



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigators: Manuel W. Diaz, Breno Penichet

Case No: K14-049	Case Name: Atesiano, Biscayne Park	Date Open:	CASE CLOSED Date: <u>10/28/14</u>
	Subject(s): Raimundo Atesiano	5/6/14	

Allegation(s):

The Miami Herald reported that Village of Biscayne Park (the Village) Chief of Police, Raimundo Atesiano (Atesiano), entered into a written agreement (the contract) with Village Police Officer Tomas Harrison (Harrison). According to the contract, Harrison agreed to lend Atesiano \$2,000.00; Atesiano in-turn, agreed to repay Harrison at the rate of \$150.00 per pay period and two off-duty assignments a week plus 8 hours of overtime (OT) per pay period.

An investigation was opened to determine if Atesiano may have exploited his position as the Chief of Police, by using Village funds to repay a personal loan from Harrison.

Relevant Ordinances:

Miami Dade County Conflict of Interest and Code of Ethics Ordinance, Sec. 2-11.1

“(g) *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.”

Investigation:

Interviews

Lawrence Churchman (Churchman) – Captain, Biscayne Park Police Department

A formal statement was taken by Assistant State Attorney Johnette Hardiman. Present, representing Churchman, was Kristi Kassebaum, Esq., 11645 Biscayne Boulevard, Miami, Florida 33181. Present, representing the Village of Biscayne Park, was Jessie Scott (Scott), a Private Investigator, Atlantic Associates, 151 North Nob Hill Road, Suite 201, Plantation, Florida 33314 and this writer.

The focus of the State Attorney's investigation was to gather information concerning the possible theft of monies from the Village through a vehicle "hold and release" program. The information concerning the theft was brought to the Village Manager by members of the police department.

Churchman advised that, as the Police Captain, he acted as the department administrator and commanded the department's patrol section. He remained in charge until early 2014, when he was suspended by the Manager and replaced by Harrison.

He advised that Harrison was initially hired as a reserve police officer and later hired as a full time officer. Atesiano knew Harrison prior to hiring him.

Churchman advised that he considered Harrison a bad police officer and had opened several (three) internal investigations on Harrison. One had to do with recovered stolen property from a residential burglary that was discovered in Harrison's vehicle. As a result of his findings, he recommended that Harrison not pass probation. Atesiano disagreed and promoted Harrison to detective and assigned him to work as the Department's Community Relations Officer. According to Churchman, the assignments allowed Harrison to make additional overtime.

Churchman stated that when he was suspended, Harrison was appointed the acting chief by the Manager. As acting chief, Harrison had access to Churchman's office and the internal affairs investigations that he had conducted on Harrison. According to Churchman, Harrison's internal affairs investigation file disappeared after Harrison was made acting chief.

Harrison, according to Churchman, was always in need of money and would work all the overtime and off-duty that was available. At times, Harrison was unable to work his regular assignments because he was exhausted from the amount of off-duty he worked.

Harrison was eventually disciplined by Atesiano, who suspended him from working off duty for periods of time.

Churchman did not know of the contract until it was shown to him by Scott. Churchman believed that the contract was a joke. He said that Atesiano had a sense of humor and was

always fooling around. Churchman identified the handwriting on the contract as Atesiano's writing. He stated that he had no first-hand knowledge if Harrison ever loaned Atesiano any money.

Atesiano never directed Churchman to give Harrison any overtime or assign him any off-duty work. Churchman said that he did not recall approving any overtime for Harrison. He advised that Atesiano or Officer Dayoub, a senior officer, would approve Harrison's overtime. As the department's administrator, Churchman reviewed the overtime slips submitted by Harrison and would approve overtime before it was submitted to payroll for payment.

Churchman advised that Atesiano had money issues. He said that at times he would lend Atesiano between \$20.00 to \$50.00 dollars. Churchman said that Atesiano would always repay him.

According to Churchman, overtime was usually given to senior officers. It was unusual for probationary officers to get overtime.

Heidi Shafran (Shafran), Village of Biscayne Park City Manager; **Duncan Forrester** (Forrester), Chief of Police (Acting) Biscayne Park; and **Jessie Scott** (Scott), a private investigator hired by the Town to investigate the thefts of money within the Police Department.

All were advised that the COE had initiated an investigation to establish the validity of the contract mentioned in a recent *Miami Herald* article. (Copy in file). If the contract did exist and Atesiano utilized municipal funds to repay a loan to Harrison, Atesiano may have exploited his position.

Shafran advised that the Village would cooperate with the COE investigation.

She advised that apparent improprieties within the police department were brought to her attention by a Town Commissioner who received the information from members of the police department. The Commissioner advised her that one or more employees brought the allegation to his attention. She advised that, because of the nature of the allegations, she had contracted with Scott to conduct an internal investigation. Scott advised that he was working with ASA Hardiman. Neither Shafran nor Scott provided information concerning the internal investigation because it was part of an active criminal investigation.

Scott confirmed that his investigation has discovered the contract between Atesiano and Harrison. He noted that Harrison verified the contract, stated that Atesiano had paid him back \$150.00 of the \$2,000.00 he loaned him, and that Harrison was not interested in pursuing the matter.

Forrester was asked to provide the COE with copies of the police department's policies on overtime and outside employment. Shafran explained that the COE could make public records requests through the Village Clerk and she would provide what the department had.

Forrester stated that he had retired from another Florida police department and had only been with the Village since Atesiano resigned. He advised that he was having problems locating any policies on employment practices and other internal files.

Forrester advised that he was unable to find copies of the department policies dealing with overtime, and overtime assignments.

Shafran noted that as far as she knew overtime was usually given to senior employees first.

Scott noted that his investigation found that off-duty jobs were abundant, with reserve and full time officers securing jobs in North Miami and Miami Beach through Churchman. He explained that Churchman had assigned two officers to coordinate the off-duty assignments. Churchman and the two coordinators maintained off-duty records.

Forrester confirmed that he was not able to locate any records in his office. To his knowledge, the police department did not maintain any records for off-duty work.

In a later interview, Shafran confirmed that Harrison provided her with the contract between himself and Atesiano. She provided the contract to Scott who included it as part of his investigation.

Tomas Harrison (Harrison), Police Officer, Biscayne Park Police Department

Harrison was interviewed at the Village police department offices. Investigator Penichet was present during the interview.

Harrison explained that he has been employed by the Village since March of 2013. He was initially hired as a reserve officer, then a full time officer. Harrison had previously been employed by the Miami-Dade School Board Police for 11 years. Prior to that, he was employed by the City of Sunny Isles Beach Police Department.

Harrison confirmed that he loaned Atesiano \$2,000.00 in late July or early August of 2013. Atesiano did not tell him why he needed the loan. Harrison commented that Atesiano always needed money. Harrison does not know if Atesiano borrowed any money from any another employees. He stated that the loan was made from a reserve of cash that he maintained. He never told his wife that he loaned Atesiano the money. Other than the contract, there are no other records that substantiate the loan.

Harrison said that the loan was made voluntarily. Atesiano never applied any pressure on him to lend the money. There were no witnesses to the actual loan. Harrison advised that other employees knew of the loan.

Harrison stated that Atesiano wrote the contract referred to in the allegation. The contract was Atesiano's idea not Harrison's. The signing of the contract was witnessed by Officer Fernandez. Harrison said he considered the document as a "joke" and that it was not necessary. He expected Atesiano to repay the loan at a rate of \$150.00 per pay period with or without the contract. Harrison does not recall if Churchman was present when the contract was prepared.

Atesiano repaid Harrison \$150.00, in cash. Harrison said that he is still waiting for the rest.

Harrison referred to the notations in the contract referring to two off-duty jobs and 8 hours per pay period as a method of repayment as foolish because off-duty jobs were plentiful and he already had two permanent off-duty jobs. Harrison noted that Atesiano had no involvement in assigning off-duty jobs; off-duty jobs were controlled by Churchman. In addition, he already received overtime because of his departmental assignments: Detective and Community Services Officer. He noted that the Atesiano assigned him the extra assignments because of years of experience he had as a law enforcement officer.

Harrison confirmed that he gave a statement to Scott. Harrison advised that he could not comment on the criminal investigation. He did advise that the investigation was initiated after he and other officers went to a Village elected official and complained concerning Chapman's actions. The elected official took the complaints to Shafran who hired Scott to investigate. Harrison said that he provided the contract to Scott.

Raymond Atesiano, Former Chief Biscayne Park.

Atesiano appeared pursuant to a subpoena issued by the COE. He was represented by Richard Diaz, 3127 Ponce de Leon Blvd, Coral Gables, FL 33134. The interview was not sworn or recorded.

Atesiano was shown a copy of the contract. He identified the contract and identified the handwriting as his. Atesiano stated that he, Churchman, and Harrison were in the police trailer located outside the Village City Hall. He said the he wrote the contract as a joke either in late December 2013 or early January 2014. He did not recall topic of the discussion at the time.

Atesiano stated that he wrote the contract as a joke, "cop humor," and that there never was any loan between him and Harrison. As an example, he noted the terminology used in the contract and the obvious misspellings in the document. He said that Officer Raul Fernandez was not present. He printed in Fernandez' name on the document. The document was not dated, and he intentionally misspelled the word "Official." He never believed that Harrison would keep the original document.

Atesiano stated that Harrison was once a neighbor and he had previously worked with Harrison before hiring him. He explained that Harrison was always short of money. He said that he was always asking for overtime. Partially because of his friendship with Harrison, he appointed Harrison as a detective and as the Department's Community Relations Office. According to Atesiano, Harrison, was a convincing speaker. As a detective, Harrison had the ability to do follow-up investigations.

According to Atesiano, one of the reasons that his predecessor was terminated was because he drastically exceeded the department's overtime budget. Atesiano, when appointed, increased the number of reserve officers to help with reducing overtime. He also held overtime to blocks of 4 hours per officer per week. He succeeded in reducing individual officer overtime. The minimum that he would authorize was 4 hours for a call out from home.

According to Atesiano, he had authorized Churchman to initiate an internal investigation into the discovery of recovered stolen property receipts found in Harrison's assigned vehicle. He had also been forced to suspend Harrison from outside employment because he was not properly following up on his departmental work assignments by working too many off-duty assignments. Atesiano felt that Harrison took advantage of their friendship. He was thinking of extending his probation just prior to being suspended by Shafran.

Artesiano advised that on the day he was suspended, he was called into Shafran's office where she presented him with a copy of the contract, advised him the contract was poor judgment and suspended him; he later resigned. The same day, the City Manager met with and suspended Churchman and appointed Harrison the acting chief. His and Churchman's keys were confiscated by Shafran and their access to the police trailer was prohibited.

He thinks that Harrison gave Shafran the contract. He learned from Churchman that, after they were suspended, the files concerning Harrison's internal investigations disappeared from

the police trailer.

Raul Fernandez (Fernandez), Reserve Police Officer, Biscayne Park Police Department

Fernandez works full time for the Mexican Consulate, and lives outside of Mexico City. He periodically returns to the US to visit family. While in the US he serves as a Village Reserve Police Officer.

Fernandez was on duty in the Biscayne Park Police Office, when the loan between Atesiano and Harrison was discussed. At first he thought the conversation was a "joke." He was present when Atesiano drew up the contract. He is aware that Atesiano included his name as a witness. He advised that Atesiano signed his name (Fernandez) on the contract. Fernandez stated that he thought the idea of the Chief wanting to borrow money from Harrison, a subordinate, was foolish and he did not want to get involved.

He did not recall if other officers were present and overheard the conversation between Atesiano and Harrison.

He does not know if the loan was ever made. He told Harrison after that he should not loan money to Atesiano.

Documents Reviewed:

Payroll records for Village officers who were employed between June 30, 2013 and March 21, 2014 were reviewed. An analysis of the overtime earned by Harrison and the other officers, confirmed that he earned more overtime than other officers during the time. (Copy of analysis on CD in file)

Overtime - July 30, 2013- March 21, 2014.*

Officer	Paid Overtime /Hrs.	Compensation Overtime/Hrs.
Harrison	190	40.5
Wollschalger	165	24.5
Dayoub	114	25
Ravelo	98	21
Fernandez	74	14
De La Torre	26	26.5
Marchese	18	3
Valiazah	14	14
Pineda	7.5	0
Tarr	4	14

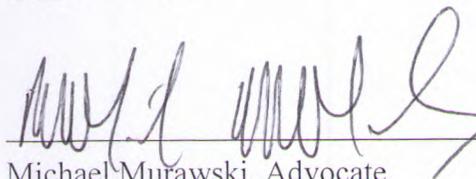
Conclusion:

After discussion with the Ethics Commission Advocate, it was determined that this matter would be closed with no further action. There is insufficient evidence to determine whether a loan between Atesiano and Harrison ever even existed; Atesiano denies that it did and Harrison has no evidence, other than his word, that a loan was made (i.e. a bank withdrawal slip). Moreover, Atesiano did not control the assignment of off-duty work which appeared to be abundantly available to Village officers. In closing, it should be noted that while borrowing money from a lower level employee is not, per se, an ethics violation, it's not a good idea as it can create an appearance of impropriety. In addition, drawing up a "joke" contract also demonstrates a lack of good judgment and should be discouraged.

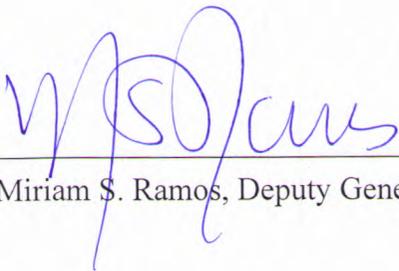


Manuel W. Diaz, COE Investigator

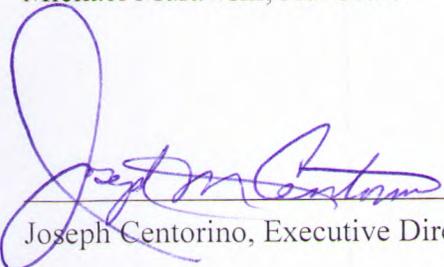
Approved by:



Michael Murawski, Advocate



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Date