**COMMERCIAL BRIBE RECEIVING FIRST DEGREE**

**Penal Law § 180.08**

**(Committed on or after Sept. 1, 1983)**

The (*specify*) count is Commercial Bribe Receiving in the First Degree.

Under our law, an employee [agent or fiduciary] is guilty of Commercial Bribe Receiving in the First Degree when, without the consent of his or her employer [or principal], such employee, [agent or fiduciary] solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence such employee’s [agent’s or fiduciary’s] conduct in relation to his or her employer’s [or principal’s] affairs, and when the value of the benefit solicited, accepted or agreed to be accepted exceeds one thousand dollars and causes economic harm to the employer [or principal] in an amount exceeding two hundred and fifty dollars.

The following terms used in that definition have a special meaning:

BENEFIT means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.1

AGREEMENT means a mutual agreement between an employee [agent or fiduciary], and a person from whom he or she solicits, accepts or agrees to accept any benefit, valued in excess of one thousand dollars, that such employee’s [agent’s or fiduciary’s] conduct in relation to his or her employer’s [or

1Penal Law §10.00(17).

principal’s] affairs will thereby be influenced.2

UNDERSTANDING means at least a unilateral perception or belief by an employee [agent or fiduciary] who solicits, accepts or agrees to accept any benefit, valued in excess of one thousand dollars, that such employee’s [agent or fiduciary’s] conduct in relation to his or her employer’s [or principal’s] affairs will thereby be influenced.3

ECONOMIC HARM TO THE EMPLOYER [OR PRINCIPAL] means actual economic loss suffered by the employer [or principal] which would not have been incurred in the absence of the corrupt arrangement.4

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following four elements:

1. That on or about (*date*), the defendant (*defendant’s name*), was an employee [agent or fiduciary] of (*specify employer or principal*);
2. That on or about that date, in the county of (*county*), the defendant solicited, accepted or agreed to accept a benefit valued in excess of one thousand dollars from (*specify*);
3. That the defendant did so upon an agreement or understanding that such benefit would influence

2The definition provided has been drawn from *People v Tran*, 80 N.Y.2d 170 (1992), which defined the term “understanding” in the context of a bribe giving rather than a bribe receiving case. The Court of Appeals has not specifically adopted a definition of the term “understanding” in the context of a bribe receiving case.

3 *Id*.

4 *People v Wolf*, 98 N.Y.2d 105 (2002)

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his/her conduct in relation to his/her employer’s [or principal’s] affairs;

1. That the defendant did so without the consent of his/her employer [or principal]; and
2. That the defendant's conduct caused economic harm to the employer [or principal] in an amount exceeding two hundred and fifty dollars.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.

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