



**Miami-Dade Commission on Ethics & Public Trust**

**Preliminary Inquiry Report**

**Investigator:** Robert Steinback

<b>Case No.:</b> PI 13-013	<b>Case Name:</b> Lopez-Cantera	<b><u>Date Open:</u></b>	<b><u>Date Closed:</u></b>
<b>Complainant(s):</b> Steven Schultz	<b>Subject(s):</b> Carlos Lopez-Cantera	July 11, 2013	1/23/14

**Allegation(s):**

Complainant Steven Schultz (Schultz) alleges that the subject, Carlos Lopez-Cantera (Lopez-Cantera), in his role as Miami-Dade County's elected Property Appraiser, clandestinely used his influence and political leverage to engineer the appointment of new members to the Value Adjustment Board (VAB) in an effort to gain greater influence over the board, which in practice is supposed to be fully independent of the Property Appraiser. Schultz was the attorney for the VAB<sup>1</sup>. In the process, complainant believes certain Board members may have violated the Sunshine Law by arranging in private to put his job as attorney to the Board, out to bid in a Request for Proposals (RFP)/Request for Qualifications (RFQ) process.

**Relevant Ordinances:**

Complainant alleges violation of Sec. 2-11.1 (g) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance: *Exploitation of official position prohibited*.  
"No person included in the terms defined in Subsections (b)(1) through (6) and (b)(13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners."

<sup>1</sup> Steven Schultz resigned Dec. 11 as VAB attorney due to poor health; no replacement, interim or permanent, has been named. The RFP/RFQ has not been presented yet.

Complainant also alleges violation of the Florida Government-in-the-Sunshine law, 286.011 (1):

“All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.”

## **Investigation:**

### ***Interviews***

**Steven Schultz**, Value Adjustment Board (VAB) attorney, July 31, 2013, 11 a.m., at COE offices.

#### **Summary of interview**

This investigator met with complainant Schultz at length on this day. Schultz’s complaint was forwarded to this office from the Miami-Dade County Office of the Inspector General (OIG).

Complainant described the normal function of the VAB, which is an independent, quasi-judicial body empaneled to resolve the cases of Miami-Dade County property owners who choose to challenge the annual taxable appraised values determined for their property by the Office of the Property Appraiser. The panel appoints magistrates to take testimony and make recommendations to the Board regarding assessed valuation, certain homestead exemption issues and other property-related matters. In practice, the Board routinely accepts the magistrates’ recommendations without further hearing, so that the magistrates’ recommendations effectively stand as final rulings. The magistrates’ hearings are essentially civil trials in which the property appraiser is the defendant and the property owner the plaintiff.

By state law, the VAB and the magistrates who work for it are mandated to operate free of any influence or control exercised by the property appraiser.

The VAB is a five-member board made up of two Miami-Dade County commissioners chosen by the Commission chairperson, one Miami-Dade School Board member chosen by the School Board chairperson, and two “citizen” board members, one chosen by the County Commission, the other by the School Board.

Schultz alleges that Lopez-Cantera, who was elected to the post of property appraiser in November 2012, and took office the following January, set in motion a series of events designed, in the view of the complainant, to enhance the property appraiser’s effective influence over the VAB and its magistrates. Specifically, Schultz believes that Lopez-Cantera, using pre-existing friendships with the chairpersons of the School Board and County Commission (respectively, Perla Tabares-Hantman and Rebeca Sosa), prevailed upon them to replace VAB existing appointees with new ones politically allied with Lopez-Cantera.

In his written complaint to the OIG, Schultz states that “Cantera contacted the newly appointed Chairperson of the County Commission (i.e. Rebecca [sic] Sosa) to change the membership of the VAB. As a result, Comm. Sosa removed the previous chairperson (i.e. Comm. Audrey Edmondson) and appointed Comm. Juan Zapata (Zapata) to take her place...Subsequently; Cantera contacted the School Board and obtained the removal of School Board member Dr. Dorothy Bendross-Mindingall as its primary designated VAB member. At the request of Cantera, Mr. Carlos Curbela (Curbela) was then appointed as his replacement.”

Schultz did not explain how he knew this had occurred, nor did he provide any evidence supporting his account of events.

The other members of the VAB are County Commission Lynda Bell (Bell), the new VAB chairwoman, and citizen appointees Anibal Duarte-Viera and Hani Jardack. Schultz said that Curbela and Zapata, along with Bell, gave Lopez-Cantera effective control of the VAB board.

Schultz believes that the changes allegedly engineered by Lopez-Cantera resulted in the VAB abruptly putting Schultz’s position as VAB attorney out to bid with no prior public discussion, and with almost no discussion on the day the proposal was introduced. Schultz believes this could only have occurred as it did if board members had discussed the matter privately in advance, thus violating the state’s Government in the Sunshine law. Again, Schultz offered no evidence beyond his suppositions that this had been the case.

At the regularly scheduled May 22, 2013, meeting of the VAB, Chairwoman Bell introduced a surprise resolution after the concluding business on the published agenda items calling for the Clerk of the Board to prepare an RFP or RFQ for the position of Board Attorney, a position held by Schultz for 36 years. [It should be noted that prior to 2008, the Property Appraiser position in Miami-Dade County was an appointed, not an elected, position, so key VAB officers typically held their positions without challenge.] Bell was attending and chairing her first VAB meeting. Curbelo, also attending his first meeting, seconded Bell’s motion, and it passed 4-0 by voice vote (Board member Hani Jardack was absent). The entire matter was disposed of in less than two minutes, passing without discussion except for Bell’s brief observation that Schultz’s position had not been advertised for “decades and decades.”

In his discussion with the COE investigator, Schultz insisted that an “adversarial relationship” had existed between Lopez-Cantera and the VAB staff “from day one.” Schultz said Lopez-Cantera made no effort to meet with VAB staff after taking office, and in a chance meeting, made the statement to them that “We’re going to put you guys out of business.”

Schultz speculated that Lopez-Cantera intended to disrupt a long-working process that allowed the Miami-Dade VAB to handle more than 75,000 citizen appeals for tax year 2012, and in past years, as many as 140,000 appeals in a single year. These numbers are far in excess of any other VAB in Florida; Broward County in 2012 handled about 5,500 appeals, Schultz said. The Miami-Dade VAB, in fact, handles more cases than the rest of the state VABs combined, Schultz said.

This efficiency was accomplished in part by a practice the special magistrates had developed over time of broadly summarizing the reasons for their assessed value findings in their written

final reports, rather than providing detailed explanations for each ruling as state law requires. Schultz suggested that practice rarely caused a problem, because the only time a detailed report would truly be needed would be if a particular property owner wanted to appeal a magistrate's ruling to the circuit court, which virtually never happens. Summarized reports allowed the magistrates to hear upward of 75 cases a day. But Lopez-Cantera, through a memo to Schultz on May 21, 2013 – the day before Bell introduced the resolution to put Schultz's job out for bid – insisted on requiring the magistrates to following the letter of the state law. This sharply increased the amount of paperwork each magistrate faced, and as a result, sharply reduced the number of cases each magistrate could handle.

Schultz said he believed that part of Lopez-Cantera's plan was to reduce the number of appeals overall, by enticing property owners to come directly to Lopez-Cantera's office in search of a pre-appeal settlement of their assessed value challenge. Schultz said as many as half the staffers in the Property Appraiser's office who had previously been assigned to handle appeals were reassigned to work on settlements. Schultz suggested that the changes were part of a larger scheme by Lopez-Cantera to gain more influence and leverage over the magistrates by making them feel less secure about their routine reappointment, thereby increasing their incentive to rule in favor of the property appraiser when property owners appealed. Among other effects, Schultz said the combination of alleged actions by Lopez-Cantera has caused the appeal process to back up, so that is now operating almost a year behind schedule. Schultz believes Lopez-Cantera will use the now-less efficient VAB process to argue for replacement of magistrates, which in turn might lead to the appointment of more Lopez-Cantera-friendly magistrates.

Schultz said his motive in filing the complaint was not so much to preserve his job, but “to protect the integrity of the process so that it is totally independent for the taxpayers.” He called the VAB process that had been developed prior to Lopez-Cantera's arrival the “best in the state,” one used as a model by the Florida Department of Revenue as it developed statewide VAB rules.

Schultz said that the agency that governs the operations of VABs across the state is the Florida Department of Revenue, particularly F.S. 194.015

County Commissioner **Lynda Bell**, chairperson of the VAB, October 9, 2013, by telephone around 3:45 p.m.

**Summary of interview**

Bell told the COE investigator that she decided on her own to bring up the RFP/RFQ for the VAB attorney's position. As she prepared for her first meeting as VAB chairperson, Bell said that after meeting with Lopez-Cantera, it was her understanding that Schultz had not been forthcoming with certain information Lopez-Cantera had requested. She then met with Schultz, and determined that he was "very critical" of Lopez-Cantera. "I could tell they weren't too pleased about each other."

After doing some research, she discovered that Schultz's position had not been put out to bid since he was hired 36 years ago.

Bell said it had always been her policy to favor the bidding process in such circumstances, and concluded that this should be done for the VAB attorney's position. She said she asked for a list of his itemized billings, and never received it. Bell said she did not discuss her decision with anyone, but merely felt that after 36 years without bid, it was time for the position to be advertised. Bell said she did have a brief conversation with Lopez-Cantera but that there was no discussion of replacing the VAB attorney. She said, "Our fiduciary responsibility is to spend the taxpayer's money wisely."

Bell said she told Schultz that her move wasn't "personal," and that he was welcome to apply for the position. She also said that the fact that Schultz would file a COE complaint at all "after 36 years makes me a little suspicious. When I take on something I feel a great deal of responsibility to be clear and open."

**Dr. Dorothy Bendross-Mindingall** (Bendross-Mindingall), Miami-Dade County School Board member, former member of the VAB, by telephone on Monday, July 29, 2013, at 3:20 p.m.

**Summary of interview**

The COE investigator spoke with Bendross-Mindingall by telephone. Asked if being removed as the VAB board representative was in accordance with her wishes, she said yes. Asked if she felt there were any behind-the-scenes machinations to engineer her removal from the board, or if she had any concerns to that effect regarding Lopez-Cantera, she said no.

***Document/Audio/Video Review:***

Schultz included with his complaint copies of the May 21, 2013, letter from Joseph Ruiz, General Counsel for the Miami-Dade Office of the Property Appraiser, conveying Lopez-Cantera's concerns about the summarized magistrate's findings. He also supplied sample copies of magistrates' rulings.

Schultz provided a copy of his memorandum to Michael Auch of the Miami-Dade Office of the Inspector General, outlining his complaint against Lopez-Cantera.

Schultz provided a copy of his 2012 memorandum to the VAB outlining the board's general powers, duties and procedures.

Subsequently, Schultz provided a copy of the transcript of the May 22, 2013, VAB meeting, during which Chairperson Bell introduced the resolution to issue an RFP/RFQ for the board attorney position.

Investigator secured a copy of Lopez-Cantera's Form 6 statement of financial interests for 2012.

***Analysis***

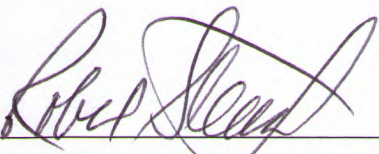
The complainant alleges a sequence of events lacking any hard or even circumstantial evidence based on events that could be explained in any number of alternate ways.

The mere fact that Schultz's perceptions about what Lopez-Cantera has done *could* be plausible doesn't provide a credible enough foundation to support a violation. Schultz's conclusions are speculative at best. Complainant offers no evidence beyond his own suspicions that Lopez-Cantera contacted the chairwomen of the Miami-Dade County Commission or the Miami-Dade School Board with the intent of provoking favorable changes in VAB representation. The chairwomen of both panels acted fully within their authority to make the reappointments they did. Replaced VAB member Bendross-Mindingall not only did not suspect any backroom dealings to engineer her dismissal, she said she actually welcomed the opportunity to leave the board.

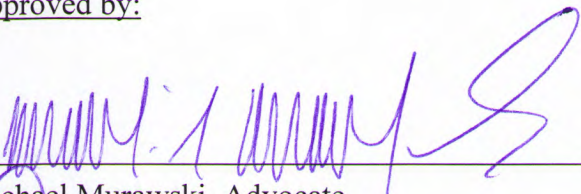
While Bell's sudden introduction of a resolution to put out to bid the VAB attorney's position was abruptly done – without posting to the day's agenda, for example – she violated no rules by doing so in that manner. She took full responsibility for making the decision to present the resolution, and offered reasons for having done so – the lack of such a process in 36 years – that are persuasive enough.

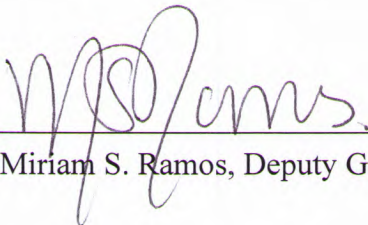
**Conclusion(s):**

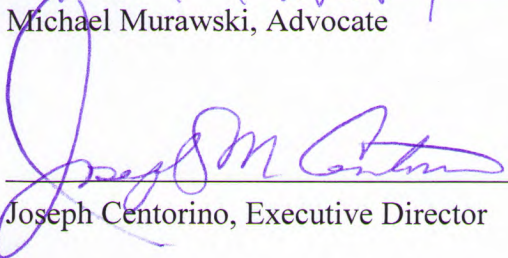
This matter should be closed with no further action. There's insufficient evidence that Lopez-Cantera exploited his official position in order to gain some nebulous advantage for himself. If anything, Lopez-Cantera appears to have been insisting that Shultz follow the letter of the law instead of the –what Shultz viewed as more efficient- practice of broadly summarizing the reasons for their assessed value findings in their written final reports, rather than providing detailed explanations for each ruling as state law requires.

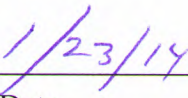
  
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Robert Steinback, COE Investigator

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Michael Murawski, Advocate

  
\_\_\_\_\_  
Miriam S. Ramos, Deputy General Counsel

  
\_\_\_\_\_  
Joseph Centorino, Executive Director

  
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Date