

August 20, 2020

VIA EMAIL

Stanley L. Garnett
Attorney at Law
303.223.1286 tel
303.223.1111 fax
sgarnett@bhfs.com

Jenna Griswold (jenna.griswold@sos.state.co.us)
Secretary of State
1700 Broadway, Suite 200
Denver, CO 80203

Phil Weiser (pjweiser@coag.gov)
Attorney General
Colorado Attorney General's Office
1300 Broadway
Denver, CO 80203

RE: The Messner Foundation

Dear Secretary Griswold and Attorney General Weiser:

This firm represents Messner Reeves, LLP and its charitable foundation, The Messner Foundation. I am writing with regard to a complaint filed with your office last week by a group of individuals including former Colorado Supreme Court Justices Mullarkey and Dubofsky. The complaint alleges that The Messner Foundation, as an entity licensed to conduct raffles for charitable purposes was somehow deceptive in its conduct of such raffles, and that The Messner Foundation violated the Colorado Charitable Solicitations Act when it stated that the proceeds of charitable raffles it conducted in 2015, 2016 and 2019 would be used to fund scholarships for students identified by the Messner Foundation.

These allegations are patently and demonstrably false. The Messner Foundation has at all times raised funds according to its stated mission of identifying high-achieving students from diverse backgrounds in need of scholarship assistance. Funds raised in its raffles were used for such scholarships, and the Foundation has made scholarship disbursements every year from 2016 to the present. The complainants have taken facts out of time and context to create the impression that the Foundation engaged in fraud and self-dealing, when nothing could be further from the truth.

The Messner Foundation was formed in 2009. It was initially funded with a single \$100,000.00 gift from Messner & Reeves, LLC (Messner & Reeves, LLC became Messner Reeves, LLP in 2013). From 2009-2014 it solicited—and received—no further gifts.

In late 2014, the Messner Foundation determined it would launch a scholarship program. To that end, the Foundation raffled a—then somewhat exotic—Tesla Model S automobile in June 2015 to begin the fundraising for this effort. The press releases and solicitation materials for that auction stated:

Proceeds from the raffle of the Tesla will go to the Messner Foundation, Messner Reeves's private foundation. The Messner Foundation actively seeks out potential future leaders by identifying at-risk high school youth who demonstrate Messner Reeves LLP core values: initiative, leadership, entrepreneurialism, and commitment to community. Messner Reeves's 20th Anniversary Tesla Raffle promises to raise significant funds that will have a lasting and measurable impact on the lives of students selected as Messner Scholars.

And this is exactly what The Messner Foundation did with the monies raised. It worked to identify promising scholars and awarded its first scholarship in 2016. Since the inception of the scholarship

410 Seventeenth Street, Suite 2200
Denver, CO 80202-4432
main 303.223.1100

program, The Messner Foundation has distributed over \$83,000.00 in scholarship funds to scholars from at-risk backgrounds demonstrating Messner Reeves's core values of initiative, leadership, entrepreneurialism and commitment to community.

The complainants know all this. They have carefully—and deceptively—worded their complaint to focus not on *what* the Messner Foundation did with the money raised from the 2015 action, but on *when* the Messner Foundation awarded scholarships. Specifically, they argue that because The Messner Foundation did not begin distributing scholarship funds until 2016, it somehow deceived raffle participants when it told those participants the monies would go to fund scholarships. This would be absurdly hyper-technical were it not so mean-spirited: the solicitation said that The Messner Foundation “seeks out potential future leaders by identifying at-risk high school youth who demonstrate Messner Reeves LLP core values. . . .” The Messner Foundation was engaged in this work at the time it held its auction—this is why it was able to begin awarding scholarships the very next year.

The bad faith of the complaint is evidenced by its unquestionably willful conflation of the Messner Foundation's activity before 2015—when it had not solicited a cent from the general public, and had not yet instituted a scholarship program—and after 2015 when it began awarding scholarships. The complaint attempts to cast a 2014 gift to Colorado Academy—made using the funds donated by Messner & Reeves LLC—as somehow harming potential scholarship recipients for whom no raffle funds would be raised until 2015. Even worse, the complaint is just plain wrong that no single scholarship recipient has received more than \$50,000.00 from The Messner Foundation. Indeed, The Messner Foundation's very first scholarship recipient is now in graduate school and remains on scholarship. She has received over \$75,000.00 in scholarship funds to-date.

The Messner Foundation was properly registered to conduct charitable raffles under the Colorado Bingo and Raffles Law. Pursuant to this registration, it submits regular quarterly reports of its activities. It is possible that The Messner Foundation should have also filed a separate registration under the Colorado Charitable Solicitations act in 2015 and 2016 when it took in more than \$50,000.00 in raffle proceeds. However, at no time did the Secretary of State's office suggest such separate registration was necessary. And as the complainants well know, The Messner Foundation has unquestionably been exempt from registration under the Charitable Solicitations Act since 2016, and there is no way to correct any past failure to register, as the applicable statute of limitations has past.

Frankly, when the late timing of this complaint is considered in conjunction with its deceptive and cynical tone, it is apparent that this complaint has one purpose: to attack the hard-earned good name and reputation of Messner Reeves's founder Corky Messner, who is currently a Republican candidate for United States Senator in New Hampshire. New Hampshire's primary election is mere weeks away. It cannot be a coincidence that this complaint came too late to permit The Messner Foundation to remedy any failure to register under the Charitable Solicitations Act, but just-in-time to prove useful to Mr. Messner's political opponents.

While this complaint was made by former supreme court justices and prominent public citizens, their stature should not give credibility to the otherwise specious allegations therein. Its only effect can be to make other citizens who are in a position to do good by the community more hesitant to do so for fear that their genuine concern for and service to others will be cynically twisted to harm their reputations.

Jenna Griswold, Colorado Secretary of State
Phil Weiser, Colorado Attorney General
August 20, 2020
Page 3

All the foregoing said, we are happy to meet with your offices to answer any questions. My clients have asked me to tell you that you and your office are welcome to review all records of The Messner Foundation—and to thereafter issue a letter clearing my clients' names.

Very truly yours,



Stanley L. Garnett

cc: Steve Kaufmann (via email: Steve.Kaufmann@coag.gov)
Jim Smith (via email: jsmith@messner.com)
Corky Messner (via email: corkymessner@gmail.com)
Alissa Gardenswartz (via email: agardenswartz@bhfs.com)