



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Larry Lebowitz

Case No: K14-046	Case Name: Carlos Hernandez	Date Open:	CASE CLOSED
	<u>Subject(s):</u> Carlos Hernandez	4/20/2014	

Allegation(s):

Potential Citizens' Bill of Rights violations by the elected Mayor of Hialeah, Carlos Hernandez (Hernandez), for furnishing false information on his finances, which is a public matter (finances and sources of income are subject to annual financial disclosure requirements).

Hernandez claimed in 2011 press conference that he never received any interest income from two loans cumulatively worth \$180,000 that he made in 2007 to a businessman later convicted of spearheading a Ponzi scheme fraud. Placed under oath at a federal criminal trial in 2014, Hernandez, a retired 22-year veteran police officer, testified that he received more than \$100,000 in interest income from the convicted businessman which directly contradicted what he stated at the 2011 press conference.

See attached detailed supplemental report.

Applicable Law:

Section (A)(2) of the Citizens' Bill of Rights, Part I, Miami-Dade County Home Rule Charter states, in pertinent part:

"Truth in Government. No County or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public."

Investigation:

Interviews

The bulk of this investigation is based purely on public records, court transcripts and videotaped materials. A handful of interviews were conducted primarily to locate and authenticate the existing public record and videotaped materials. (See supplemental report for more detail regarding a brief September 2014 conversation with Hernandez at Hialeah City Hall)

Document/Audio/Video Review:

Attaching all of the items footnoted in the supplemental report.

Conclusion(s):

Referred to the Advocate for a filing decision. (See "ANALYSIS" section of supplemental report for additional details.)

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**Miami-Dade County
Commission on Ethics
and Public Trust**

MEMO

To: Miriam Soler-Ramos, Deputy General Counsel
Michael Murawski, Advocate
Joseph Centorino, Executive Director

From: Larry Lebowitz, Investigator

Re: Supplemental Report - #K14-46 Hernandez (COE Complaint #C13-036)

LEGAL

Section (A)(2) of the Citizens' Bill of Rights, Part I, Miami-Dade County Home Rule Charter states, in pertinent part:

"Truth in Government. No County or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public."¹

JURISDICTION

The Commission on Ethics & Public Trust (COE) has jurisdiction to enforce violations of the Citizens' Bill of Rights pursuant to Section (A) (17). Further, Section 2-1072(b) of the Miami-Dade County code states that "violations of the Citizens' Bill of Rights are subject to penalties set out in Section 2-11.1(cc)(1) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance."²

BACKGROUND AND FACTS

Between 2005 and 2011, Carlos Hernandez (Hernandez) was an elected official in the City of Hialeah. Like all elected officials, Hernandez was required to file a Statement of Financial Interests (Form 1), disclosing the sources of his primary and secondary income for each of those years. On or about March 1, 2007, Hernandez loaned \$100,000 to Luis Felipe "Felipito" Perez (Perez), of Lucky Star Diamonds Inc., as part of Hialeah's underground "shadow-banking" industry.

¹ Exhibit attached

² Exhibit attached

Perez deposited two checks from Hernandez to Lucky Star Diamond, each worth \$50,000: a personal check from a Hernandez account at Power 1 Credit Union, and a cashier's check from Total Bank, also to Lucky Star Diamond.³

Unlike many of the other persons who loaned Perez money --- including former Hialeah Mayor Julio Robaina and his wife, Raiza --- Hernandez did not receive a formal collateral agreement, contract or promissory note from Perez.⁴

Under the terms of their verbal loan agreement, Perez would pay Hernandez interest at a rate of 3-percent per-month, or 36-percent annually, on the original \$100,000 loan, in apparent violation of Florida statutes designed to prevent loan-sharking and usury.^{5 6}

On or about April 4, 2007, Hernandez deposited the first in a series of \$3,000 monthly interest payments from Perez on the \$100,000 loan. Check Number 1013 was written to Hernandez on a Lucky Star Diamonds Inc. business account at Mellon National Bank.⁷

Perez continued to pay Hernandez \$3,000 a month on this loan through May 2009, writing checks on Lucky Star Diamonds accounts at three different banks. By the time the June 2009 payment was returned due to insufficient funds, the Ponzi scheme had collapsed.⁸

Shortly after receiving interest payments on the initial \$100,000 loan Hernandez loaned Perez an additional \$80,000.

On or about July 23, 2007, Perez deposited two checks from Hernandez written to Lucky Star Diamonds: a \$60,000 check dated July 20, 2007, written on a personal account at Power 1 Credit Union, and a \$20,000 cashier's check dated July 23, 2007, from Total Bank.⁹

Under the terms of their verbal loan agreement, Perez would again pay Hernandez monthly interest at a rate of 3 percent, or 36 percent annually, on this \$80,000 loan. On or about August

³ Checks excerpted from composite Exhibit 90-a, *USA v. Julio Robaina and Raiza Villacis Robaina*, US District Court, Southern District of Florida, Case# 13-20346-CR-Ungaro.

⁴ References to promissory notes in federal court testimony, *USA v. Robaina and Robaina*, plus US Attorney's Office press releases relating to conviction and sentencing of Perez in criminal Case #s 10-20584-CR-Huck, 10-20411-CR-Huck and a related civil suit, *SEC vs. Luis Felipe Perez* (Case # 10-21804-CV-Martinez), which was dismissed after Perez was sentenced in the criminal case.

⁵ Under Florida Stat 687.071(2), lenders who charge between 25- and 45-percent annual interest are guilty of a second-degree misdemeanor, and under 687.071(3), lenders exceeding 45-percent annual interest are guilty of a third-degree felony. In many of these "shadow-banking" arrangements in the Perez Ponzi scheme, lenders were offered monthly payments between 2- and 10-percent, or 24-to-120-percent annually.

⁶ Under Florida Stat. 775.15, the statute of limitations for all second-degree misdemeanors is one year.

⁷ Check excerpted from composite Exhibit 90-b, *USA v. Robaina and Robaina*

⁸ In December 2010, Perez was sentenced to 10 years in prison on the securities-fraud case and a concurrent 5-year sentence on the bank-fraud case, and ordered to pay \$10 million in restitution. Even before he was charged, Perez was cooperating with authorities in hopes of eventually securing a reduced sentence

⁹ Checks excerpted from composite Exhibit 90-a, *USA v. Robaina and Robaina*. It is important to note that Hernandez wrote "Loan/Investment" in the memo line of the \$60,000 personal check he wrote to Lucky Star Diamonds on July 20, 2007.

23, 2007, Hernandez deposited the first in a series of \$2,400 monthly interest payments on this loan. Check Number 1733 was written to Hernandez on a personal account in the names of Luis F. Perez and Ruth Alonso at Mellon National Bank.¹⁰

With the exception of January 2008 when Perez missed a payment, Perez continued to pay Hernandez \$2,400-a-month on this \$80,000 loan through April 2009, using three different checking accounts at area banks. Hernandez unsuccessfully attempted on two occasions to deposit the May 2009 payment from a Lucky Star Diamonds Inc. account at Euro Bank; both times the check was returned due to insufficient funds.

Federal court records show that Hernandez cumulatively loaned Perez \$180,000 in 2007. The records show Hernandez received \$126,000 in interest payments between April 2007 and May 2009. In mid-2009 Perez stopped making payments to Hernandez altogether.^{11 12}

Hernandez was originally elected to the Hialeah City Council in 2005, was appointed City Council President by his colleagues in 2007, and re-elected to a second four-year council term in 2009. In May 2011, Hernandez was elevated to Interim Mayor when then-Hialeah Mayor Robaina resigned to run for mayor of Miami-Dade County.

During the fall of 2011, Hernandez was running to complete the two years remaining on Robaina's term.

As a candidate and then as an elected official, Hernandez was required to file Form 1s for 2005, 2006, 2007, 2008, 2009 and 2010. Hernandez attached his personal tax returns as is permitted under the Form 1 financial disclosure rules. Those forms failed to disclose the interest income Hernandez received from Perez/Lucky Star Diamonds on his Form 1s for 2007, 2008 and 2009. Records show Hernandez failed to disclose the \$39,000 he received in interest payments from Perez/Lucky Star Diamonds on his Form 1 for 2007; \$62,400 in 2008, and \$24,600 in 2009.¹³

On Oct. 12, 2011, in the middle of Hernandez's first campaign for mayor, the Miami Herald published an article accusing Hernandez of loaning funds to Perez at usurious rates and failing to report the interest-income payments on his federal tax returns.¹⁴

¹⁰ Checks excerpted from composite Exhibit 90-b, *USA v. Robaina and Robaina*.

¹¹ Complete copy of Exhibits 90-a, 90-b, 90-c and 90-d, *USA v. Robaina and Robaina*.

¹² Investigator analysis of payments/income generated from Perez to Hernandez 2007-2009

¹³ Had these facts been discovered earlier, Hernandez could have faced additional charges with the state Commission on Ethics, and possibly the Miami-Dade Commission on Ethics & Public Trust. But the statute of limitations has long since expired for failing to properly report his income in 2007, 2008 and 2009.

¹⁴ Laura Insensee and Jay Weaver, The Miami Herald, "Hialeah Mayor's Ties To Ponzi Schemer Follow Him On Campaign Trail"; online version published Oct. 12, 2011, print version Oct. 13, 2011.

The next day, Hernandez called a press conference at which he repeatedly attacked the newspaper stories. With several of his council colleagues standing behind him, Hernandez, speaking in Spanish and then English, repeatedly denied that he ever received any interest income from Perez and thus he had properly reported his income to the IRS and on his Form 1s. All of the payments, Hernandez said in Spanish and English, were made toward the outstanding principal.¹⁵

This investigator initially found copies of these back-to-back press conferences posted on YouTube by a person believed to be a Hernandez opponent using the name “Hialeah Today.” This investigator showed the YouTube videos to three reporters who attended the press conference – all three authenticated them as complete, accurate and unaltered. The Commission on Ethics & Public Trust subsequently served a subpoena on WJAN-Channel 41 to obtain a complete copy of the unedited Spanish version of the press conference.¹⁶

On several occasions, Hernandez says that he received only a portion of his principal - not interest - from Perez. Starting at 1:31: “I invested money with Mr. Luis Felipe Perez and never recovered my original investments; therefore there were never earnings to declare in my income tax.”¹⁷ In response to repeated questions from reporters, Hernandez said several times that he never recovered his “initial investment” so there was no interest income to declare with the IRS or on his state financial disclosure forms. In one exchange with a reporter, Hernandez stated that a \$2,500 check was “part of recovering my original investment.”¹⁸

Hernandez also repeated the same claims in the briefer, English version posted to YouTube.¹⁹ At 1:37 of the English press conference, during prepared opening remarks similar to the ones he had already given in Spanish, Hernandez said: “I invested money with Luis Felipe Perez and never recovered my original investments. So I never have profits to report on my tax statements.”²⁰

In response to a question whether he received any interest payments from Perez, at 3:10, Hernandez responds, haltingly: “He [Perez] was paying prin... He was paying only... My

¹⁵ Laura Insensee and Jay Weaver, The Miami Herald, “Hialeah Mayor: I Got No Interest On Loans To Ponzi Schemer”; online version published Oct. 13, 2011, print version Oct. 14, 2011.

¹⁶ Disc of Oct. 13, 2011 press conference, in Spanish, provided under subpoena, by WJAN-Channel 41.

¹⁷ Spanish press conference disc, translated and transcribed into English, Hernandez opening remarks, between 1:31 and 1:46.

¹⁸ Spanish press conference disc, translated and transcribed into English, exchange between Hernandez and reporter Erika Carillo, between 3:41 and 4:30. The checks in question from Perez to Hernandez were actually paying \$2,400 a month on the second, \$80,000 loan, not \$2,500.

¹⁹ Disc of Oct. 13, 2011, press conference, in English, originally found on YouTube at

<https://www.youtube.com/watch?v=igUo68twO-Q&list=UUyYKBF9ipqqidfywm6byw> under the headline “Carlos Hernandez invests in Ponzi and doesn't pay taxes – English.” The Spanish version of the press conference, burned to the same disc, was originally found at

https://www.youtube.com/watch?v=AncjE2U_9Q0&index=7&list=UUyYKBF9ipqqidfywm6byw under the headline “Carlos Hernandez Press Conference Oct. 11, 2011 – Spanish”

²⁰ English press conference transcript, Hernandez opening remarks, between 1:37 and 1:52.

agreement was principal. Always... A few times ... that I made investments in movies or anything like this, I'd get my principal back, for reasons like this.''²¹

On April 16, 2014, Hernandez was called as a prosecution witness during the federal tax-evasion trial of former Hialeah Mayor Robaina and his wife, Raiza.²² Hernandez, who testified without an immunity agreement, was essentially called to help the prosecution bolster testimony they had already received from Perez, who painted a picture of the underground "shadow-banking" industry that existed in Hialeah.

When placed under oath and threat of a perjury charge, Hernandez, a retired 22-year veteran police officer, told a different story than the one he told the press in October 2011 and at various campaign events that season. Responding to questions from veteran federal prosecutor Richard Gregorie, Hernandez admitted loaning Perez \$180,000 with the expectation of 3-percent monthly interest payments, or 36-percent annual returns, which would violate state loansharking statutes.²³ Hernandez also testified that he received more than \$100,000 in interest payments from Perez, but none of the principal when the Ponzi scheme collapsed in 2009.

Q: So he paid you over \$100,000 in interest up till that point?

A: Somewhere --- in that investment, somewhere in that area, sir, yes, sir.

Q: But you hadn't taken anything off the principal? You hadn't taken anything off the principal? He still owed you \$180,000?

A: I believe so. Yes, sir. I'm sorry.²⁴

On Sept. 3, 2014, this investigator was instructed to notify Hernandez, in person, as a courtesy before a formal complaint would be filed. This investigator met Hernandez in his office at Hialeah City Hall for approximately 10 minutes. The conversation was respectful and largely cordial. Hernandez respectfully declined repeated offers to voluntarily come in to the Commission offices to discuss the facts of the case in a pre-filing setting. A follow-up e-mail

²¹ English press conference transcript, exchange between Hernandez and reporter Michael Putney, between 3:08 and 3:30.

²² The Robainas, who loaned more than \$750,000 to Perez and were repaid at similarly illegal annual rates of 36 percent, were charged with hiding more than \$2 million in income to avoid paying taxes. They were eventually acquitted after a 6-week jury trial.

²³ Transcript of Hernandez federal court testimony in *USA v. Robaina and Robaina*, P.5, Lines 11-25

Q (by federal prosecutor Richard Gregorie): And did you loan him any money?

A (by Hernandez): The venture that he explained that he was, again, as a wholesaler, he was making like five percent on his sales on a monthly basis. He was looking for investors and he offered me three percent if I was interested in that venture.

Q: Three percent for what period of time?

A: Pretty much he said as long as I wanted to be there or whatever, but that was the deal and that if we wanted to get out or whatever any time, 'cause he -- that you can do it.

Q: But was it three percent a day, three percent a month?

A: I'm sorry. Three percent a month

Q: Okay. That would be 36 percent a year?

A: Yes, sir.

²⁴ Transcript of Hernandez federal court testimony in *USA v. Robaina and Robaina*, P.12, Lines 18-25

was sent to the Mayor's office the next day, re-iterating the offer. This investigator received a confirmation that the e-mail was read, but never received a formal response.

After briefly visiting the Mayor on Sept. 3, 2014, this investigator stopped at the City Clerk's office and asked to reconfirm that the original financial disclosure forms that had been on file for several years were still the "working" versions. City Clerk Marbelys Fatjo Rubio confirmed that Hernandez had not amended his financial disclosure forms for the years relevant to this investigation --- 2007, 2008 and 2009.

Several attempts were made throughout the second half of 2014 to reach Perez, through his attorneys, Joshua and Alvin Entin, after Perez testified in the Robaina trial. The Entins were told that the Commission was hoping to secure a sworn affidavit detailing the specifics of Perez's business arrangement with Hernandez on the two loans.

On Oct. 3, 2014, US District Judge Paul C. Huck granted the government's Motion to Reduce Perez's Sentence in recognition of his extensive cooperation in the Robaina trial and other related prosecutions. Perez's sentence was reduced from 10 years to 5 years. He was released from the Federal Detention Center in Miami on Dec. 10, 2014.

ANALYSIS

Hernandez is in violation of the Truth in Government section of the Citizens' Bill of Rights. "No County or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public."

- FACT: Hernandez is a municipal official today, he was a municipal official in 2007, 2008 and 2009 when the relevant transactions occurred, and he was a municipal official in October 2011 when he made the public statements at the heart of this investigation;
- FACT: When placed under oath in a federal courtroom, Hernandez changed his story, admitting, for the first time, that he had, in fact, received more than \$100,000 in interest -- and no principal -- from Perez.

It should further be noted that in the middle of his first campaign for Mayor, on Oct. 13, 2011, Hernandez called a press conference. In Spanish and English, he "*knowingly omitted significant facts when giving requested information*" about the true source and extent of his income between April 2007 and May 2009 -- and this *information was being requested by the press, who are members of the public.*