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NYC Opera's Ch. 11 Is A Cautionary Tale For Arts Community

By **Maria Chutchian**

Law360, New York (October 07, 2013, 2:08 PM ET) -- Cultural organizations have been fighting to keep up funding for the better part of a decade, but the 70-year-old New York City Opera Inc.'s recent bankruptcy announcement served as an especially rude wakeup call to the arts community: Without donor support, it's curtains.

Dubbed "The People's Opera" due to its affordable ticket prices, the nonprofit filed its voluntary bankruptcy petition Thursday after a failed campaign to raise \$7 million. The opera did everything a cash-strapped and debt-laden company should do: It reduced its staff, cut back its productions and moved to less expensive locations.

But those efforts weren't enough, and now the City Opera is prepared to close its doors for good and liquidate unless a wealthy benefactor with a soft spot for opera comes forward during the bankruptcy process. The closure comes with an ironic twist: Its final production was "Anna Nicole," based on the late model Anna Nicole Smith, whose legal battle over her late husband's estate served as the backdrop for the 2011 U.S. Supreme Court's *Stern v. Marshall* decision, which turned the bankruptcy community on its head.

Like for-profit corporations, the opera was hit hard by the economic downturn. Its accumulated deficit was around \$44 million for fiscal year 2012. Its endowment was at \$5 million in FY2012, down from \$9 million the previous fiscal year and \$55 million several years ago, according to court documents.

"Something like this sends shockwaves through the arts community and will allow fundraisers to point to something very vivid and say, 'We're not just crying wolf here, if we're telling you there's a problem. Look what happened, you don't want us to end up like the New York City Opera,'" Matthew Gold of Kleinberg Kaplan Wolff & Cohen PC said.

Arts institutions like the opera are often plagued by artist and performer compensation issues, pricey productions and an audience that's constantly being distracted by other entertainment options, bankruptcy experts said. With those setbacks, if there isn't a strong donor base, these organizations have little chance of surviving.

"Obviously if you're going to give to a cultural institution, it usually means it's something that interests you and if it doesn't interest enough people to make that commitment, that's when the problems start with ticket sales and support," Claudia Springer of Reed Smith LLP said.

Springer represented the official committee of unsecured creditors in another popular cultural

institution's recent bankruptcy case — the Philadelphia Orchestra. That case wrapped up recently with the orchestra reorganizing its debt and negotiating new labor contracts and retiree benefits.

But the difference between the orchestra and the City Opera is key. While the opera was unable to bring in the donations it needed throughout its final years, the Philadelphia Orchestra had no such problem. Its entrance into bankruptcy was mainly for the purpose of getting control of its labor costs, Springer said.

The City Opera, on the other hand, has been relying to some degree on its board of directors of late, who have in some cases shelled out their own money to keep the organization going. It also has been borrowing from its endowment, which it in turn has been unable to build back up.

Its unsuccessful attempt to raise \$1 million through crowd-funding website Kickstarter was a good idea, Ted Gavin of Gavin/Solomonese LLC said, but its fatal flaw was that the people who would likely support the opera are unlikely to be familiar with Kickstarter.

"If you're going to make a last minute appeal for funding, you better do it in a manner that your funding sources are familiar with and comfortable with," Gavin, a longtime fan of the City Opera, said. "I don't know if it was because donors didn't get it — I'm sure they publicized it — but your appeal has to be palatable to the people who have money to give you."

The opera's move from its longtime home in Lincoln Center to other theaters around the city didn't help either, Gavin said, even though it was meant to lower costs. Fans identified the organization with its location and were likely to find other forms of entertainment when it moved, he said.

Decreasing money for arts organizations is nothing new, and Gavin says the problem will probably get worse before it gets better. The Minnesota Orchestra, which has been mired in contract negotiations that caused the cancellation of the 2012-2013 season, doesn't get its act together soon, it could be next to file for bankruptcy, he said.

"I really think this is not the watershed that people are making it out to be. It is very unfortunate for a number of reasons," Gavin said. "But this isn't going to be the last one."

--Editing by John Quinn and Richard McVay.

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