

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

Application of The Japanese Educational Institute
of New York,

Petitioner.

For an order approving the sale of assets pursuant to
N-PCL §§ 510 and 511.

Index No. 06-103400

IAS Part 13
Hon. Sheila Abdus-Salaam

AFFIDAVIT

AFFIDAVIT OF JADE JOAN HON

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JADE JOAN HON, being duly sworn, deposes and says:

1. I am an associate in the law firm, Szold & Brandwen, P.C., which presently is counsel to the respondent-objector PTA of the Japanese School of New York (the "PTA").

2. The PTA objects to the proposed sale by the Japanese Educational Institute of New York ("JEI") of the educational campus in Greenwich, Connecticut ("Greenwich Campus") that is the home of the Japanese School of New York ("JSNY").¹

3. The PTA alleges that a powerful United States Senator put pressure on JEI to sell the Greenwich Campus to an organization whose Vice President is a major contributor of money to the Senator, the Senator's political party, and numerous elected officials and candidates allied with the Senator.

4. The Senator intervened by calling the Japanese Consulate in New York City and speaking to Ambassador Hiroyasu Ando, Consul-General of Japan. At that time, Ambassador

Ando was serving as the Honorary President of the JEI Board of Trustees. See Affidavit of Takanora Adachi. In response to the Senator's phone call to New York City, Ambassador Ando made a special trip to Washington, D.C. to meet with the Senator and reassure him in person about the status of the sale of the Greenwich Campus to WFHA. Id.

5. The PTA alleges that WFHA was a favored bidder from the inception of JEI's sale plan in 2003 (or before). By Spring 2005, when a contract still was not signed and opposition was building up in the JSNY community to JEI's sale plan, the Senator intervened at a high diplomatic and political level to push the sale to completion. The PTA alleges that this political pressure was one of the improper reasons that caused JEI to persist in pursuing a plan to sell the Greenwich Campus to a favored bidder for below market value even after the PTA had demonstrated that the plan was not in the corporation's educational or fiscal interests.

6. My assignment was to "follow the money." I conducted research on the Internet of publicly filed campaign contributions reports. The data I retrieved, reported below,² established an extremely strong money connection between WFHA's Vice President and the Senator.

7. Federal Election Commission ("FEC") records show, for example, that on September 30, 2005 the WFHA's Vice President and his wife contributed \$8,400.00 to the Senator's primary election and general election committees. On a single day they paid out the legally permissible absolute maximum amount of hard money contributions that spouses could make to a federal candidate in the entire two-year election cycle of 2006. See infra. This

¹ The Japanese School of New York is also known as the Greenwich Japanese School ("GJS").

² Annexed to this affidavit as exhibits are copies of print-outs of the pertinent web pages. Printed at the bottom of each page is a URL and a date. This provides, for verification purposes, the exact location of the data on the Internet as of a particular date.

occurred not long after the Senator's initial interventions at the diplomatic/political level were reported and JEI's plan to sell the Greenwich Campus was threatened by the strong and articulate opposition of the JSNY parents.

8. The \$8,400 payments on September 30, 2005 are just the tip of the political money iceberg. Several hundred thousand dollars in federal contributions, hard money and soft, flowed from WFHA's Vice President and his wife to the Senator, his political party, and to his allies in the Senate and Congress over the past four election cycles. FEC records also reveal that WFHA's Vice President is the CEO of a large corporation which sponsors a connected political action committee ("PAC"). His company's connected PAC also has contributed heavily to the Senator, his party and his allies.

Background Facts and Allegations

9. I will briefly summarize the grounds for the PTA's objections, in order to put my report on the campaign finance data into perspective.³

10. The PTA alleges that the compensation in the proposed contract of sale (the "Contract") is not fair and reasonable. The PTA further alleges that both the particular Contract, and also JEI's overall plan to give up ownership of the Greenwich Campus, do not fulfill the educational purposes of JEI's charter.

11. Mr. David A. Messer executed the Contract on behalf of WFHA in his capacity as Vice President. Mr. Messer and his wife, Barbara J. Duberstein, reside at 1 Zaccheus Mead Lane, Greenwich, CT 06831. Their home and grounds at this address is adjacent to the

³ The evidentiary support for the PTA's allegations is provided in other affidavits and documents being submitted by the PTA. I am summarizing them, not attesting to them.

Greenwich Campus. Further, their property is interlinked with the Greenwich Campus by a connecting private driveway and a path.⁴

12. The PTA alleges that Mr. Messer was the President/CEO of Sempra Energy Trading,⁵ a large energy company that directly or through its affiliates had significant business relationships with one or more JEI-affiliated business companies.

13. The PTA alleges the plan for JEI to sell the Greenwich Campus was conceived by Mr. Messer and JEI Executive Secretary Matsumura with the particular object of passing the property to WFHA. Once JEI nominally authorized the marketing of the property for sale, JEI treated Mr. Messer's organization, WFHA, as a favored bidder for nearly two years. JEI did not use due diligence in marketing the property. Even JEI's inadequate and half-hearted marketing efforts produced an offer for \$3 million higher than WFHA's offer, but JEI admits that it did not pursue it. Ultimately, JEI's Board of Trustees approved selling its property to Mr. Messer's organization for \$20 million without even considering the fact that the market value of the property had just been assessed by the Town of Greenwich to be \$28,280,000.

14. The PTA has also submitted evidence to the effect that JEI officials reported that after the PTA said that the sale of the Greenwich Campus per se was detrimental to the children and to JEI as a whole, Sen. Joseph Lieberman, Democrat of Connecticut, personally contacted Ambassador Ando by telephone, and then met with him about this matter in Washington, D.C. It is reported that the reaction of JEI officials to Sen. Lieberman's intervention was that JEI must go through with selling the Greenwich Campus to WFHA because of diplomatic, political, and business considerations, regardless of the merits of the parents' objections.

⁴ According to the WFHA-commissioned survey report included in the petition exhibits, the title owner of the property is Ms. Duberstein

15. My political campaign contribution research provides data supporting the PTA's position that political connections and pressure became one of the causes for JEI's persistence in trying to sell the Greenwich Campus to WFHA for \$6-8 million below fair market value even after the PTA showed why it was not in the fiscal or educational interest of JEI to sell the property at all.

16. The attached reports show that Mr. Messer and his wife, Ms. Barbara A. Duberstein, regularly made significant political contributions to Sen. Lieberman, to many other candidates supported by Sen. Lieberman, and to his political party. Together, Mr. Messer and his wife have made at least \$333,750 in direct political contributions at the federal level in the past four election cycles.⁶ (Mr. Messer also made indirect political contributions to federal candidates and the Democratic National Committee (DNC) via contributions to his company's connected PAC, as described below.)

17. The political contributions reflected in this data adds another strand to the web of business, political, diplomatic and personal connections that, according to the PTA, usurped proper educational purposes, sound financial planning, and principles of not-for-profit governance.

David Alexander Messer

18. In obtaining information on David Alexander Messer, I researched the Federal Election Commission official website, at www.fec.gov, which includes data on individuals going back as far as four election cycles and is updated within 48 hours of the agency's receipt of legally mandated FEC reports. A print out of the search page for contribution records on the

⁵ Several entries on the FEC contribution reports identify Mr. Messer as the President of Semptra Energy Trading.

FEC website is annexed hereto as Exhibit A. I entered the individual's last and first name to do such a search. This search, of course, only retrieves contribution records pertaining to federal candidates and elections.

19. Mr. Messer is a major federal campaign funds contributor. He has regularly made large political contributions, frequently giving the maximum amount allowed by law.

20. Over the four most recent election cycles⁷ Mr. Messer personally made direct contributions to political committees totaling \$147,050. See Exhibit B, at p. 11 of 12.

21. He made "Total Soft Money" contributions totaling \$100,000. Id. at p. 2 of 12.

22. The FEC profile on Mr. Messer also shows that he made "Joint Fundraising Contributions" totaling \$17,000. Id. at p. 11 of 12.

23. Mr. Messer is a consistent supporter of Sen. Lieberman. He contributed \$2,000 to Sen. Lieberman's campaign committee in 1999 (the legal limit at that time). Id. at p. 2 of 12. On January 15, 2003, Mr. Messer contributed \$2,000 to Sen. Lieberman's presidential primary campaign committee. Id. at p. 9 of 12.

24. Mr. Messer's direct contributions to Sen. Lieberman accelerated during the exact time period when WFHA was trying to get JEI to sign the Contract. As I noted above, on September 30, 2005, Mr. Messer contributed the maximum allowable amount both to Sen. Lieberman's primary committee and to his general election committee, a total of \$4,200. His wife made identical contributions that same day, for a total of \$8,400. The FEC website provides link to images of the pages of the Lieberman candidate committee's report that show the Messer/Duberstein contributions on that date. See Exhibit C.

⁶ Under federal law an election cycle for contribution purposes is two years. The currently pending election cycle, denominated "2006," includes contributions donated between January 1, 2005 through December 31, 2006.

25. Mr. Messer made many large contributions to Sen. Lieberman's political party in every election cycle since 2000 as well as to many candidates, most of them politically affiliated with Sen. Lieberman.

26. Mr. Messer's entire soft money contribution total of \$100,000 was comprised of a payment to the DNC Non-Federal Unincorporated Association Account in 2000. See Exh. B at p. 1 of 12. The FEC records also report that his contributions to political committees included, among others, a \$20,000 payment to the DNC Services Corporation/Democratic National Committee (Id. at p. 3 of 12); a \$5,000 payment to the CT Democratic State Central Committee (Id. at p. 2 of 12); a \$5,000 payment to the Democratic Senatorial Campaign Committee (Id. at p. 5 of 12); and a \$10,000 payment to the Indiana Democratic Congressional Victory Committee (Id. at p. 11 of 12).

27. The records also show that when Sen. Lieberman ceased being a contender for the Democratic Party's Presidential nomination in 2004, Mr. Messer made a contribution of \$2,000 directly to the presumptive nominee, Sen. John Kerry (Id. at p. 5 of 12) and \$15,000 to Kerry Victory 2004 (Id. at p. 11 of 12).

Barbara J. Duberstein

28. I conducted a similar search on the FEC website to obtain information on Barbara J. Duberstein.

29. On the FEC contribution records Ms. Duberstein is listed as being "Unemployed" or "Homemaker."⁸ Nevertheless, she has made significant federal contributions over the past

⁷ The current cycle that does not end until December 31, 2006, so the total contribution figure may increase.

⁸ The FEC requires individuals to disclose their occupations.

four election cycles. Her total contributions to political committees currently yield \$69,700.00. See Exhibit D annexed hereto, at p. 4 of 4.

30. Ms. Duberstein contributed a maximum of \$2,000 to Sen. Lieberman's presidential primary committee in March 2003. Id. at p. 3 of 4. (Like her husband, Ms. Duberstein later made a maximum of \$2,000 to Sen. Kerry's presidential primary committee. Id.).

31. Following the pattern of her husband, Ms. Duberstein's contributions to Sen. Lieberman rapidly accelerated during the period when the prospective contract to sell the Greenwich Campus was in doubt. As noted above, she and Mr. Messer each contributed \$4,200 to Sen. Lieberman's campaign committees (primary and general election) on September 30, 2005. Ms. Duberstein's side of these transactions is also reported on Exhibit D at p. 1 of 4. See also Exhibit C.

32. Ms. Duberstein also made a \$20,000 contribution to the DNC Services Corporation/Democratic National Committee in election cycle 2000. See id at p. 1 of 4.

Sempra Energy

33. In obtaining information on Sempra Energy Employees Political Action Committee (the "Sempra PAC"), I used the website www.campaignmoney.com, where I was able to search for data on the Sempra PAC.

34. In the 2006 cycle, which has another eight months to run, Sempra PAC has already contributed \$10,000 to Sen. Lieberman, making him one of only three candidates who received that amount. See print out of pertinent report, copy annexed hereto as Exhibit E. Mr.

Messer is identified as President of Sempra Energy Trading. He and one other Sempra employee are the top contributors to the Sempra PAC, at \$5,000 each.

35. I also researched political contributions connected to Mr. Messer's company on a website sponsored by the Center for Responsive Politics, www.crp.org. I found a report that in the 2002 cycle the Sempra PAC and/or Sempra employees individually contributed \$10,000 to the "Responsibility/Opportunity/Community PAC: Affiliate: Joe Lieberman (D)." A copy of the print out of this report is annexed hereto as Exhibit F.

36. Another website with searchable information about political contributions related to Mr. Messer's company is www.icij.org, which is sponsored by the Center for Public Integrity. According to this organization, Sempra Energy, its employees and its political action committees made substantial contributions to both Sen. Lieberman and the National Democratic Party Committees, in amounts totaling \$20,250 and \$426,500, respectively, as of the 2004 election cycle. See Exhibit G.

37. Of all federal office holders and candidates in the nation, Sen. Lieberman ranked second highest in the amount of contributions he received from the Sempra PAC. Id.

38. Even though Sempra is an energy company, Sempra-related contributions to the National Democratic Party Committee exceeded contributions to the National Republican Party Committees by a factor of nearly two to one. Id.

JADE JOAN HON

Sworn to before me this
day of March 2006

Notary Public