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Trump Must Pay \$2 Million For Violation of Foundation Rules

*Judge refuses to impose double damages
because of agreement to avoid recurrence of wrongdoing*

President Donald J. Trump has been ordered to pay \$2 million in damages for improperly using the charitable assets of his private foundation to intervene in the 2016 Presidential election and further his political interests. A trial court judge has rejected a request by the New York Attorney General that he be ordered to pay double damages because he has stipulated to “a number of proactive conditions so that the conduct which engendered this petition should not occur in the future.”

The judicial Order essentially winds up the case first brought by the Attorney General in June 2018, charging Trump and his children as the Foundation’s directors with breach of fiduciary duty in ignoring their oversight duties and charging that President Trump “repeatedly used Foundation money for his own personal, business, and political interests, including unlawful coordination with his 2016 presidential campaign.” ([See Ready Reference Page: “The Charges Against the Trump Foundation.”](#))

The Attorney General and the defendants have entered into a series of stipulations to resolve the case. In December, 2018, following a court decision in favor of the Attorney General’s Office, the Foundation agreed to shut down and dissolve under court supervision. In October, they agreed that the Foundation’s remaining assets of about \$1.78 million would be distributed to a group of charities with no connection to Trump or his family.

On October 1, the parties agreed to a set of factual stipulations in which the defendants essentially agreed to the charges of the original petition. Among the agreements were:

- The Board of Directors, which included Trump, Donald J. Trump, Jr., Ivanka Trump and Eric F. Trump, did not meet from 1999 through November, 2018 and “did not provide oversight, set policy or approve the direction, operations or acts of the Foundation ... and did not adopt a conflict of interest policy after July 2014, when such policy was required.”
- They allowed an Iowa Fundraiser in January, 2016 to be used as a campaign event, developed by campaign personnel and used for campaign purposes. The event raised approximately \$5.6 million for veterans’ groups, with \$2.8 million being contributed

to the Foundation and granted out to various groups. Trump announced the foundation grants at a campaign press conference.

- Foundation funds were used to help settle litigation against Mar-a-Lago, the private club in Palm Beach, FL, owned by a company controlled by Trump, for violating a local ordinance.
- Foundation funds were also used to help settle litigation arising out of a hole-in-one claim in a charity golf tournament at the Trump National Golf Course in Briarcliff, NY.
- The Foundation made a \$25,000 contribution to Florida Attorney General Pam Bondi's political campaign fund. The Foundation paid an excise tax to the IRS for the improper expenditure and Trump reimbursed the Foundation for the \$25,000.
- The Foundation paid for an advertisement in a charity event program book in which it advertised the Trump International Hotel in Washington, D.C.
- The Foundation paid \$10,000 for a painting of Trump bought at a charity auction and utilized in Mar-a-Lago.
- The Foundation donated \$32,000 to the North American Land Trust to satisfy a pledge by an entity owned by Trump that held title to his estate in West Chester County, NY.
- The Foundation also purchased about \$11,000 of Tim Tebow sports paraphernalia at another charity auction, for which Trump was required to reimburse the Foundation.

The stipulation sets forth the agreed upon facts but says that it cannot be used by any third party and "shall not be construed as an admission of liability" by the defendants.

The Trump children agreed to complete "an in-person, interactive board training session pertaining to charitable organizations and the fiduciary responsibilities of those organizations' directors and officers." Upon certification that they had completed the training, the charges were dismissed against them.

Trump agreed that if he ever serves on a charity's board of directors in New York he will not engage in any self-dealing. Any charity he joins must have a majority of independent directors, must engage counsel with expertise in New York not-for-profit law, and must engage the services of an accounting firm to monitor and audit the organization's grants and expenses.

The Attorney General asked that Trump be ordered to repay the entire \$2.8 million in grants paid to veterans' organizations by the Foundation, but the judge was unwilling to do so. "Taking into consideration that the Funds did ultimately reach their intended destinations, i.e. charitable organizations supporting veterans," Judge Salliann Scarpulla ordered that Trump pay only \$2 million.

She approved the distribution of funds be paid to the eight charities sharing in the distribution of the remaining assets: Army Emergency Relief, The Children's Aid Society, Citymeals-on-wheels, Give an Hour, Marta's Table, United Negro College Fund, United Way of National Capital Area, and the U.S. Holocaust Memorial Museum. ([People v. Trump, Supreme Ct., NY County, NY, Index No. 451130/2018, 11/7/19.](#))

YOU NEED TO KNOW

This is a great teaching case to show the range of neglect and waste that can occur when a board never meets and the person directing the show either doesn't know or doesn't care about the rules governing his actions.

Two legal points of note: (1) The Attorney General can prosecute violations of the Internal Revenue Code as well as state law because the private foundation rules of the U.S. Treasury require that the private foundation limitations must be included in the state law governing documents of a private foundation; (2) The case went forward, with investigation, court orders and resolution, even though the prime defendant was President of the United States. State courts have not accepted the argument that litigation cannot be prosecuted against a sitting president.