

York County and  
The Cultural and Heritage Commission of York County

vs.

Culture and Heritage Foundation, Inc.;  
Sustainable Development Group, Inc.;  
SDG Properties, LLC; and  
CHF Property Management, LLC

In the Court of Common Pleas  
Sixteenth Judicial Circuit

Civil Action No: 13-CP-46-1986

Expert Forensic Investigation Report of  
GreerWalker, LLP

June 8, 2015



# GreerWalker

## I. Introduction

1. York County (“the County”) is a political and administrative division of South Carolina, providing certain local governmental services.
2. The Cultural and Heritage Commission of York County (“the Commission”) is a non-profit charitable organization that operates as a division of York County. It is organized and existing under the laws of South Carolina.
3. The Culture and Heritage Foundation, Inc. (“Foundation”) is a non-profit eleemosynary 501(c)(3) corporation organized and existing under the laws of South Carolina.
4. Sustainable Development Group, Inc. (“SDG”) is a South Carolina corporation. The Foundation is the majority owner of SDG.
5. SDG Properties, LLC (“SDGP”) is a Delaware limited liability company, authorized to do business in South Carolina and has a registered agent in Rock Hill, York County, South Carolina. SDGP is wholly owned by SDG.
6. CHF Property Management, LLC (“CHF”) is a South Carolina limited liability company. CHF is wholly owned by SDG.
7. The Plaintiffs and Defendants entered into a Settlement Agreement dated September 3, 2014. The Plaintiffs have areas of concern on the part SDG, SDGP and CHF that include but are not limited to possible fraud, wrongdoing, undisclosed conflicts of interests, mismanagement of funds, inconsistencies of audits and other financial records.

## II. Assignment

8. The law firms of Nexsen Pruet, which represents York County and the Cultural and Heritage Commission of York County and Driscoll Sheedy, which represents Culture and Heritage Foundation, Inc., Sustainable Development Group, Inc. and SDG Properties, LLC, jointly retained GreerWalker LLP to provide forensic accounting services in compliance with the Settlement Agreement between the Plaintiffs and Defendants.

## III. Expert Qualifications

9. GreerWalker LLP is full service accounting firm. Copies of the curriculum vitae (‘CV’) for Charles F. Dillman, Assurance Partner, Beth Allen, Assurance Senior Manager and William A. Barbee, Litigation and Forensic Services Partner are included in Exhibit A.

## IV. Executive Summary

10. We were provided numerous documents relevant to the various areas of concern as outlined in the Settlement Agreement. We reviewed and analyzed those documents as well as participated in conversations with the involved parties. The only significant item we noted involves the transfer of the \$800,000 to the Sustainable Development Group, Inc. (“SDG”) in August 2007. Based upon our analysis, it appears that these funds were used for a different purpose than what was originally communicated by SDG’s Board of Directors.

### GreerWalker LLP – Certified Public Accountants

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## V. Work Performed and Findings

### The flow of \$800,000 from CHF to SDG and the related payment by SDG of the CSDG Capital Call

11. On March 6, 2007, prior to the issuance of the capital call, the CHF Board/Trustees approved the payment of \$786,181 to SDG as well as retention by SDG of the 2<sup>nd</sup> distribution from CSDG totaling \$2,000,000. The payment and retention of the distribution were approved for the purpose of funding the start of Phase 1 Design Development. Jane Peeples communicated to the CHF Board that in connection with Phase 1, SDG would engage an Owner's Agent and design team for the museum to accomplish the design development phase of architecture and engineering. Prior to the vote by CHF trustees on March 6, 2007, a memo from Peeples to CHF Trustees dated February 26, 2007 indicated that the Design Development phase of work was anticipated to take 8-10 months and would provide:
  - Complete plans that define the Museum of Life and Environment ("MLE") building and grounds including square footage and building systems that will enable us to project the associated operating costs including HVAC and staffing
  - Provide the identification of interior spaces and their respective square footage as well as associated exterior spaces that can be used to define project and naming opportunities with donors
12. The total budget contemplated for this phase was \$2,786,181. This amount consisted of \$2,486,181 of actual costs, \$200,000 contingency, and \$100,000 for SDG operating expenses. Of the \$2,486,181 of estimated actual costs, \$2,408,181 was budgeted for architecture and engineering and \$78,000 was budgeted for Owner's Agent.
13. We also noted that March 20, 2007 CHC Board of Commissioners meeting minutes noted that CHF authorized additional capital investment in its subsidiary SDG in order to begin design development for the MLE. We did not identify any additional discussion in any subsequent minutes.
14. On June 13, 2007, the Members of CSDG were presented with an official capital call by the Managing Member, Kanawha. The total amount of the capital call was \$4,000,000. SDG was responsible for \$1,840,000 and Cherokee was responsible for \$2,160,000. These amounts were based upon each Member's respective interest in CSDG. The proceeds from the call were to be used to purchase additional parcels of land to assist with the entrance to the development and to pay down an existing line of credit with a financial institution. Pursuant to the OA, SDG was allowed a certain amount of time to decide whether or not to contribute its portion of the capital call. The SDG Board of Directors engaged Fort Dearborn Partners to assist in the evaluation of whether or not SDG would make the required capital call.
15. SDG's Board of Directors met on July 10, 2007. The minutes of this meeting indicate the capital call comprised the entirety of what was discussed. The Manager provided detailed reasons for the capital call. The reasons for the call were consistent with the June 13, 2007 letter, but also included additional reasons related to the discovery of various Catawba sites, which reduced the developable acreage and resulted in work delays. After the Manager presented the reasons for the call, the Board went into private discussions with representatives of Fort Dearborn. Fort Dearborn presented a report to the Board that included four options related to the call. The minutes indicate that Fort Dearborn recommended two of the four options. The first recommendation was for SDG to pass on contributing its portion of the capital call. The second recommendation was for CSDG to pursue outside financing for a portion of the total capital call.
16. SDG's Board of Directors met again on July 31, 2007 and formally voted to contribute its \$1,840,000 portion of the capital call. The minutes also include discussion on the Design Development phase of work presented to CHF in March 2007. Shields reported that, based on discussions with William McDonough Partners, the architects could complete the design phase and other capital projects could

continue as planned, but the construction manager would have to be hired with a limited scope of work until the design phase was completed.

17. As of July 31, 2007, SDG's available funds consisted of cash totaling \$1,025,020.19 and two certificates of deposits totaling \$1,000,000 for a combined total of \$2,025,020.19. On August 7, 2007, \$800,000 was transferred from CHF to SDG under the authority of Kelvin Arthur. CHF treated this amount as a receivable in its accounting records and SDG treated this amount as a payable. On August 14, 2007, SDG wired \$1,840,000 to CSDG to satisfy its portion of the capital call.
18. Based upon the board meeting minutes of CHF, it does not appear that CHF Trustees were overtly informed that \$800,000 had been transferred to SDG for purposes of fulfilling the capital call. Per the September 4, 2007 CHF Board meeting minutes, Peeples reported that a capital call had been paid and that "resources SDG had on hand were used to respond to the call". We did note that the February 11, 2008 update to CHF Trustees from Sandy Barnes included a notation in the Investment Performance section that there had been an \$800,000 capital campaign fund distribution to SDG for Capital Projects Phase 1. We also noted that the March 4, 2008 CHF Board meeting minutes include a report by Peeples communicating that SDG answered a \$1.8 million capital call in the previous year. Peeples also mentioned the engagement of Fort Dearborn, but did not mention their recommendation to pass on the call.
19. Based upon our analysis and review of provided documentation, it appears that the \$800,000 transfer to assist in paying the capital call directly relates to the \$786,181 in funds approved by the CHF Board on March 6, 2007 for Design Development. It is our opinion, based upon the documents analyzed that the \$786,181 was not used for Design Development, but was instead used to assist in paying the capital call. Van Shields provided a financial report for the month ending July 31, 2007 to CHF's Trustees via email on August 31, 2007. The narrative portion of this financial report indicates that the \$786,181 of funding approved in March 2007 had not been sent to SDG as of July 31, but was distributed to SDG on August 7. August 7 is the same day the \$800,000 was transferred to SDG for the capital call. Additionally, Van Shields emailed Kelvin Arthur on July 30, 2007 stating, "Heads up – Gary thinks we should meet the call and live with our funds + foundation funds already obligated (\$786k) and try to make it work through schematic phases."
20. Fraud is generally defined as an intentional misrepresentation of a material existing fact made with knowledge of its falsity for the purpose of inducing one to act and upon which the person relies with resulting injury or damage. Fraud may also include an omission or purposeful failure to state material facts, the omission of which makes other statements misleading. We are not in a position to opine whether or not fraud was committed as the commitment of fraud is a legal matter; however, it appears to us that a material fact was not communicated by SDG to CHF related to the ultimate use and disposition of the \$800,000 transfer.

## VI. Conclusion

21. As previously noted, the only significant item we noted relates to the transfer of \$800,000 from CHF to SDG in August 2007. Specifically, the initial communications regarding the reasons for why those funds were needed differs from the reasons the funds were eventually used. We do not know if CHF's Board would have made a different decision had they been aware that the \$800,000 was used for the CSDG capital call, but CHF's Board should have been made aware that the funds were being used for that purpose.

Please do not hesitate to contact us to discuss this report.

Sincerely,

  
GreerWalker, LLP

# EXHIBIT A



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#### **Industry Focus**

Construction  
Real Estate  
Manufacturing  
Distribution  
Not-For-Profit

#### **Areas of Expertise**

Audit, review, and  
compilation services

Internal control  
assessment

Forensic accounting

#### **Education**

Bachelor of Science in  
Accounting, University  
of Dayton

#### **Certification**

Certified Public  
Accountant  
North Carolina,  
Certificate # 30561

Certified Fraud  
Examiner

Construction Industry  
Technician

### **Chip Dillman, CPA, CFE, Partner**

#### **Professional Experience**

Chip Dillman is the partner-in-charge of GreerWalker's construction practice and a senior member of the firm's real estate practice. Chip has over 20 years of experience dedicated to providing clients with straightforward, honest professional information upon which they can rely.

Chip serves a full range of real estate and construction organizations including subcontractors, general contractors, architects, real estate developers, property managers and resorts. Chip possesses strong analytical and long-range planning abilities, and is extraordinarily adept at readily comprehending clients' unique needs and identifying creative, yet practical solutions. His expertise includes a wide range of industries including construction and real estate, not-for-profits, manufacturers and professional service firms.

Mr. Dillman is also a Certified Fraud Examiner and has extensive experience participating and leading forensic investigations.

#### **Professional Affiliations**

- American Institute of Certified Public Accountants
- North Carolina Association of Certified Public Accountants
- Construction Professionals Network of North Carolina
- Association of Certified Fraud Examiners
- Charlotte Chapter of the Association of Certified Fraud Examiners
- Construction Financial Management Association
  - Board of Directors -Treasurer
- French American Chamber of Commerce of North Carolina
  - Board of Directors

#### **Community Activities**

- Alexander Youth Network
  - Treasurer, Chairman of Finance Committee
- Men's Shelter of Charlotte
  - Past Treasurer
  - Past Chairman of the Finance Committee

#### **Publications and Presentations**

- *Tough Economy Heightens Contractors' Risk of Fraud, 2010*
- *Introduction to Forensic Accounting, UNCC, 2010*
- *How You Classify Workers is a Key Business Decision, 2009*
- *What You Need to Know About Fraud, Virginia Tech and College of Charleston, Beta Alpha Psi, 2008 and 2009*



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### **Industry Focus**

Manufacturing  
Distribution  
Global Services  
Not-For-Profit  
Service Businesses

### **Areas of Expertise**

Service Organization  
Control Reporting  
Assurance Services  
Compliance Consulting  
International Operations

### **Education**

Bachelor of Science in  
Accounting and Masters  
of Accountancy,  
University of North  
Carolina

### **Certification**

Certified Public  
Accountant  
North Carolina,  
Certificate #31248

## ***Beth Allen, CPA, Senior Audit Manager***

Beth joined GreerWalker LLP in 2003 upon graduation from the University of North Carolina at Charlotte where she earned a Bachelor of Science in Accounting and a Master of Accountancy. Beth is a senior manager in our business assurance practice. She has experience with clients in a variety of industries including professional service, not-for profit, international business, and manufacturing and distribution. She also leads control testing engagements for GreerWalker.

### **Professional Affiliations and Trade Associations**

- American Institute of Certified Accountants
- North Carolina Association of Certified Public Accountants
- Arrowood Business Association
- Charlotte Chamber Manufacturing Council
- Charlotte World Trade Association
- North Carolina Association of Independent Schools

### **Community Activities**

- Hospitality House of Charlotte; Board of Directors, Vice Chair & Treasurer
- Children and Family Services Center, Inc.; Board of Directors, Treasurer
- North Carolina Charter Educational Foundation; Board of Directors, Treasurer
- Mitchell Community College, Board of Directors (At-large)

### **Honors**

40 Under 40 Award, 2013



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### **Areas of Expertise**

Business Valuation  
Fraud Investigation  
Forensic Accounting  
Litigation Support  
Financial Damages  
Alternative Dispute  
Resolution (ADR)

### **Education**

Bachelor of Business  
Administration, Florida  
Atlantic University

Master of Accounting,  
Florida International  
University

### **Certification**

CPA, North Carolina  
Certificate # 21659

Accredited in Business  
Valuation (ABV)

Certified in Financial  
Forensics (CFF)

Certified Insolvency &  
Restructuring Advisor  
(CIRA)

## **William A. Barbee, CPA/ABV/CFF, CIRA, Partner**

### **Professional Experience**

Andy Barbee is Partner in Charge of GreerWalker's Litigation and Valuation Services Practice. He has more than 20 years of experience working in business valuation, forensic accounting, fraud investigation, litigation, bankruptcy, and restructuring. Andy has experience working with attorneys and their clients in numerous fraud and forensic accounting engagements.

While the services Andy provides are more focused on his specialized skills, expertise, and knowledge and not specifically industry focused, he has served clients in many industries. Some of these industries include not-for-profit, manufacturing, distribution, real estate, motorsports, insurance, financial services, construction, technology, retail, auto dealers, restaurants, and health care.

Andy received his Bachelor of Business Administration from Florida Atlantic University and Master of Accounting from Florida International University. He is a Certified Public Accountant, with the Accredited in Business Valuation (ABV) and Certified in Financial Forensics (CFF) designations and is also a Certified Insolvency and Restructuring Advisor (CIRA). Andy began his career at Coopers & Lybrand (now PriceWaterhouseCoopers) and has worked with national and regional consulting firms in the areas of business valuation, fraud investigation, forensic accounting, litigation and bankruptcy his entire career.

### **Professional Affiliations**

- American Institute of Certified Public Accountants
- AICPA Forensic and Valuation Services Section
- Financial Consulting Group (Business Valuation/Litigation Services)
- Carolina FBI Citizens Academy Alumni Association
- Association of Insolvency and Restructuring Advisors
- Commercial Finance Association

### **Community Service**

- Member of the Board of Directors and Treasurer of the Council for Children's Rights
- Past Director and President of the Turnaround Management Association, Carolinas Chapter
- Past Treasurer of the Carolinas FBI Citizens Academy Alumni Association