

Summary of the Ethics Complaint by Chevron Corporation Against Thomas P. DiNapoli

David Grandeau, as attorney for complainant Chevron Corporation, has alleged on information and belief in the Complaint provided herewith that New York State Comptroller, Thomas DiNapoli, certain members of the staff of the New York State Office of the State Comptroller and certain past members of the staff of the New York State Office of the State Comptroller have violated Sections 74(2), 74(3)(d), 74(3)(f), 74(3)(h) and 74(4) of the New York Public Officers Law as follows:

A. Section 74(2)

Section 74(2) of the New York Public Officers Law prohibits New York officials from having “any interest, financial or otherwise . . . which is in substantial conflict with the proper discharge of his duties in the public interest.” As trustee of the New York State Common Retirement Fund, which owns hundreds of millions of dollars of Chevron stock, DiNapoli owes a duty to act for the benefit of the Fund and his fiduciaries. Likewise, as a state official, he has a responsibility to act for his constituents and not for any particular advocacy group.

DiNapoli has apparently breached those duties by having interests that conflict with the proper discharge of his duties. DiNapoli has taken public action for the benefit of a group of individuals who are plaintiffs in a fraudulent environmental suit against Chevron in Lago Agrio, Ecuador (the “Lago Agrio Plaintiffs” or “LAPs”), not for the benefit of his fiduciaries or constituents, and he has apparently done so in exchange for illicit benefits received from the LAPs. Specifically, as discussed in the Complaint, the LAPs and their representatives have made direct financial contributions to DiNapoli’s campaign, and have offered DiNapoli and his staff trips to Ecuador, celebrity access and political benefits. In an apparent *quid pro quo* exchange, DiNapoli has used his public office to take actions for the LAPs (such as sponsoring

shareholder resolutions and making public statements against Chevron) that were expressly intended to pressure Chevron into giving the LAPs a payoff in connection with the Lago Agrio litigation. DiNapoli's advocacy has come despite clear evidence and findings by U.S. federal courts that the Lago Agrio litigation has been pervaded by fraud committed by the LAPs and their representatives. Moreover, DiNapoli's statements have been based upon information provided to him by the LAPs, which investigation by the Comptroller's office would have shown to be false. These actions do not benefit either the citizens of the State of New York or the beneficiaries of the New York State Common Retirement Fund, which holds hundreds of millions of dollars of Chevron stock. They serve to benefit only DiNapoli's private interests and the LAPs.

B. Section 74(3)(d)

Under Section 74(3)(d), no official "should use or attempt to use his or her official position to secure unwarranted privileges . . . for himself . . . including, but not limited to, the misappropriation to himself . . . of the property, services or other resources of the state for private business or other compensated non-governmental purposes."

DiNapoli has apparently misused his official position as Comptroller and trustee of the New York State Common Retirement Fund, which holds a significant investment in Chevron, to secure unwarranted privileges for himself by supporting private, non-governmental business. DiNapoli has used his office to support the LAPs' fraudulent (and private) scheme to publicly pressure Chevron into giving the LAPs a payoff in connection with the Lago Agrio litigation. In doing so, DiNapoli and his office have apparently misused state resources, such as employee time and state equipment, as well as DiNapoli's elected office and position as trustee of the New York State Common Retirement Fund. In an apparent exchange for this support, DiNapoli and

his office have secured privileges for themselves including tens of thousands of dollars in campaign donations, offers of trips to Ecuador, celebrity access, and political benefits that are unwarranted.

C. Sections 74(3)(f) and 74(3)(h)

Under Section 74(3)(f), a state official “should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties.” Likewise, Section 74(3)(h) provides that a state official “should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.”

DiNapoli has by his conduct given reasonable basis for the impression that he can be improperly influenced in the performance of his official duties, and his conduct has raised suspicion that he is likely to be engaged in acts that are in violation of his public trust. Specifically, DiNapoli has given reason to believe that his support for the LAPs is the apparent result of illicit consideration, including tens of thousands of dollars in campaign contributions, given to him by the LAPs’ representatives. The Lago Agrio litigation has been shown to be a fraud, yet DiNapoli continues to support the LAPs’ goal of forcing Chevron to give the LAPs a multibillion-dollar payoff in connection with the Lago Agrio litigation. DiNapoli has done so without disclosure of his financial and other ties to the LAPs, or apparently thorough investigation of the (baseless) claims against Chevron. Moreover, DiNapoli’s course of conduct is in conflict with the public interest.

D. Section 74(4)

Section 74(4) of the Public Officers Law provides: “In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and

intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law.” It provides further that for intentional violations of certain subsections, such as Section 74(3)(d), violators “shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation.”

DiNapoli’s apparent violation of his public trust appears to be intentional as evidenced by the fact that he has intentionally taken action to benefit the LAPs and to attack Chevron in an apparent exchange for benefits received from the LAPs. Such conduct is an apparent violation of other sections of the Public Officers Law and could not be anything other than an intentional violation. Indeed, DiNapoli took all, or most, of his public actions against Chevron and for the LAPs’ benefit after having been put on notice by Chevron that the Lago Agrio litigation is a fraud and that there is no support for the LAPs’ (and DiNapoli’s) position. Yet DiNapoli continued to take action in support of the LAPs and adverse to the interests of his fiduciaries and constituents in apparent pursuit of his own private interests.

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Given these apparent violations of the New York Public Officers Law, an ethics investigation into Comptroller DiNapoli and his office is warranted. The facts supporting the foregoing allegations are contained in the formal Complaint and relevant exhibits, which are provided herewith.