

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

THE NATIONAL RIFLE ASSOCIATION OF AMERICA, WAYNE
LAPIERRE, WILSON PHILLIPS, JOHN FRAZER, AND JOSHUA
POWELL,

Defendants.

Index No. 451625/2020

STIPULATION OF
SETTLEMENT AND
ORDER OF DISMISSAL

This Stipulation of Settlement (“Stipulation”) is made and entered into as of the 5th day of January, 2024, by and among Defendant Joshua Powell (“Powell”) and the People of the State of New York (“Plaintiff”) (together with Powell, the “Settling Parties”). Plaintiff is represented by the Office of New York State Attorney General Letitia James:

WHEREAS the above-captioned action was commenced against Powell, the National Rifle Association of America (“NRA”), Wayne LaPierre, Wilson Phillips and John Frazer on August 6, 2020 in the Supreme Court of the State of New York (the “Action”). On May 2, 2022, Plaintiff filed a Verified Second Amended Complaint (“Complaint”) in the Action, in which, *inter alia*, Plaintiff asserts claims against Powell pursuant to the Not-For Profit Corporation Law (“N-PCL”) and the Estates, Powers, and Trusts Law (“EPTL”);

WHEREAS Powell was employed by the NRA from 2016 through January 2020 and the Complaint alleges that during his employment, Powell breached his fiduciary duties and failed to administer the charitable assets entrusted to his care by, *inter alia*, using his powers as an officer and senior executive of the NRA to convert charitable assets for his own benefit and for the benefit of his family members;

WHEREAS Powell has appeared in the Action, has served an Answer to the Complaint, and has asserted a number of defenses to Plaintiff’s claims and has testified under oath;

WHEREAS the Settling Parties have engaged in good faith, arms-length negotiations that led to this Stipulation, which embodies all of the terms and conditions of the settlement among the Settling Parties;

WHEREAS Powell has agreed to enter into this Stipulation to avoid the risk of liability, as well as further expense, inconvenience, and litigation;

NOW, THEREFORE, it is agreed by and among the Settling Parties, in consideration of the mutual covenants contained in this Stipulation, the adequacy of which are hereby acknowledged, that all claims in the Action against Powell be settled, compromised and dismissed on the merits and with prejudice, and without costs as to Plaintiff or Powell, on the following terms and conditions, each of which is material to this stipulation, and which the Parties respectfully request be so-ordered by the Court:

Stipulated Legal Conclusions

1. Powell, in his capacity as an officer, director and senior employee of the NRA, owed the NRA fiduciary duties of care, loyalty, and obedience. In addition, as a trustee pursuant to EPTL Section 8-1.4 because he administered property for charitable purposes in the State of New York, Powell had a duty to administer the charitable assets entrusted to his care properly.

2. Powell admits that he breached his fiduciary duties of care, loyalty and obedience by, *inter alia*, using the NRA's charitable assets for his own benefit and the benefit of his family members.

3. Powell further admits that he failed to administer the charitable assets entrusted to his care properly.

4. Powell further admits that the conduct referred to in paragraphs 2 and 3 of this section violated Sections 715 and 717 of the N-PCL and Section 8-1.4 of the EPTL and that, as a result of such violations, he must pay restitution in the amount of \$100,000 to remediate the harm to the NRA.

Stipulated Relief

5. Pursuant to EPTL § 8-1.4(m) and N-PCL § 714, Powell hereby accepts a permanent bar from service as an officer, director or trustee or in any position where he has any fiduciary responsibilities for any not-for-profit or charitable organization incorporated, registered, operating or soliciting contributions in New York, or for any other individual or entity that holds charitable assets or solicits charitable contributions in the State of New York, including, but not limited to, responsibility for financial and/or management oversight of any New York charitable entity.

6. Powell hereby agrees to pay restitution in the amount of \$100,000 (the "Settlement Amount"). The Settlement Amount shall be paid to Plaintiff, who shall hold the funds in escrow for the benefit of the NRA's charitable beneficiaries. Powell further agrees that full payment of the Settlement Amount shall be made on the date that this Stipulation is fully executed by the Settling Parties (the "Stipulation Date"), provided, however, that Plaintiff shall return the Settlement Amount to Powell in the event that this Stipulation is not so ordered by the Court. Plaintiff shall release the full amount of the Settlement Amount from escrow and transfer the funds to the NRA within 45 days of the entry of the final judgment in the above-captioned Action, unless an appeal has been filed, in which case the funds shall be released and paid to the NRA within 45 days after the exhaustion of all appeals, or as otherwise ordered by the Court.

7. Powell agrees that he will accept service of a subpoena for appearance at the Trial ("Trial" includes any and all stages of the trial proceeding in this Action, including the jury and bench trial stages, pre-trial or post-trial proceedings, or re-trials) of this Action and will appear at the Trial for as many days as are deemed necessary by the Attorney General and will provide truthful testimony. Powell further agrees that: (a) he shall be responsible for all fees and expenses in connection with his testimony at Trial; (b) the subpoena referred to in this paragraph may be served by electronic means, without tendering witness fees by email upon his personal email that has been used in this Action; and (c) that such service shall be sufficient service under CPLR 2303.

Powell further agrees that he will not pursue any appeals relating to Court orders in the Action. Powell's appearance pursuant to subpoena is a material term of this settlement.

8. Dismissal of lawsuit with prejudice. In consideration of the covenants undertaken herein, Plaintiff agrees that the claims against Powell in this Action shall be discontinued with prejudice on the Effective Date, the date when this Stipulation is so ordered by the Court.

9. Resolution of all claims. This Stipulation, upon being so ordered by the Court, will resolve all outstanding claims by Plaintiff against Powell relating to the subject matter of the Action. Plaintiff hereby agrees that if this Stipulation is so ordered by the Court, and if Powell performs his obligations under this Stipulation, it will seek no additional recovery or restitution of any kind from Powell in connection with the Action, including but not limited to contribution under N-PCL Sections 719(c) and (d) for amounts recoverable from the remaining defendants in the Action subsequent to the execution of this Stipulation. Nothing in this Stipulation shall affect or limit Plaintiff's continuing claims against other defendants in the Action.

Additional Terms and Conditions

10. Powell shall not take any action or make any statement denying, directly or indirectly, the propriety of this Stipulation or expressing any view that the Action is without a factual basis.

11. Plaintiff has agreed to the terms of this Stipulation based on, among other things, statements made by Powell under oath in this Action and representations to Plaintiff. To the extent that any material statement made by Powell during the course of the Action, is later found to be inaccurate or misleading, this Stipulation is voidable by Plaintiff in its sole discretion.

12. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Stipulation has been made to or relied upon by Powell in agreeing to this Stipulation. Powell hereby acknowledges that he has had the opportunity to and has consulted with counsel in agreeing to this Stipulation.

13. In the event that one or more provisions contained in this Stipulation shall for any reason be held invalid, illegal, or unenforceable in any respect, in the sole discretion of Plaintiff, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Stipulation.

14. If, for any reason, this Stipulation is voided or breached, Powell agrees that: any statute of limitations or other time-related defenses applicable to the subject of this Stipulation and any claims arising from or related thereto are tolled from and after the date of this Stipulation. In the event this Stipulation is voided or breached, Powell expressly agrees and acknowledges that this Stipulation shall in no way bar or otherwise preclude Plaintiff from commencing, conducting, or prosecuting any investigation, action or proceeding, however denominated, related to this Stipulation, against Powell, or from using in any way statements, documents, or other materials produced or provided by Powell prior to or after the date of this Stipulation.

15. The Settling Parties agree that this Stipulation may be enforced by this Court and submit to its jurisdiction for that purpose. In the event that a court of competent jurisdiction determines that Powell has breached this Stipulation, Powell shall pay to Plaintiff the cost, if any, of such determination and of enforcing this Stipulation including, without limitation, legal fees, expenses, and court costs.

16. Plaintiff finds this relief and the agreements contained in this Stipulation appropriate and in the public interest. Accordingly, Plaintiff accepts this Stipulation in settlement of the claims asserted against Powell in its Complaint. This Stipulation shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

17. Except as set forth above, the Settling Parties agree to bear their own fees, costs and expenses of this matter.

18. Nothing contained herein shall be construed to deprive any person of any private right under the law.

19. The terms of this Settlement Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts to be performed wholly within the State of New York.

20. This Stipulation may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement. Delivery by facsimile or electronic transmission in portable document format (PDF) of an executed counterpart of this agreement is as effective as delivery of an originally executed counterpart of this Stipulation.

21. All notices, reports, requests, and other communications to any party pursuant to this Stipulation shall be in writing and shall be directed as follows:

To the Attorney General:

Monica Connell

Office of the Attorney General, Charities Bureau

28 Liberty Street, 19th Floor

New York, New York 10005

E-mail: Monica.Connell@ag.ny.gov

cc: Emily.Stern@ag.ny.gov

To Defendant Joshua Powell:

Joshua Powell

151 Calle De San Francisco

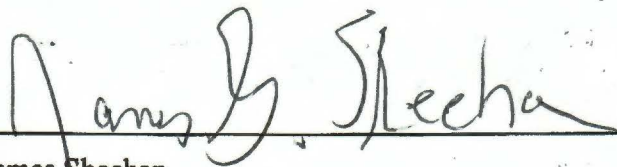
San Juan, Puerto Rico 00901

22. This Stipulation may not be amended except by an instrument in writing signed on behalf of all Settling Parties.

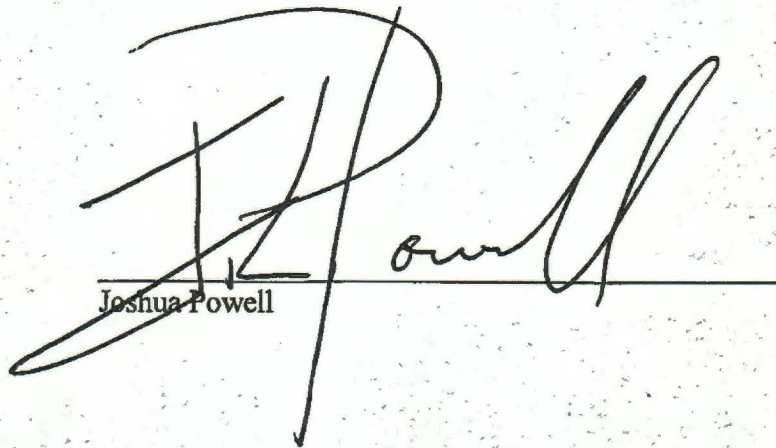
23. The "Effective Date" of this Stipulation shall be the date it is so ordered by the Court.

IN WITNESS WHEREOF, this Stipulation is executed by the parties hereto on 1/5 2024
(the "Stipulation Date").

LETITIA JAMES
Attorney General of the State of New York

By: 

James Sheehan
Chief, Charities Bureau
28 Liberty Street
New York, New York 10005
Counsel for Plaintiff


Joshua Powell

SO ORDERED:

Hon. Joel M. Cohen
Justice of the Supreme Court of the State of New York