

OFFICE OF THE INDEPENDENT ADVOCATE  
REPORT OF INVESTIGATION

K #: K07-046

Date Opened: April 3, 2007

Date Closed: Pending

Name of investigator: Breno Penichet and Kennedy Rosario

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**Allegation:**

On or about April 3, 2007 COE Investigator Rosario was contacted by MDFR Internal Affairs Sergeant Rigo Rivas (Rivas) concerning an investigation regarding the MDFR Wellness Center (Center), specifically the usage of Wellness Center American Express Credit Cards (Amex) by County employee MDFR Firefighter Orlando R. Pena (Pena) during his tenure as the Center's Coordinator, circa 2003 through 2007.

Preliminarily, the usage of the Amex cards by Pena for personal purchases constitutes a violation of the Miami-Dade County Code of Ethics specifically Exploitation of Official Position.

**Background:**

The Center is an established Florida non-profit organization duly incorporated as a 501 (c) (9) under the corporate name of Metro Dade Firefighters Wellness Center, Inc. Their Articles of Incorporation were filed with the Florida Department of State on December 16, 2002.

Article VI reads "this Corporation is subject to and subordinate to the authority of Metro Dade Firefighters, Local 1403, IAFF" (Union).

Article VII relates that "the Board shall directly parallel the Officers of "Local 1403".

A 2003 Uniform Business Report (UBR) filed with the Florida Department of State on February 12, 2003 added Mr. Orlando R Pena as a Wellness Director.

By 2005 changes in the Corporate Officers and Articles of the Wellness Center were reflected in an “Articles of Amendment to Articles of Incorporation” adopted on April 14, 2005 and filed May 4, 2005.

This amendment, among other items, changed the name of the Corporation to Miami-Dade Firefighters Wellness Center, Inc (Article I).

Article VI, was deleted in its entirety.

Article VII details the change in the make up of the Board from one of total Union representation to one that reflects Miami-Dade County’s assumption, via the MDFR, of control in conjunction with the Union, including the naming of Pena as IAFF/IAFC Wellness Initiative Coordinator.

The Center contracts with the University of Miami to provide medical services such as pre-employment medical screening, annual physical examinations and physical therapy to MDFR firefighters and their families.

The Center has as its sources of income; fees it charges for the various medical / therapy duties it performs, and funds from various local agencies. However the majority of its operating capital derives from Miami-Dade County funding.

The Center is overseen / governed by the Non-profit Corporation that sits as the Wellness Board.

Ms. Veronica Salom, a County employee, is the current Wellness Center Director, a position she was selected to by the Board in June 2006.

On Thursday, March 1, 2007 Ms. Veronica Salom, as the complainant, rendered a recorded statement to Sgt. Rivas which included the following:

Following the established guidelines for a 501 (c) (9) corporation, the Wellness Center called for their annual audit that was conducted by the Coral Gables accounting firm of Verdeja & De Armas, LLP. Their preliminary findings identified questionable charges that were made on two Wellness Center American Express small business credit cards. The charges did not appear to be specific to the operations of the Wellness Center, and the accounting firm requested the Complainant review the account information.

The Complainant identified that the concerned credit cards were under the direct control of MDFR Firefighter Orlando Pena, the former Wellness Center Coordinator. Upon the Complainant's review, the majority of the credit card charges made appeared to be for legitimate purposes i.e.; business travel, office lunch meetings and business lunches with outside sources. Some charges; however, appeared to be for FF Pena's own personal use such as purchases made at locations like Sports Authority, United States Tennis, NASDAQ, Pro Tennis World, Golf Hills Golf, and the Bonaventure Golf at Weston.

As it was subsequently discovered by Sgt. Rivas an Amex card was also given to Ms. Irene Salvi by FF Pena to be used strictly for Center related purchases.

Ms. Salvi began her employment at the Center as a University of Miami employee in 2003. Ms. Salvi also rendered a recorded statement to Sgt. Rivas on March 1, 2007 stating in part the following:

Ms. Salvi stated that during her tenure at the Wellness Center she worked with FF Pena and shared the same office space with him for quite some time. Ms. Salvi couldn't recall the exact date when FF Pena gave her an American Express Delta Sky Miles Business Credit Card. FF Pena gave her the credit card for business use but never offered much other information for its uses. Ms. Salvi assumed that it was to be used exclusively for authorized Wellness Center expenditures.

Some time in 2003, FF Pena requested the American Express Delta Sky Miles Business Credit Card back from Ms. Salvi, and explained to her that the credit card was obtained using his personal information i.e., social security number,

and he was going to cancel the credit card and replace it with another credit card. Ms. Salvi returned the credit card and FF Pena gave her an American Express Business Green Rewards Card.

According to Ms. Salvi, she recalled using the credit cards to procure medical and office supplies, and occasionally for business lunches, as instructed by FF Pena. Ms. Salvi stated that she was also permitted by FF Pena to pay for other Wellness Center employee lunches on special events such as birthdays.

Ms. Salvi stated that on more than one occasion, she observed FF Pena pay for the entire table (occupied by other Wellness Center employees), using one of the concerned American Express credit cards. FF Pena would then pocket the cash that other employees had contributed toward the bill. Ms. Salvi recalled that happening at the Chevy's restaurant located at 8191 N.W. 12 Street, Miami, Florida.

In January 2007, FF Pena advised Ms. Salvi that the account for the Business American Express credit card she had for the Wellness Center had been closed. Ms. Salvi informed the Complainant, on the status of the closed account, and the Complainant instructed her to contact American Express to verify the account status.

Ms. Salvi contacted American Express and discovered that the account was still open and was not closed as FF Pena had reported to her. When Ms. Salvi informed the Complainant of the account status, the Complainant requested that she re-contact American Express and inquire if FF Pena had changed the billing address on the account. Ms. Salvi stated that American Express confirmed that the billing address had been changed from 8000 NW 21 Street to another address in Parkland, Florida. Since Ms. Salvi was not the account holder, American Express only released information that the new billing address for the account was Parkland, Florida. Ms. Salvi suspected that FF Pena changed the billing address to his home address in Parkland, Florida but she could not explain why FF Pena did that.

Ms. Salvi, now a County employee, is the current Wellness Center Office Manager.

**Investigation:**

COE investigators met with Rivas who expressed the MDFR IA wish to have the COE spear head the inquiry given the investigative / auditor resources needed to conduct the

investigation, noting that MDPD Public Corruption Investigation Bureau asked MDFR IA to refer the investigation to the COE.

Sgt. Rivas supplied the COE with the above noted statements, DVD recording, as well as the Amex monthly statements he received from Ms. Salom.

The established facts of the investigation as of this point indicated the Amex accounts where all initiated by Firefighter (FF) Pena ostensibly to facilitate Wellness Center purchases beginning in 2003. The Center as currently structured is a non-profit organization and not a taxable entity.

FF Pena used his personal social security number to establish / secure the Amex accounts but under the Center corporate banner.

Ms. Salvi was issued one of the Amex cards by her supervisor, FF Pena, under her name but under the sponsorship of FF Pena's principal account.

FF Pena, as his normal course of duty, received the Amex billing statements and arranged for the monthly payments utilizing the Center's funds. There was no oversight nor established procedure, prior to Ms. Salom's tenure, of the purchases made via the Amex by FF Pena and / or Ms. Salvi except that in Ms. Salvi's case FF Pena would normally direct her usage and / or purchases.

An audit commissioned by the Center / Board and mandated by law to maintain the Center's continuance as a non-profit organization was the catalyst for Ms. Salom's complaint.

On April 5, 2007 a meeting was held with Assistant State Attorney Johnette Hardimon. In attendance were MDRF IA Sergeants Mitjan and Rivas and COE Investigators Penichet and Rosario.

ASA Hardimon was briefed as to the Pena allegations, inclusive that FF Pena purchased personal items with the Amex cards, deceived Ms. Salvi as to the closing of the Amex accounts and instead transferred the billing address to his residence in Parkland Florida, as well as an admission to Ms. Salom concerning his personal usage of the Amex cards. Also mentioned was the incident where in FF Pena allegedly pocketed the monies paid by luncheon attendees then paid the bill with the Amex card.

ASA Hardimon agreed to open an investigative inquiry, monitor the investigation, and facilitate any necessary subpoenas.

It was agreed that the COE would assume the lead role in the investigation pursuing County ordinance violation(s) and gathering information that may lead to criminal charges.

It was also agreed that the focus of the investigation was to determine the actual scope of FF Pena's usage of the Amex cards. To that end COE Auditor Christina "Tina" Topley was assigned the task to audit the Amex credit card accounts.

In order to assist the audit process it was necessary to determine what Amex charges were 1) bona fide Wellness Center expenditures / purchases 2) Union reimbursable related expenditures and 3) FF Pena's personal charges.

To accomplish this task documentary material from both the Wellness Center and the Union were requested and when received, analyzed. When further explanations were needed Center personnel (Ms. Salom and Ms. Salvi), Union President and Board

Member Stan Hill, MDFR Budget Director and Board Member Scott Mendelsberg were interviewed / debriefed.

During the course of the investigation it was learned that on April 17, 2006 FF Pena issued a personal check in the amount of \$ 17,726.49 payable to the MDFF Wellness Center and was given a document entitled "Basic Receipt In Full" signed by Veronica Salom.

According to Ms. Salom this came about via her analysis of the Center's Amex accounts in order to determine an amount that reflected FF Pena's non Wellness Center expenditures / purchases. Ms. Salom stated to the COE that FF Pena actively participated in this analysis and agreed that the \$17,726.49 was substantially accurate. It must be noted that this figure, according to Ms. Salom, includes not only FF Pena's personal charges but also Amex charges that FF Pena would apply for reimbursement to the Union.

Union President Stan Hill was cooperative in this investigation and supplied all COE requested documentation inclusive of a draft of a twelve page memo addressed to MDFR Director Herminio Lorenzo dated March 15, 2007 itemizing those charges that are material to this investigation. Although this memo was never finalized nor delivered to Director Lorenzo it is significant to the investigation in that FF Pena's material input into the production of this memo constitutes his admission to the personal / unauthorized usage of the Center's Amex accounts. Union President Hill was asked by COE Investigator Rosario to explain the draft memo, which he did via an August 10, 2007 e-mail:

As far as the draft letter dated March 15, 2007. I wrote the first page and asked Orlando Pena to justify every credit card expense pages 2-12 were drafted by Orlando. As I became aware of more and more of the expenses, I became less comfortable with the idea of the Local collecting money from Orlando and forwarding it to the Wellness Corporation and felt that Orlando was responsible for reimbursing the Wellness Center. Orlando

was instructed to reimburse the Wellness Corporation and once that was done, we told him he could submit expense reports the Local for expenses that were Union business. I have previously forwarded you copies of those expense forms that were each approved by our Executive Board. I never signed or mailed the letter.

Those expense reports, as well as a copy of the March 15 draft were reviewed by the Executive Board of Local 1403 on at least two occasions. The Board assigned responsibility for the Expenses to either the Local, the International (Union), the Wellness Center, or Orlando Pena. While that was happening, I made notations on my copy of the letter. Again, The letter was never sent and it was simply used as a tool, by me, to assign responsibility for each expense.

This draft memo was specifically utilized by COE Auditor Topley in her audit / analysis of the Amex accounts.

Finally, Ms. Topley's in depth analysis of the Center's Amex accounts from the date of their inception, June 2003, through January 2007 indicates personal charges attributed solely to Pena (neither Center charges nor Union related business) amount to a total of \$6,756.07.

On August 28, 2007 ASA Hardimon was briefed as to the results of the investigation. In attendance were COE Advocate Michael Murawski, COE Auditor Topley, COE Investigators Penichet and Rosario.

It was thus mutually agreed that FF Pena would be afforded an opportunity to discuss this matter via a "prior to" letter from ASA Hardimon. Said letter was forwarded to FF Pena to his known residential addresses via the U.S. Postal System.

On October 9, 2007, in response to the "prior to" letter a meeting was held at the Office of the State Attorney. In attendance were Orlando Pena, Attorney Mark Panunzio representing Pena, Assistant State Attorney Johnette Hardimon, COE Assistant Advocate Miriam Ramos and COE Investigator Kennedy Rosario.

As a result of this meeting Orlando Pena, with his counsel's guidance, and in lieu of possible criminal charges, agreed to submit to charges levied by the Miami-Dade



County Commission on Ethics & Public Trust encompassing his improper use of the Center's American Express credit cards.

It was also agreed that Pena would be debriefed on items material to the investigation, at a later date, by the COE.

On October 16, 2007 Pena and his attorney Panuncio met with COE Investigators Rosario and Penichet.

Pena was once again was shown the Hill draft memo and after carefully reviewing each line item agreed that the memo constituted / delineated his usage of the Wellness Center American Express credit card. It is noted that some of the line item charges as to Union or not Union related expenses were disputed by Pena, materially the Hill memo was accurate. Pena also admitted that he did in fact assist in its production through conversation with Hill.

Pena was also shown the Topley audit spreadsheet that effectively chronicled each credit card purchase / charge, thus arriving at a figure attributed to Pena's personal usage during the period Pena had material control of the credit card, in the amount of \$6,756.07.

This amount was reduced for the COE's three year jurisdictional period (September 15, 2004 through January 25, 2007) to \$5,317.07.

It is, however, concluded that either amount was included in Pena's \$17,726.49 reimbursement to the Wellness Center.

**CONCLUSION:**

It is clear, proven and admitted to that Miami-Dade County Firefighter Orlando Pena through his actions as it pertains to the personal usage of the Wellness Center American Express Credit Cards violated Miami-Dade County Conflict of Interest and Code of Ethics Ordinance specifically Exploitation of Official Position namely as Physical Fitness Coordinator of the Miami-Dade County Wellness Center.