

**HIGGINS, ROBERTS &
SUPRUNOWICZ, P.C.**
ATTORNEYS AT LAW

Michael R. Suprunowicz
Charles J. Assini, Jr.
Michael E. Basile
Amy Herter Robinson
Maura C. Mottolese
Lawrence A. DeAngelus
Richard A. Fuerst

Matthew T. Nowak

Service By Fax Not Accepted

1430 Balltown Road
Schenectady, New York 12309-4301

Telephone: 518-374-3399
Fax: 518-374-9416
E-mail: Attorneys@HRSLaw.us.com
Web: www.HRBCLaw.com

Frank S. Higgins
(1950 - 1982)
Richard E. Roberts
(1954 - 2002)
Edwin J. Beyerl*
(1956 - 1987)
Robert J. Coan*
(1959 - 2002)
James H. Erceg*
(1964 - 2005)

* Retired

September 12, 2013
Via certified mail/return receipt requested

Erin C. Morigerato, Esq.
The State Education Department
The University of the State of New York
Albany, NY 12234

Graceway Ministries
1259 Chrysler Avenue
Schenectady, NY 12303
Attn: Marc Thompson

RECEIVED

SEP 13 2013
NYSED Office of Counsel

RE: Appeal from SED July 30, 2013 Decision to Reclaim Funds

Dear Ms. Morigerato and Mr. Thompson:

Enclosed please find my decision as hearing officer in the above referenced matter.

Thank you.

Very truly yours,



Michael E. Basile

MEB:ans

IN THE MATTER OF AN APPEAL BY GRACEWAY MINISTRIES

FROM A DETERMINATION OF THE NEW YORK STATE DEPARTMENT OF EDUCATION DATED JULY 30, 2013
AND RENDERED IN RELATION TO THE 2012 SUMMER FOOD SERVICE PROGRAM

DECISION

This appeal arises from a determination of the New York State Education Department (SED) dated July 30, 2013 whereby SED sought to reclaim a sum of \$5314 from appellant Graceway Ministries for expenses deemed to be unsubstantiated and/or unallowable as a result of appellant's participation as a sponsor under the 2012 Summer Food Service Program (SFSP). I initially note that the notice of action letter dated July 30, 2013 does not indicate that it was sent by certified mail return receipt requested, as required by 7 CFR 225.13 (b)(1). Nevertheless, appellant has not challenged the notice of action on this basis and does not appear to be prejudiced by any failure to send the notice of action letter by certified mail return receipt requested, as appellant has timely appealed by way of letter dated August 6, 2013.

The appeal is being considered based on the submission of documents, as a hearing was not requested by the appellant. The only documents submitted, other than the notice of action letter and letter of appeal and accompanying documents, were submitted by SED. They are included with a letter dated September 6, 2013, from Erin C. Morigerato, Esq. and are listed as follows:

1. Appellant's New York State Education Department Summer Food Service Program 2012 Sponsor Online Renewal Application/Agreement (Exhibit A);
2. Appellant's 2012 Summer Food Service Program Budget and Staffing Charts (Exhibit B);
3. NYSED's Site Review, dated July 31, 2012 (Exhibit C);
4. NYSED Administrative Review Form, dated January 8, 2013 (Exhibit D);
5. NYSED Notice of Action, dated February 14, 2013, declaring Appellant seriously deficient and reclaiming \$8,656 in improperly paid funds based upon Appellant's claimed failure to provide the required cost documentation for the 2012 SFSP (Exhibit E);
6. Appellant's documentation submission, dated February 26, 2013 (Exhibit F);
7. NYSED's Notice of Action, dated April 26, 2013, declaring Appellant seriously deficient and reclaiming \$8,656 in improperly paid funds based upon Appellant's alleged failure to provide the required cost documentation for the 2012 SFSP (Exhibit G);
8. E-mail and telephone exchange between NYSED and Appellant regarding cost documentation for the 2012 SFSP (Exhibit H);
9. NYSED's Notice of Action, dated July 30, 2013, reclaiming \$5,314 in improperly paid funds based upon Appellant's failure to provide the required cost documentation for the 2012 SFSP (Exhibit I);
10. Appellant's Appeal and Request for a Review of Documentation, dated August 6, 2013, postmarked August 12, 2013 and received by NYSED on August 14, 2013 (Exhibit J);
11. NYSED Impartial Hearing Officer's (IHO) acknowledgment letter (Exhibit K);
12. Code of Federal Regulations, Title 7 Part 225 was referenced as Exhibit L and not produced;
13. Excerpt from USDA 2013 SFSP Handbook pages 13-17 and 85-95 (Exhibit M);
14. USDA Guidance on SFSP Financial Management, FNS Instruction 796-4, Rev. 4 (Exhibit N):

SED maintains that the documentation requested for labor and purchases were inadequate. It points out that appellant initially provided no supporting documentation for SFSP funds paid to appellant for labor, operational or administrative costs. Appellant has not disputed this contention that documentation was not initially provided or challenged the determination of the administrative review provided as Exhibit D. A notice of action followed whereby SED reclaimed SFSP funds in the amount of \$8,656.00. This was issued on February 14, 2013. On February 26, 2013, appellant faxed to SED copies of a bank statement, two cancelled checks and two credit card statements. SED found this documentation deficient, as it did not correlate to labor costs and did not contain receipts. The two checks were made out to cash and not correlated to time records. These documents are located at Exhibit F provided by SED. SED also provides Exhibit H, which contains an email dated 5/3/2013 from Nalene Vanderpool, who is identified in subsequent documentation provided by appellant (see Exhibit J) as the overseer of the 2012 SFSP program operated by appellant as sponsor. The email indicates that receipts were in a file folder and that they "are what the SFSP need to see to prove that we spent the money on allowable SFSP costs." The documents provided on the appeal do not reveal that any such receipts were ever produced to SED for any part of the sums still sought to be reclaimed.

Exhibit H also contains an SED call log entry that indicates an SED representative received a voicemail message from Ms. Vanderpool wherein she stated that she did not have timesheets for the 2012 summer program but that she could draw some up. SED Exhibit H also contains a single page list of dates and times for summer hours for Nalene Vanderpool. SED Exhibit J, which was submitted by appellant as part of this appeal, also contains a one page list of dates and times for summer hours for Alexander Vanderpool. Also contained with the submissions by appellant is an unsigned letter dated August 6, 2013, containing the name of Nalene Vanderpool at the foot of the letter, which letter indicates that contemporaneous timesheets were not kept and that \$5,000.00 was withdrawn at the end of August for payment of salary owed and reimbursement for expenses, including some from the summer drop in program, which is identified as a free day camp of which SFSP was just one of the elements.

By its notice of action letter dated July 30, 2013 SED determined that the documentation provided by appellant was insufficient to justify payment of the labor costs and some of the other operational costs. SED found that no pay stubs, original timesheets or tax documents were provided by appellant and that an Excel spreadsheet did not substantiate labor costs because it did not correspond with the lump sum payment on the bank statement. It also determined that no other documents were provided to support the hourly amount paid. Also, the letter references the budget cap of \$2600.00 for labor with respect the 2012 SFSP for appellant. The budget is provided as Exhibit B.

7 CFR 225.12 allows a state agency administering the SFSP program, such as SED, to seek repayment of funds not justified by the sponsor's records. In its appeal letter, appellant admits to an overpayment of \$1008.00. Additionally, it does not refute the budget cap of \$2600.00 for labor. Yet, the letter of August 6, 2013 with the name of Ms. Vanderpool at the bottom sets forth that salaries totaled \$2958.00. The letter further indicates that some of the \$2,042.00 total for reimbursements set forth in her letter went to a program known as the Summer Drop in Program and not SFSP. When this concession and these discrepancies are considered along with the failure to maintain contemporaneous

time records or any payroll records and the failure of the sponsor to produce receipts for expenses other than those for which it was credited, I conclude that the challenged decision of the state agency is reasonable, rational and supported by the record. I thereby affirm the decision of SED made by letter dated July 30, 2013.

September 12, 2013

A handwritten signature in cursive script, reading "Michael E. Basile", is written over a solid horizontal line.

Michael E. Basile, Impartial Hearing Officer

ANY PARTY THAT DISAGREES WITH ALL OR ANY PART OF THIS DECISION HAS THE RIGHT TO PURSUE AN APPEAL BY SEEKING JUDICIAL REVIEW OF THE DECISION IN THE NEW YORK STATE SUPREME COURT OR AN APPROPRIATE UNITED STATES DISTRICT COURT.