. SPIN's new policy on financial controls has helped to resolve the issue of late payment fees.*

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<sup>24</sup> In March 2007, Ms. Shorin obtained her own health insurance and was dropped from the plan. This does not remedy the fact that SPIN was in violation of their contract for several years.

*g. SPIN will avoid incurring unnecessary costs and properly document instances where custom furniture is purchased.*

*h. Mr. Wynne did use the corporate credit card improperly to purchase a passport but reimbursed the agency for the cost.*

*i. SPIN did have a written tuition reimbursement policy; however, in the future the Board will be required to reimburse an employee for tuition expenses.*

*CQCAPD Rebuttal: The Commission will conduct a follow-up review of SPIN's new internal control policy to determine how effective it is in preventing abuses from occurring in the future.*

## 8. Board of Directors

SPIN and Children's Services have two separate boards with common members. Additionally, certain staff of each entity sits on the other entity's board, creating, at a minimum, an appearance of a conflict of interest. For example, Cliff Datys, the Director of Children's Services, is the Secretary of the SPIN Board and Marcelle Bailey, the Assistant Executive Director of SPIN, sits on the Children's Services Board.<sup>25</sup> The common thread, however, is that both entities are controlled by Seibert Phillips, their executive director. Generally, a nonprofit organization must consolidate a related nonprofit entity if the reporting entity (SPIN) has an economic interest in the related entity (Children's Services). An economic interest exists if the related entity "holds or uses resources for another to either produce income for it or provide services to it."<sup>26</sup> As noted before, in addition to common board members, SPIN shares administrative staff with Children's Services. As a result, the Commission believes that, for financial reporting purposes, the two corporations should be consolidated.

The Commission met with SPIN's Board on March 30, 2007, and outlined its findings. For the most part, the Board was unaware of many of the areas of concern identified in this report. Specifically, Board members claimed no knowledge of Mr. Ortiz's annual salary of \$100,000, the gas charges to SPIN's reportedly stolen corporate credit card, the \$5,000 transfer of funds to the New York Association of Emerging & Multicultural Providers, and the compensation level of SPIN's executive director. According to Section 717(a) of the NY Not-for-Profit Corporation Law, "Director and officers shall discharge the duties of their respective position in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions."

Given the enormity of the problems noted at SPIN and as documented in this report, it is the Commission's opinion that the SPIN Board was lax in its fiduciary oversight of the finances and operations of this agency.

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<sup>25</sup> As part of the agency's supplemental response, both Ms. Bailey and Mr. Datys resigned from the Board.

<sup>26</sup> Thomson PPC, Guide to Audits of Nonprofit Organizations, Volume 1, Section 703.6, February 2006

*SPIN Response: Throughout its tenure, the Board has taken its fiduciary responsibilities most seriously. It is with these responsibilities foremost in mind that the Board acted promptly and comprehensively in response to the CQC report.*

*CQCAPD Rebuttal: The Commission commends the Board for the many steps it has taken to correct problems identified in this report. However, given the breadth and gravity of the findings noted, the Commission believes that the SPIN Board failed in its oversight role.*

## 9. Executive Director Credentials and Other Matters

On August 24, 2007, the SPIN Board responded to the Commission's draft report (See Attachment II). This response prompted the Commission to conduct a further review and the Commission made additional findings which are identified below:

### **Executive Director's Credentials**

In its response, the Board provided a brief background on Seibert Phillips. The response stated that Mr. Phillips "attended York College while working part time as a direct care worker providing services to people with disabilities... After college graduation, he embarked on a career in social services to pursue his goal of assisting individuals with disabilities." The Commission attempted to verify Mr. Phillip's academic credentials and found that he had no degrees, even though the resume maintained in his personnel file at SPIN claimed that he had a bachelor's degree from York College and a master's degree in Social Work from Fordham University.

The Commission contacted both York College and Fordham University and found that Mr. Phillips attended York College but did not earn a degree; and that he never attended Fordham University.

The Commission also found that in several applications to either OMRDD or SED, Mr. Phillips improperly represented himself as a Certified Social Worker when he had no such certification. For example, on November 8, 1997, as part of its Medicaid application, Mr. Phillips sent a memorandum to the Department of Health notifying the Department that the agency's name changed from Serving People In Need, Inc. to Evelyn Douglin Center For Serving People In Need, Inc. The memorandum identified Mr. Phillips as "Seibert R. Phillips, MSW, CSW." Also, on November 1, 2004, as part of its application to the New York State Education Department to receive a charter to operate its Children's Programs, Mr. Phillips represented himself as a Certified Social Worker. Finally, in 1994, Mr. Phillips submitted to this Commission his resume to become a panel member of the Commission's Surrogate Decision Making Program. The application included his resume which reflected that he had a bachelor's degree from York College; a master's degree from Fordham University and that he was a certified social worker. As part of the application process, Mr. Phillips provided the Commission with a certification number that actually belonged to another person.

## **Hiring of Carlos Ortiz**

As part of its internal investigation into the Commission's draft report, the SPIN Board learned from Seibert Phillips that a mutual friend of his recommended Carlos Ortiz for a position with SPIN. The report stated "Mr. Ortiz was recommended to Phillips by Eihab Haggazy, now deceased, who had substantial experience in the not-for-profit arena, including as founder and Executive Director of Eihab Human Services. Mr. Haggazy was a long-time friend and colleague of Phillips." When the Commission asked Mr. Phillips how he first learned of Carlos Ortiz, he stated that a friend of his told him of Mr. Ortiz and gave him Mr. Ortiz's resume. Mr. Phillips, however, could not remember the name of the friend.

A subsequent review of Mr. Haggazy's background revealed that he had died in August 1999 from a motorcycle accident. This was approximately three years prior to Mr. Ortiz receiving the position with SPIN.

## **SED Applications**

On August 24, 2004, Evelyn Douglin Center for Children's Services, Inc. (EDCCS) applied to the NYS Education Department (SED) to operate a full-day Special Class in an integrated setting for children with disabilities. EDCCS had already been approved by SED to operate a Special Education Itinerant Services program and a multidisciplinary evaluation program.

As part of its application, EDCCS was required to submit a "staffing summary" form which listed each member of the professional, supervisory or administrative staff, their certification or licensure and the allocation of time proposed to be spent in the new program. EDCCS' application listed 11 individuals as follows: five professional staff (a psychologist, a speech therapist, a social worker, a physical therapist, and an occupational therapist); two education professionals ( a teacher and a teacher's aide); and, four administrative staff. For the five professional staff, EDCCS also listed the professional's certification or license number. This part of the application appears to have been completed by EDCCS' Assistant Executive Director, Cliff Datys. Mr. Datys was a SPIN Board member at the time.

The Commission contacted each professional staff and learned that **none** of them ever heard of Evelyn Douglin Center or any staff member associated with Evelyn Douglin's Children's Services. The staff also said that they did not give anyone authority to use their certification and/or license number as part of any application to SED.

The Commission intends to refer this matter to SED's Office of Professional Discipline for whatever investigation or other action it deems appropriate.

## Recommendations

The Commission's review identified numerous serious problems at SPIN. As such, the Board should immediately consider implementing the following recommendations:

1. The Board should conduct an internal review of all agency expenditures to ensure that funds are spent only for business-related purposes. Any personal expenses paid for by the agency should be reimbursed by the employee on whose behalf the expenditure was incurred.
2. The Board should conduct a review of all agency contracts to ensure that they comply with corporate policy and purposes. All future employment services contracts should be reviewed and approved by the entire Board of Directors.
3. Internal controls should be established to ensure that all agency expenditures comply with applicable state and federal laws, regulations and agency policies. This would include requirements that:
  - All expenditures are reasonable, necessary and allocable to the proper program.
  - Expenditures are supported by complete and proper documentation.
  - Expenditures are approved by the appropriate agency official and/or Board member.
  - All salary increases are approved by the appropriate agency official and are properly documented.
  - All personnel records are complete and maintained in one central location.
  - The business uses of agency vehicles are properly documented.
4. SPIN should cease making contributions to any political organization or individual.
5. SPIN should review its current method of allocating costs to its programs and ensure that a rational basis is employed so that only those costs that benefit the program are allocated to it. The Board should ensure that costs that are administrative in nature are not treated and recorded as program costs.
6. A determination should be made whether those employees who have "cashed-out" vacation and sick-time accruals did so in accordance with agency policy. If it is determined that agency policy was violated, the employees should reimburse the agency for the funds improperly received.
7. The Board should review the appropriateness of leasing luxury vehicles for agency staff.

8. The Board should ensure that the agency follows proper state and federal tax guidelines and that any employee benefit be properly included in the employees W-2 for tax-related purposes. Prior year W-2's should be re-issued to correctly reflect agency benefits that were paid but not recorded. This would include personal use of agency vehicles and other compensation, such as bonuses or longevity pay.
9. The Board should revisit the agency's agreement with its executive director to include an examination of how it determines the executive director's compensation. This should include conducting an analysis in accordance with all IRS Intermediate Sanction guidelines.
10. The Board should ensure that all applicable agency staff working in excess of 40 hours per week are appropriately paid overtime in accordance with NYS Labor Law.
11. The Board should conduct its own investigation into the improper use of the agency corporate gas card and, if appropriate, require the individual or individuals who used the card without authorization to reimburse the agency \$17,924.24.
12. The Board should consider attending training sponsored by OMRDD or the Attorney General's Office on Board of Director Responsibilities. The Board should also become more involved in overseeing the agency finances, including, reviewing and approving any single expenditure over a reasonable set amount; for example, any expenditure over \$5,000 should require Board review and approval.

*SPIN Response: In response to the Commission's recommendations, SPIN adopted several new policies and procedures which comprehensively address and improve Board and Corporate governance and internal controls. A copy of the actions that the agency plans to take or has already taken is attached as Attachment II.*

## Attachment I

## Agency Vehicles

Employee	Vehicle	Vehicle Cost	W-2 Amount	IRS Required Amount	Difference
Seibert Phillips	Denali -07	\$51,475	\$8,740.38	\$13,250	\$ 4,509.62
Marcelle Bailey	Denali -05	\$54,195	\$1,382.48	\$14,250	\$12,867.52
Melvin Wynne	Denali -05	\$57,275	\$1,474.51	\$14,750	\$13,275.49
Cliff Datys	Jeep -04	\$22,338	\$4,318.95	\$ 6,100	\$ 1,781.05
Gerard Lightburn	Explorer -05	\$29,698	\$1,497.51	\$ 7,750	\$ 6,252.49
Lisa Hardy	Explorer -05	\$29,698	\$3,793.98	\$ 7,750	\$ 3,956.02
Raymond Wynne	Navigator -06	\$62,370	\$1,474.51	\$16,093	\$14,618.49
Ray Soto	Expedition -04	\$44,674	\$2,018.30	\$11,750	\$ 9,731.70
Antoinette Williams	Denali -05	\$57,275	\$ 913.99	\$14,750	\$13,836.01
Taniqua Bigelow	Taurus -05	\$21,145	\$4,270.84	\$ 5,850	\$ 1,579.16
Sekou Smith	Explorer -06	\$33,040	\$4,367.05	\$ 8,750	\$ 4,382.95
Carlos Ortiz	Aviator -05	\$51,240	\$ 0.00	\$13,250	\$13,250.00
	<b>TOTAL</b>	<b>\$514,423</b>	<b>\$34,252.50</b>	<b>\$134,293</b>	<b>\$100,040.50</b>



## **Evelyn Douglin Center**

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*For Serving People In Need, Inc.*

241 37th Street, Suite 604, Brooklyn, NY 11232

718.965.1998 • Fax: 718.965.3995

August 24, 2007

**BY FEDEX**

Robert Boehlert, Esq.  
Counsel  
State of New York Commission  
on Quality of Care and Advocacy for Persons with Disabilities  
401 State Street  
Schenectady, NY 12305-2397

Re: Evelyn Douglin Center for Serving People in Need

Dear Mr. Boehlert:

We, the undersigned officers of the Board of Directors of the Evelyn Douglin Center for Serving People in Need (the "Board"), write on behalf of the Board with the knowledge and consent of all Board members. The Board has reviewed the Commission's preliminary report dated May 3, 2007 ("CQC Report") and thanks the Commission for the opportunity to respond.

The Board is deeply troubled by the factual findings and allegations contained in the CQC Report. Throughout its tenure, the Board has taken its fiduciary responsibilities most seriously. It was with these responsibilities foremost in mind that the Board acted promptly and comprehensively in response to the CQC Report. In doing so, the Board sought to accomplish two things: first, to conduct a full and impartial investigation of all matters addressed in the CQC Report and, second, to remedy the problems uncovered by the CQC Report and the Board-commissioned investigation. The Board's ultimate goal remains the same – to ensure the

Robert Boehlert  
August 24, 2007  
Page Two

continued integrity of EDC-SPIN's programs and the delivery of services to the developmentally disabled in a fiscally and operationally sound manner.<sup>1</sup>

Specifically, the Board has taken the following steps in response to the CQC Report:

1. The Board retained the law firm of Kelley Drye & Warren LLP ("Kelley Drye") to (i) conduct an internal investigation of the matters raised in the CQC Report, (ii) provide a written response to the CQC Report based on its investigation ("Investigation Report"), and (iii) draft a comprehensive set of new and improved corporate governance policies.
2. The Board carefully reviewed Kelley Drye's Investigation Report, a copy of which is attached hereto as Appendix A, and has relied on it, as well as the CQC Report, in making decisions regarding EDC-SPIN's management, administration, policies and structure.
3. In addition to the factual findings in the CQC Report, the Board has carefully considered the 12 Recommendations set forth in the CQC Report. The Board's specific responses to those 12 Recommendations are attached as Appendix B.
4. The Board is currently reviewing a set of Board governance and corporate compliance policies drafted by Kelley Drye. These draft policies are attached as exhibits to Appendix B.
5. The Board has approved revised policies on the following matters: (a) check signing; (b) gas card usage; (c) electronic time and attendance system; (d) contract staff; (e) the Human Resources committee (which now includes Board participation); and (f) incident review procedure.
6. The Board retained the CPA Firm of Cerini & Associates, LLP to complete an audit and risk assessment. This assessment will commence shortly.
7. The Board has taken the following disciplinary actions against EDC-SPIN's Executive Director, Seibert Phillips. In deciding on the appropriate discipline for Phillips, the Board weighed the severity of Phillips' misconduct and mismanagement against Phillips' demonstrated abilities, his exemplary prior

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<sup>1</sup> While gravely concerned about the actual and apparent administrative improprieties noted in the CQC Report, the Board is pleased that CQC's random site visits and comprehensive review of all incident reports did not uncover any evidence that EDC-SPIN failed its consumers in any way with respect to the operation or quality of its consumer programs.

Robert Boehlert  
August 24, 2007  
Page Three

service and dedication to the Agency, his sterling reputation in the field and, most importantly, the Board's belief that Phillips is the best option to lead EDC-SPIN in the immediate future.

- Phillips will be placed on probation for 18 months, starting September 1, 2007 ("Probationary Period"), during which time the following conditions will apply;
- Phillips' salary will be reduced by 13% (approximately \$25,000) for at least the duration of the Probationary Period;
- During the first 12 months of the Probationary Period, members of the Board (to include the Vice-President of the Board and another Board member) will meet monthly with Phillips to review and supervise his performance. The supervisory meetings will occur bi-monthly during the remaining 6 months of the Probationary Period and quarterly thereafter for the remainder of Phillips' tenure as Executive Director;
- Phillips will be required to participate in regular training sessions on various issues, including leadership, employee dispute resolutions, management, and fiscal controls;
- Phillips will be required to make such restitution to the Agency as is deemed appropriate by the New York State Attorney General's Office upon completion of its investigation; and
- A written warning will be placed in Phillips' personnel file. The warning will detail the disciplinary action taken and admonish Phillips that future incidents of poor management or misconduct will result in immediate termination.

During the 18-month Probationary Period, the Board will require that the Agency and its Executive Director focus exclusively on the management and administration of existing programs. To ensure that all energies are directed in this regard, the Board will not approve EDC-SPIN's expansion into any new programs during the 18-month Probationary Period.

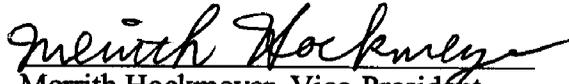
The Board thanks the Commission for its assistance in identifying and remedying problems within the Agency. The Board is unreservedly committed to preventing similar problems in the future and believes that the actions detailed in this letter, in addition to the Board's renewed vigilance in overseeing the Agency, will ensure that this commitment is met.

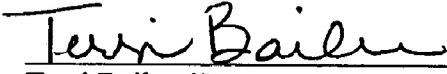
Robert Boehlert  
August 24, 2007  
Page Four

Very Truly Yours,

The Board of Directors of the Evelyn Douglin  
Center for Serving People in Need, Inc.

  
\_\_\_\_\_  
Judy Jones, President

  
\_\_\_\_\_  
Merrith Hockmeyer, Vice-President

  
\_\_\_\_\_  
Terri Bailer, Treasurer

  
\_\_\_\_\_  
Charles Archer, Secretary



## **Evelyn Douglin Center**

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*For Serving People In Need, Inc.*

241 37th Street, Suite 604, Brooklyn, NY 11232  
718.965.1998 • Fax: 718.965.3995

January 24, 2008

**BY FEDEX AND EMAIL**

Robert Boehlert, Esq.  
Counsel  
State of New York Commission  
on Quality of Care and Advocacy for Persons with Disabilities  
401 State Street  
Schenectady, NY 12305-2397

Re: Evelyn Douglin Center

Dear Mr. Boehlert:

We, the undersigned officers of the Board of Directors of the Evelyn Douglin Center for Serving People in Need (the "EDC-SPIN Board") and the undersigned officers of the Board of Directors of the Evelyn Douglin Center for Children's Services (the "EDC-CS Board") (collectively, the "Boards"), write on behalf of the Boards with the knowledge and consent of all Board members to supplement the EDC Initial Response that was filed with the Commission on August 24, 2007 ("Initial Response").

As you know, we reviewed the Commission's preliminary report dated May 3, 2007 ("CQC Preliminary Report") and, following an internal investigation, responded to it in our Initial Response. Since that time, we have continued to work with you and the Commission to address remaining issues. The Boards greatly appreciate the Commission's efforts and assistance throughout this process, particularly the Commission's willingness to meet personally with the Board on September 13, 2007 and again on November 26, 2007. We have learned much from this process and we look forward to continuing our efforts to move EDC forward in a constructive way.

Since submitting the Initial Response, the EDC Boards have been engaged in a continuing effort to improve both EDC Agencies. Those efforts have included an ongoing internal investigation, an audit and risk assessment and the implementation of a Corporate Compliance Program, which includes the adoption of the Board Governance and Corporate

Robert Boehlert  
January 24, 2008  
Page Two

Compliance Policies (with some revision) that were attached as Appendix A to the Initial Response. In addition, the Commission has shared with us additional pertinent information gleaned from its ongoing investigation.

As a result of these ongoing efforts, we requested, and the Commission authorized, the submission of this supplement to the Initial Response (the "Supplement"). Accordingly, the Boards supplement the Initial Response as follows:

1. **New Leadership.** The Boards have accepted the resignation of the founder and former Executive Director of both EDC Agencies, Seibert Phillips. Mr. Phillips has been replaced in both roles by former employee and former EDC-SPIN Board member, Charles A. Archer. Mr. Archer, who has assumed the title of Chief Executive Officer, has been involved in the industry for many years, including most recently as a lobbyist for the Interagency Council of Mental Retardation and Developmental Disabilities Agencies. Most importantly, however, to ensure a smooth transition in leadership and to maintain stability and consistency for the agencies, their employees and consumers, Mr. Phillips agreed to remain in a consulting role for a six month period to assist Mr. Archer. Copies of Mr. Archer's employment agreements with EDC-SPIN and EDC-CS are attached hereto as Exhibits A and B.
2. **Corporate Compliance Program.** The Boards have adopted Board Governance and Corporate Compliance Policies, which are attached hereto as Exhibit C.
3. **Executive Compensation.** The Boards have appointed a Joint Committee consisting of representatives of both EDC-SPIN and EDC-CS, which has been authorized to do the following:
  - (a) to determine compensation for the CEO, Executive Directors, Assistant Executive Directors, and/or other key employees, particularly those with roles in both agencies;
  - (b) to address all employment and personnel issues related to the CEO, Executive Directors, Assistant Executive Directors, and/or other key employees, particularly those with roles in both agencies;
  - (c) to determine whether either or both agencies should enter into any transaction or arrangement in which an officer, director or employee has an economic interest or a conflict of interest; and

Robert Boehlert  
January 24, 2008  
Page Three

- (d) to consult with the appropriate tax, legal, and business professionals and regulatory authorities to assess whether the two agencies should reorganize into or under a single entity.
4. **Revitalize Board Membership.** The Boards have also initiated a campaign to recruit new Board members with experience in financial controls and corporate governance. In addition, employees are no longer permitted to serve on the Boards as Directors, and the two last employees to have done so, Marcelle Bailey and Cliff Datys, have resigned. Their letters of resignation are attached hereto as Exhibits D and E.
  5. **Correct W2's.** The Boards have directed the agencies to reissue any improperly issued or non-issued W2's in the correct form and with the appropriate tax authorities. Copies will be provided when this process is complete.
  6. **Risk Assessment.** The Board retained the CPA Firm of Cerini & Associates, LLP to complete an audit and risk assessment, which is ongoing.
  7. **Corporate Vehicles.** EDC-SPIN is in the process of reviewing its fleet of vehicles to ensure that they are all being used to provide services to consumers and to further EDC-SPIN's goals. To date, the EDC-SPIN Board has identified the following purposes that EDC-SPIN's vehicles serve:
    - (a) performing executive rounds (all program shifts);
    - (b) transporting staff who supervise multiple programs;
    - (c) returning eloping consumers to the facility;
    - (d) transporting consumers and other staff as needed;
    - (e) securing EDC-SPIN's property (Property Maintenance Department on-call 24 hours/day);
    - (f) transporting service coordinators and In-Home Residential Habilitation Staff

In evaluating the necessity of EDC-SPIN's vehicles, the EDC-SPIN Board notes that EDC-SPIN would incur significant costs if it were to do away entirely with its fleet of vehicles. For example, it would need to reimburse all staff for work-related travel. Moreover, EDC-SPIN may need to insure staff members' personal vehicles if they were to use them for business purposes. Finally, EDC-SPIN

Robert Boehlert  
January 24, 2008  
Page Four

would incur costs associated with workers' compensation insurance. For these reasons, EDC expects that it will continue to maintain a fleet of vehicles, but it is currently in the process of evaluating its needs in that regard and whether the current fleet can be reduced. Indeed, the Board has already determined that the next two vehicle leases which expire at the end of January will not be replaced.

Accordingly, throughout the remaining terms of the existing leases, which EDC-SPIN is contractually obligated to honor, EDC-SPIN plans to undertake a cost-benefit analysis to determine the most cost-efficient means to meet its transportation needs. In addition, EDC-SPIN will continue to evaluate the usage of its fleet of vehicles to ensure that the vehicles are being used to serve consumers. As the leases expire, the EDC-SPIN Board will evaluate the need to renew or terminate each lease on a case-by-case basis. Ultimately, the EDC-SPIN Board expects to reduce the overall number of vehicles leased by EDC-SPIN.

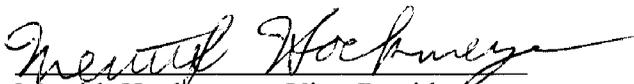
The Boards thank the Commission for its assistance in identifying and remedying problems within the EDC Agencies. The Boards are unreservedly committed to preventing similar problems in the future and believe that the actions detailed in the Initial Response and this Supplement, in addition to the Boards' renewed vigilance in overseeing the Agencies, will ensure that this commitment is met.

Robert Boehlert  
January 24, 2008  
Page Five

Very Truly Yours,

The Board of Directors of the Evelyn Douglin  
Center for Serving People in Need, Inc.

  
\_\_\_\_\_  
Judy Jones, President

  
\_\_\_\_\_  
Merrith Hockmeyer, Vice-President

  
\_\_\_\_\_  
Terri Bailer, Treasurer

The Board of Directors of the Evelyn Douglin  
Center for Children's Services, Inc.

  
\_\_\_\_\_  
Merrith Hockmeyer, President

  
\_\_\_\_\_  
Judy Jones, Vice-President

## Attachment IV

### Chronology of Events

- Fall 2006: CQCAPD receives complaint regarding financial abuses at the agency.
- March 30, 2007: Exit conference with SPIN Board of Directors to discuss draft findings.
- May 3, 2007: CQCAPD issues draft report to the Board with a 30-day response due date.
- May 30, 2007: Kelly, Drye & Warren, Attorney's for the SPIN Board, request an extension to the response due date. The firm was retained by the Board and an internal investigation was going to be conducted to look into the Commission's findings.
- August 24, 2007: SPIN response to Commission draft report received. The Board requests a meeting to discuss corrective actions being taken to address Commission findings.
- September 13, 2007: Commission meets with Board to discuss corrective actions and to discuss new information discovered related to the executive director due to the agency's response.
- November 26, 2007: Joint meeting held between the SPIN Board, OMRDD and the Commission regarding corrective actions taken – namely the removal of the executive director.
- January 23, 2008: SPIN Board meets to formally adopt new policies and procedures recommended by their internal investigation.
- January 24, 2008: SPIN submits revised response outlining corrective actions taken and future actions to be taken to address Commission findings.