



REPORT OF INVESTIGATION REGARDING LONG WHARF THEATRE'S SEXUAL HARASSMENT POLICIES AND PROCEDURES

Introduction

This law firm was engaged following the termination of the Theatre's artistic director to investigate how he was able to engage in continued inappropriate behavior without board knowledge, and to make recommendations to prevent this type of misconduct from happening again.

The former artistic director was, according to his reputation and those interviewed, a brilliant, creative director, charming fund raiser and overall success in his artistic role. He was a big personality who dominated the room and who had high expectations for everyone. His artistic success and large personality, however, gave him cover for harassment of Theatre employees who did not feel empowered to complain. The phrase, "Too big to fail" comes to mind, with an amendment: "Too big to be held accountable." While there were rules, procedures and trainings in place that met the rule of law, his behavior went largely unreported, unchallenged and unchecked. Our investigation sought to understand why.

We found that there were lapses in communication across the organization. Staff seemed confused or unaware of the board's role, how to file a complaint, what rules governed the process, and how such complaints would fare in an environment dominated by a single, strong personality with perceived influence in the industry. Our recommendations that arose from the investigation focus on clarifying procedures, calling for more training, and improving communication between the board and staff, and among different departments in the Theatre. The goal is a more open, communicative environment with clear approaches for making and addressing behavioral concerns.

In summary, we found that misconduct emanated from the behavior of this single, powerful person. His departure removed sexual harassment and bullying from the Theatre environment. Implementation of our recommendations should protect the Theatre from their return.

Investigation Process

This investigation included: (1) review of Theatre documents which were the 2002 Amended and Restated Certificate of Incorporation of The Connecticut Players Foundation, the 2012 Bylaws, an offer of employment letter, and LWT Employee Handbooks, effective 2006, 2007, 2012, 2015 and January, 2017; (2) interviews with 21 persons, who were a cross-section of current employees, plus the current managing and associate managing directors, a past board chair, two current board members, a former managing director, and former employees who had experiences with the former artistic director as reported in the *NY Times* article; and (3) a tour of the Theatre spaces.

Findings and Recommendations: Board

It is the role of management, not the full board, to respond to most employee issues, including reports of harassment. The Bylaws describe the composition and duties of the Board Committee most relevant to employee issues: the Compensation and Human Resources Committee ("C&HR Committee"). This Committee is charged with, among other things, reviewing with management and making "recommendations concerning an overall compensation plan for all employees"; making "recommendations to the Board concerning policies applicable to employees of the Theatre"; and helping "with human resource planning and development. . . ."

The Bylaws do not describe another important function of the C&HR Committee, and should be amended to add: "to assist management with employee complaints of harassment, sexual or otherwise," pursuant to the Harassment Policies and Procedures section of the Employee Handbook ("Handbook"). The Bylaws currently specify that the board chair is to receive allegations of harassment by the managing director, but are silent regarding alleged harassment by the artistic director. They should be amended accordingly.

There is a misconception among some staff members that today's board is the same as that which served during the time of the misconduct reported in the *Times* article. This misunderstanding contributes to an impression that the board has not appropriately responded to sexual misconduct. Therefore, staff and other interested persons should be advised that the board has turned over since the sexual harassment complaints against the artistic director reported in the *Times* article were lodged.

Findings and Recommendations: Employee Handbook

Policy - The Handbook is where one would expect to find policies regarding harassment. Indeed it does contain the appropriate language expressing no tolerance with harassment of any kind, defining the several types of sexual harassment, including "quid pro quo" harassment, and behavior that has the effect of unreasonably interfering with the employee's work or creating a hostile work environment. Except for persons employed during the past year, a number of employees whom we interviewed were not aware of a policy regarding harassment, sexual or otherwise. A few said there may have been one, but they did not recall it. They did not feel there was recourse for the

type of bullying and/or sexually charged behavior that the artistic director exhibited toward them or in their presence.

A former employee described two older versions of the Handbook, and she recalled being aware of the harassment policies therein. She reported that she had made several formal complaints pursuant to the policy to a managing director (who is no longer employed by the Theatre) about the artistic director's harassment, but nothing came of them, as far as she knew. According to her, his conduct did not change, and so she made no further complaints.

Reporting Procedure - The Handbook does describe an appropriate procedure for reporting complaints, with one significant gap. It includes reporting to the chair of the board if the harasser is the managing director, but, similar to the bylaws mentioned above, is silent regarding the artistic director. This procedure should be amended to include the artistic director along with the managing director as potential harassers. It should also be made clear that if a staff member who has a harassment complaint about either director is uncomfortable going directly to the board chair, the report can be made to any other member of management who would report to the chair.

The policy does not say what the board chair is to do with a report of harassment, however. Presumably the chair would work with the C&HR Committee to resolve the complaint, and this should be made explicit with an amendment to the Handbook.

Further, the Handbook procedure should be amended to indicate that all managers are "mandatory reporters," that is, any manager who becomes aware of harassment must report it to the appropriate next level, even if a conversation describing an incident of misconduct was "off the record."

Finally, management could consider a "hot-line" for reports of sexual misconduct

Training - The Handbook's harassment policy requires sexual harassment training for supervisory personnel, which currently complies with State regulations. We recommend that such training be given to all employees on a regular basis. (In the time frame following the Rubinstein complaint, according to two former employees, all employees were provided training, but the artistic director did not attend and his absence was noted by staff at the time). If everyone receives training, supervisors will know their responsibilities, and non-supervisory employees will know their rights. For example, many employees expressed discomfort caused by the artistic director's sexually charged rehearsals, jokes, and comments. They did not understand that such conduct on his part created a hostile work environment for them, was reportable and discriminatory harassment under the law, even though he did not direct that behavior at them. Training of everyone will correct such misconceptions.

Management can best determine how often and in what context this training should be given. We suggest it be part of an annual all-hands event at the beginning of the season. Management should require everyone to attend the training, to sign in and out, and this record should be retained. Refresher training can be made available on line.

Acknowledgement - We understand that each employee now signs an acknowledgment of having read and understood the Handbook, and that it is retained in the employee's personnel file. We recommend that the acknowledgement refer specifically to the harassment policy.

Policy Placement - Finally, this important policy is somewhat buried in the Handbook, alphabetically listed along with 32 other policies, in a section titled, "General Policies and Procedures." This placement in the Handbook does not give it appropriate significance. This policy, as well as several others, should be moved to a new Section II, with the heading, "Professional Standards." Management may determine that other "General Policies" be moved to this new section.

We recommend that each member of the board review the harassment policy, and that it be included in the board handbook.

Findings and Recommendations: Additional Related Issues Identified in Interviews

Human Resources - The associate managing director is in charge of both human resources and finances. Although staff universally praised the associate managing director for her role as the human resources person, and as the first person to be effective in this role, there was consensus that there needs to be a full time HR person. We agree that the two major responsibilities of the associate managing director, HR and Finance, are too important to reside in one person. There was also a general recognition that the Theatre does not have the money to hire an additional manager. Nevertheless, we recommend a full time HR person, or in the alternative, outsourcing some HR functions. There may be resources available for little cost through agencies that support arts organizations. If not, there are ombudsman and/or consulting organizations that can assist. But however it is accomplished, HR must be addressed.

As the only human resources person, the associate managing director currently has the task of investigating complaints of harassment. We recommend that this person be given discretionary authority to outsource an investigation when warranted.

One issue with the present HR function which was expressed to us by several staff is the lack of privacy in the associate managing director's office space. Our tour of the physical space confirmed the lack of privacy for a confidential conversation. The associate managing director's office is one of three lightly partitioned offices in a larger room. It has a pocket door, which does not provide sound privacy. We recommend addressing this issue, if possible in the current space. Privacy is important in most human resource conversations, but especially so for the emotionally charged report of sexual harassment.

We understand that the Theatre offers as a benefit an independent EAP, Employee Assistance Program. An EAP can take some burden off the HR person by providing anonymous counseling over the telephone or in person. An interviewee mentioned that women who have been harassed by GE do not feel supported, that their trauma (from both the harassment and the decision to come forward) is not

acknowledged. An accessible EAP could meet this need, and we recommend that the availability of this benefit be highlighted in harassment training.

Feedback – Some staff expressed frustration at not hearing anything about the outcome of a complaint. We recommend that feedback be incorporated into the harassment complaint review process.

In addition to there being an EAP plan to assist complainants with the distress often associated with making a complaint of harassment, someone, presumably the HR person, should check in with the complainant by way of supportive followup. In addition to the complainant, the accused harasser may also require support, and HR should be sensitive to that as well.

Arbitration Clause – We learned from a former employee who is in touch with current employees that they believe the presence on an arbitration clause in their employment letter (it is also in the Handbook's Grievance Procedure) means that they cannot report harassment or they would be fired. This misunderstanding is baffling, but begs clarification. We recommend that HR resolve this point, explaining that retaliation for lodging a complaint of harassment is illegal retaliation.

We recommend consideration of abandoning arbitration as a dispute resolution tool. It is no longer an inexpensive way to resolve claims.

Conclusion

The Theatre is an artistic treasure, enriching greater New Haven, the States of Connecticut and New York, and the entire international theatre community. The creative talent and multiple skills that combine to be Long Wharf Theatre are beyond measure. But the Theatre is a workplace, not a family. A former employee told us that the artistic director used to say, repeatedly, "We are family, we are one big family." That mantra created a culture in which it was hard to complain about him, because it would have felt like "telling on a parent." No, the Theatre is a workplace where inappropriate conduct is not tolerated by anyone. Its employees should feel safe, appreciated, respected, empowered and rewarded. Our investigation demonstrated that the board, management and staff have the resolve to build and support this culture.

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