REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
ORT AMERICA, INC.

AS OF December 31, 2021

EXAMINER: Hasan Ahmed

DATE OF REPORT: March 22, 2023

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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TABLE OF CONTENTS

ITEM		PAGE NO.
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Fund	4
	A. History	4
	B. Structure	4
	C. Assets under the board of trustees	4
	D. Third-party payment service provider	4
	E. Oversight Structure	4
4.	Investment review	6
	A. Investment strategy statement	6
	B. Monitoring	6
5.	Assets and liabilities summary	7
6.	Treatment of annuitants	8
7.	Annual Statement	9
8.	Prior report summary and conclusions	10
9.	Summary and conclusions	12

April 21, 2023

Honorable Adrienne A. Harris
Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 32384, dated July 14th, 2022 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the ORT America Inc. The Fund's home office is located at 250 Park Avenue South, New York 10003.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain signed statements from the board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they have received and read any current or future filed report on examination. (See item 3E of this report)

The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and that this documentation be reviewed on a timely basis and reconciled to the applicable custodial statements for that period. (See item 3E of this report)

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials. (See item 4A of this report)

The examiner recommends that the Board of Directors, or a committee thereof, be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes. (See item 4B of this report)

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent. The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent. (See item 6 of this report)

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement. (See item 7 of this report)

2. SCOPE OF EXAMINATION

This Scope of Examination summarizes the nature of the Superintendent of the Department of Financial Services' (the "Department" or "DFS") examination and assessment of the ORT America, Inc. Gift Annuity Fund (the "Fund") through which ORT America, Inc (the "Organization") provides annuity benefits.

The prior examination was conducted as of December 31, 2016. This examination covers the period from January 1, 2017 through December 31, 2021. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2021 but prior to the date of this report (i.e., the completion date of the examination).

This report outlines DFS's supervisory expectations or priorities and articulates DFS's general views regarding the exceptional circumstances where the Organization or Fund, in relation to their annuity activities, could have better satisfied statutory standards or to adhered to practices or methods of dealing that are regularly observed among similar circumstances.

The Fund is subject to the solvency and examination requirements of New York Insurance Law § 1110 and of New York Insurance Law articles 1, 2, 3, 25, and 74.

The investment of the Fund's required admitted assets is subject to N.Y. Estates, Powers and Trust Law § 11-2.3. The investment of the remainder of the Fund's admitted assets is subject to N.Y. Not-for-Profit Corporation Law Article 5-a. Both establish that the trustees are to invest the assets consistent with prudent person standards.

The examination comprised a verification of assets and liabilities as of December 31, 2021 to determine whether the Fund's filed 2021 annual statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification. The examiner also reviewed the corrective actions taken by the Fund with respect to the violation and recommendations contained in the prior report on examination. The results of such review are contained in item 8 of this report.

3. DESCRIPTION OF FUND

A. History

ORT America, Inc. is organized for the purpose of promoting the understanding and appreciation of Jewish values throughout the world. The Organization established the Fund to issue gift annuity agreements in return for gifts from donors in 1994. The Superintendent of Insurance granted to the Organization a Charitable Annuity Society special permit on March 14, 1997.

B. Structure

The Fund is overseen by the Organization's Board of Directors. All operations related to the issuance, maintenance and settlement of annuity agreements are handled by the Fund.

C. Assets under the Board of Directors

As of the December 31, 2021 audited financial statement, the Organization's Board of Directors oversaw an endowment consisting of 24 individual funds comprising $11,267,319 in total assets. The Fund, as of December 31, 2021, held total admitted assets of $1,553,548.

D. Third-Party Payment Service Provider

PNC Institutional Investment Asset Management (PNC) is the Fund's custodian and investment manager. The Fund has a service agreement with PNC for certain recordkeeping and administrative services. Those services include record keeping, annuity benefit payments, and the preparation of tax and regulatory filings.

E. Oversight Structure

Section 312(b) of the New York Insurance Law states, in part:

> "(b) A copy of the report shall be furnished by such insurer or other person to each member of its board of directors and each such member shall sign a statement which shall be retained in the insurer's files confirming that such member has received and read such report . . ."

The examiner's review revealed that the Fund failed to obtain statements signed by each board member indicating that they received and read the prior report on examination.

The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain signed statements from the board members indicating that they received and read the prior report on examination. The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they have received and read any current or future filed report on examination.

The examiner reviewed the investment transactions for the period under examination and noted that the Fund failed to obtain broker's advices or other supporting documentation for its investment transactions to reconcile such advices to the monthly statements furnished by the custodian.

The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and that this documentation be reviewed on a timely basis and reconciled to the applicable custodial statements for that period.

4. INVESTMENT REVIEW

A. Investment Strategy Statement

New York Estate Powers and Trust Law § 11-2.3(b)(3)(A) requires trustees to "pursue an overall investment strategy to enable the trustee[s] to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio."

New York Not-for-Profit Corporation Law § 552(e)(2) requires institutions to adopt "an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution." New York Not-for-Profit Corporation Law § 552(f) provides that each "institution shall adopt a written investment policy setting forth guidelines on investments … and delegation of management and investment functions in accord with the standards of this article."

PNC Institutional Investment Asset Management is the Fund's investment adviser and custodian. PNC Institutional Investment Asset Management prepared and provided a form investment strategy statement ("ISS") to the Fund. The Fund adopted that form as its ISS.

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.

B. Monitoring

The examiner reviewed the Board of Directors minutes to determine whether the board had been provided with a report concerning the Fund's investment of required admitted assets. The minutes did not contain any indication that the board was provided with a report concerning the Fund's investment of required admitted assets.

The examiner recommends that the Board of Directors, or a committee thereof, be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes.

5. ASSETS AND LIABILITIES SUMMARY

The following summary table indicates the decline in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

	December 31, 2016	December 31, 2021	Increase
Admitted assets	$2,475,615	$1,553,548	$(922,067)
Liabilities	$1,753,896	$1,228,134	$(525,762)
Minimum required fund balance	$ 175,390	$ 122,813	$ (52,577)
Excess fund balance (surplus)	546,329	202,600	(343,729)
Total annuity fund balance	$ 721,719	$ 325,414	$(396,305)
Total liabilities and annuity fund balance	$2,475,615	$1,553,548	$(922,067)

The decrease in assets, liabilities and annuity fund balance reflects a decrease in the total number of annuities in force. Annuities decreased from 165 with annual payment amounts of $221,841 as of December 31, 2016 to a total of 98 with annual payment amounts of $200,010 as of December 31, 2021.

The Fund's admitted assets, as of December 31, 2021, were invested in equity securities (94.02%), and money market mutual funds (5.88%).

6. TREATMENT OF ANNUITANTS

The examiner reviewed a sample of annuity files to determine whether the annuitants were treated fairly and in accordance with the provisions of the annuity agreements. The examination also consisted of a review of the various controls involved, a check of the accuracy of the computations and the tracing of accounting data to the books of account.

Section 1110(a) of the New York Insurance Law states, in part:

> ". . . Every such corporation or association shall, before making such agreement, file with the superintendent copies of its forms of agreements with annuitants . . ."

The examiner's review of a sample of 3 newly issued gift annuities by the Fund during the examination period noted that in 1 newly issued annuity, the Fund used forms that differed from the gift annuity agreements filed with the Superintendent. In this instance, the form that was used was a form deviated from the accepted New York form and had no form number listed on the bottom left-hand corner of the page.

The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent. The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.

7. ANNUAL STATEMENT REPORTING

The Department's Instructions for Completing the New York State Segregated Gift Annuity Fund Annual Statement for the year ended December 31, 2021, namely the General Interrogatories section, states the following, in part:

> "8. If there has been a change in the Segregated Gift Annuity Fund's name, notification must be sent to the Department's Office of General Counsel at: Office of General Counsel, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257…
>
> 13. All Segregated Gift Annuity Funds must submit an electronic listing providing complete details relative to annuity table, rates of interest, etc., used in the calculation of the reserves reported on Page 2, Line 10 of the Annual Statement (Refer to the Instructions herein). Actuarial statements or certifications are not acceptable in lieu of the detailed listing.
>
> 14. Each Segregated Gift Annuity Fund must file its forms with the Superintendent of Financial Services. This includes any revised or updated versions of the forms…"

The examiner's review of the Fund's filed 2021 annual statement revealed that it failed to complete Items 6, 7, 8, 9, 10, 13, 14, and 15 of the General Interrogatories section.

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.

8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the recommendations contained in the prior report on examination and the subsequent actions taken by the Fund in response to each citation:

Item	Description
A	The Fund violated Section 312(b) of the New York Insurance Law by failing to maintain statements signed by each board member indicating that they received and read the prior report on examination. The Fund failed to furnish the statements duly signed by each board member indicating that they received and read the prior report on the examination. A similar violation appears in this report on examination.
B	The examiner recommends that the Fund maintain the statements, signed by the board members indicating that they received and read the prior report on examination, for the examiner's review during the ensuing examination. The Fund failed to furnish the statements duly signed by each board member indicating that they received and read the prior report on the examination. A similar recommendation appears in this report on examination.
C	The Fund violated Section 325 of New York Insurance Law by failing to maintain all annual statements and all support worksheets at its principal office in this state. The Fund maintains its annual statements and all support worksheets at its principal office in this State.
D	The examiner recommends that the Fund prepare its Annual Statements in accordance with the Department's instructions for completing the New York State segregated gift annuity fund annual statement. The examiner noted new discrepancies in the preparation of the New York State segregated gift annuity fund annual statement. A similar recommendation appears in this report on examination.

Item	Description
E	The examiner recommends that the Fund use on all annuity benefit payment checks the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York. The Fund used on all annuity benefit payment checks the name it agreed to by board resolution as part of its permit application to the Department for a special permit to issue charitable gift annuities in New York.

9. SUMMARY AND CONCLUSIONS

Following are the recommendations contained in this report:

Item	Description	Page No(s).
A	The Fund violated Section 312(b) of the New York Insurance Law by failing to obtain signed statements from the board members indicating that they received and read the prior report on examination.	5
B	The examiner recommends that the Fund comply with Section 312(b) of the New York Insurance Law by obtaining the signature of each board member indicating that they have received and read any current or future filed report on examination.	5
C	The examiner recommends that the Fund obtain broker's advices or other supporting documentation for its investment transactions and that this documentation be reviewed on a timely basis and reconciled to the applicable custodial statements for that period.	5
D	The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.	6
E	The examiner recommends that the Board of Directors, or a committee thereof, be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes.	6
F	The Fund violated Section 1110(a) of the New York Insurance Law by using gift annuity agreement forms that differed from the gift annuity agreement forms that were filed with the Superintendent.	8
G	The examiner recommends that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.	8

Item	Description	Page No(s).
H	The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement	9

Respectfully submitted,

/s/
Hasan Ahmed
Senior Insurance Examiner

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

HASAN AHMED, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

/s/
Hasan Ahmed

Subscribed and sworn to before me

this _____ day of _____

APPOINTMENT NO. 32384

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

*I, **ADRIENNE A. HARRIS**, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:*

HASAN AHMED

as a proper person to examine the affairs of the

SEGREGATED GIFT ANNUITY FUND OF THE ORT AMERICA, INC.

and to make a report to me in writing of the condition of said

FUND

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name and affixed the official Seal of the Department at the City of New York

this 14th day of July, 2022

ADRIENNE A. HARRIS
Superintendent of Financial Services

By: Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU