

Aftermath of the Ivy Academia case:
a webinar presented by:

- **Nina Marino**, Kaplan & Marino (defense counsel for Tatyana Berkovich)
- **Gregory V. Moser**, Procopio, Cory Hargreaves & Savitch, LLP (defense expert witness); **John Lemmo**, counsel to charter schools
- **Julie Umansky**, California Charter Schools Association, (amicus curiae for defense)

Sponsored by the California Charter Schools Association and
Procopio, Cory, Hargreaves & Savitch, LLP

3:30-4:30 pm April 19,2013

Agenda

- History of the case
- Key allegations
- The law, as instructed by the trial court
- Potential legal errors, as seen by the defense and charter experts
- Next steps and what you can do to help
- Lessons learned

Timeline

- Ivy Academia School, chartered by LAUSD, opened 2004
- Office of Inspector General of LAUSD began investigations in 2006
- Founders (Selivanov and Berkovich) charged in 2010 with 40 felony and misdemeanor counts
- Jury convicts both April 2013
- Motion for new trial and sentencing August 30

Central charges

- Misuse of public monies (Penal Code sec 424)
- Embezzlement (Penal Code sec 504)
 - Based on use of American Express card for disputed “school-related expenses” that included some personal items
 - Rent paid by school for use of property owned by founders’ pre-school business
- Tax fraud based on not reporting all “income” received from school

Key facts

- Charter board approved major transactions challenged as illegal
- Independent auditors issued clean audits every year
- OIG investigators and DA disagreed on “lawful” expenditures—even among themselves
- LAUSD OIG applied district policies to charter in testimony

Trial court instructions to jury:

- All funds in charter corporation are “public monies” as if it is a “county, city ... or district”
- Violations of “non-penal laws” including: (1) The Ivy Academia Charter Petition; (2) the bylaws of the corporation; and (3) Education Code sec. 47604.5, can provide a basis for misappropriation of public funds
- Did *not include* the Charter Schools Act in materials provided to jury

Legal errors?

- Charter Schools Act says ADA can be spent for “any public school purpose” and “any purpose determined by the governing body” of school
- Accounting “mistakes” are not crimes in grey areas because not “fraudulent”
- Nonprofit corporation’s funds not “public” but subject to charitable trust doctrine
- Violating “nonpenal laws” is not criminal

Next steps

- Sentencing, new trial motion August 30
 - Letters in support of defendant needed by July 15
 - Expect amicus briefs in support
- Appeal likely to follow

For more information about letters of support:

marino@kaplanmarino.com

Lessons learned

- Standards unforgiving from the start of school
- Review written financial control policies for clarity, especially on travel, business meals, use of credit cards, compensation
- Careful segregation of personal and school finances important
- Transparency of finances may reduce risks with authorizer, public
- Lack of clarity of charter school law continues

Questions

- Nina Marino



- p: 310-557-0007
- f: 310-275-4651

marino@kaplanmarino.com

- Gregory V. Moser
John C. Lemmo



p: 619-238-1900

greg.moser@procopio.com
john.lemmo@procopio.com

- Julie Umansky
California Charter Schools Association
p: 619-521-0914 x 501
jumansky@calcharters.org

