REPORT ON EXAMINATION
OF THE
SEGREGATED GIFT ANNUITY FUND
OF THE
CANCER CARE, INC.

AS OF December 31, 2022

EXAMINER: Hasan Ahmed

DATE OF REPORT: October 4, 2024

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November 26, 2024

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

Dear Adrienne A. Harris:

In accordance with instructions contained in Appointment No. 32499, dated October 6th, 2023, and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the Cancer Care, Inc. The Fund's home office is located at 1180 Avenue of the Americas, New York, NY 10036.

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 of trustees indicating that they received and read the prior report on examination. The examiner directs 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 Fund should 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 Board of Trustees, or a committee thereof, should 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 a gift annuity agreement form that differed from the gift annuity agreement forms that were filed with the Superintendent. The examiner directs 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)

Upon the death of an annuitant, the Fund should obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract. (See item 6 of this report)

The Fund should maintain a copy of the annuity agreement and other information that supports such information terminating an annuity contract. (See item 6 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") examination and assessment of the Cancer Care, Inc. Gift Annuity Fund (the "Fund") through which Cancer Care, Inc. (the "Organization") provides annuity benefits.

The prior examination was conducted as of December 31, 2017. This examination covers the period from January 1, 2018 through December 31, 2022. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2022 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 Foundation 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, 2022 to determine whether the Fund's filed 2022 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 recommendations contained in the prior report on examination. The results of such review are contained in item 7 of this report.

3. DESCRIPTION OF FUND

A. History

Cancer Care, Inc. was chartered in 1955 and is organized for the purpose of providing free, professional support services to help people manage the emotional, practical, and financial challenges of cancer. The Organization established the Fund to issue gift annuity agreements in return for gifts from donors in 1989. The Superintendent of Insurance granted to the Organization a Charitable Annuity Society special permit on December 29, 1993.

B. Structure

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

C. Assets under the Board of Trustees

As of the June 30, 2022 audited financial statement, the Organization's Board of Trustees oversaw an endowment comprising $11,244,110 in total assets. The Fund, as of December 31, 2022, held total admitted assets of $1,017,610.

D. Third Party Service Provider

BNY Mellon is the Fund's custodian of the Fund's assets. The Fund has a service agreement with PG Calc for actuarial and accounting related services. PG Calc calculates the Fund's annual liability, providing quarterly notices of amounts due to annuitants, as well as prepares the Fund's annual statement. Hirtle Callaghan is the Fund's outsourced chief investment officer and is responsible for the execution of its investment policy.

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 Fund failed to obtain statements signed by each member of its board of trustees 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 of trustees indicating that they received and read the prior report on examination.

The examiner directs 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.

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."

The Organization prepared and provided an investment strategy statement ("ISS") to the Fund. The Fund adopted that form as its ISS.

The Fund should 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

New York Estate Powers and Trust Law § 11-2.3(c)(1) requires trustees to exercise care, skill and caution in periodically reviewing the delegee's exercise of the delegated function and compliance with the scope and terms of the delegation.

New York Not-for-Profit Corporation Law § 554(a)(3) provides that, when delegating investment functions, an institution must monitor its agents' performance and compliance with the scope and terms of each's respective delegation. In so doing, the institution must use the care that an ordinarily prudent person in a like position would exercise under similar circumstances.

The examiner reviewed the Board of Trustees minutes to determine if 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 Board of Trustees, or a committee thereof, should 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 growth in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

	December 31, 2017	December 31, 2022	Increase (Decrease)
Admitted assets	$872,514	$1,017,610	$145,096
Liabilities	$ 91,347	$ 111,454	$ 20,107
Minimum required fund balance	$ 9,135	$ 11,145	$ 2,010
Excess fund balance (surplus)	772,032	895,010	122,978
Total annuity fund balance	$781,167	$ 906,155	$124,988
Total liabilities and annuity fund balance	$872,514	$1,017,610	$145,096

The increase in admitted assets, liabilities, and annuity fund balance was due to a large gift received during 2018 and investment gains. However, annuities decreased from 10 with annual payment amounts of $11,538 as of December 31, 2017 to a total of 4 with annual payment amounts of $11,884 as of December 31, 2022.

The Fund's admitted assets, as of December 31, 2022, were invested in equity securities (94.64%) and money market mutual funds (5.08%).

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 the one newly issued gift annuity by the Fund during the examination period revealed that the Fund used a form that differed from the gift annuity agreements filed with the Superintendent. The deviating form number found is 1da-I-NY.

The Fund violated Section 1110(a) of the New York Insurance Law by using a gift annuity agreement form that differed from the gift annuity agreement forms that were filed with the Superintendent.

The examiner directs that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.

The examiner's review of a sample of 4 annuity contracts terminated revealed that in 4 of the 4 cases (100%) reviewed, the Fund failed to obtain a copy of the death certificate to confirm termination of the annuity contract.

Upon the death of an annuitant, the Fund should obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract.

The examiner's review of a sample of 5 annuity contracts terminated revealed that in 6 of the 6 cases (100%), the Fund failed to provide a copy of the annuity agreements that were issued for each sample contract.

The Fund should maintain a copy of the annuity agreement and other documentation that supports such information terminating an annuity contract.

7. 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 examiner recommends that the Fund or Board of Trustees diversify the investments or memorialize why, because of special circumstances, the purposes of the fund are better served without diversification. Decisions not to diversify should be reviewed at least annually. The Department no longer provides specific guidance on diversification.
B	The examiner recommends that the Fund or its Board of Trustees should adopt procedures to monitor the concentration or diversification of the Fund's investments, or, at least annually, receive a report monitoring the concentration or diversification of the Fund's investments. The report should be memorialized either in meeting minutes or materials. The Department no longer provides specific guidance on diversification.
C	The examiner recommends that upon the death of an annuitant, the Fund obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract. The Fund failed to obtain and maintain a death certificate or other reliable evidence that supports that information terminating an annuity. A similar recommendation appears in this report on examination.

8. SUMMARY AND CONCLUSIONS

Following are the violations, actions, and 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 of trustees indicating that they received and read the prior report on examination.	5
B	The examiner directs 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 Fund should 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
D	The Board of Trustees, or a committee thereof, should be provided, at least annually, with a report concerning the Fund's investment of required admitted assets and note such in the minutes.	7
E	The Fund violated Section 1110(a) of the New York Insurance Law by using a gift annuity agreement form that differed from the gift annuity agreement forms that were filed with the Superintendent.	9
F	The examiner directs that the Fund file with the Superintendent all gift annuity agreement forms that were used and not previously filed with the Superintendent.	9
G	Upon the death of an annuitant, the Fund should obtain and maintain a death certificate or other reliable documentary evidence that supports such information terminating an annuity contract.	9
H	The Fund should maintain a copy of the annuity agreement and other documentation that supports such information terminating an annuity contract.	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. 32499

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 CANCER CARE, 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 6th day of October, 2023

ADRIENNE A. HARRIS
Superintendent of Financial Services

By: Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU