



Miami-Dade Commission on Ethics & Public Trust

Report of Investigation

Investigator: Sylvia Batista

Case: K14-061	Case Name:	<u>Date Opened:</u>	<u>Date Closed:</u>
Complainant(s): City Attorney, Jose Smith,	Subject(s): City of North Miami Beach Financial Staff.	07/10/14	CASE CLOSED

Date: 9/17/14
(corrected)

Allegation(s):

On July 10, 2014, the COE received a letter from North Miami Beach City Attorney Jose Smith ("Smith"). Smith requests that the COE conduct an investigation to determine whether there is any validity to allegations made by Mubarak Kazan ("Kazan"), an area activist, against the city's financial staff. Smith explained that by means of an e-mail dated 05/20/14, Kazan alleged that he was told by an unnamed source that the financial projections used by Kessler Consulting, Inc. (KCI) and the city in its presentation, "Solid Waste & Recycling Services Assessment – Operational Planning for the Future," were fabricated and cannot be verified. Pursuant to Kazan's e-mail, which was distributed throughout the city, the city paid KCI \$50,000 to do a sanitation study, and pays its own financial staff six-figure salaries for them to arrive at accurate figures in furtherance of the city's plan to privatize its solid waste and recycling services.

Smith's concern over leaving such serious allegations unanswered is that they could taint the planned solicitation process.

Relevant Law:

Miami-Dade County Citizens' Bill of Rights.

Investigation:

Document/Audio/Video Review:

07/16/14 - Review of the 07/01/14 city council meeting reflects that a motion for a resolution rejecting all bids submitted in response to an RFP for solid waste collection and recycling services passed 6-1. During discussion initiated by the Mayor, it was agreed upon by Councilmembers that they would each individually decide whether they were for or against privatization of the city's sanitation department before putting the issue out to bid again.

07/25/14 - Review figures on the following documents produced by Janette Smith, Finance Director –

- Solid Waste and Recycling operation presentation prepared by Kessler Consulting in November of 2012 (the "Presentation") – Kessler Consulting was awarded the RFP for the assessment of the City's Solid Waste and Recycling services.
- City's Sanitation Department current versus potential costs of services – Five Year Analysis as of 03/11/14 (the "Analysis").
- Sanitation Department's Container Amortization Schedule.

Review and comparison of the aforementioned documents reflect that the figures used in the Presentation were taken from figures in the 2014 Analysis prepared by City staff.

The table on page 11 of the Presentation entitled In House vs. Outsourced Net Cost of Service lists current and potential totals of revenues and expenses for the years 2014 to 2018. All totals used on page 11 of the Presentation are rounded-off figures identified on the Analysis.

The table on page 19 of the Presentation entitled 5 Year Financial Analysis Assumptions lists total revenues for five years of franchise fee, one year of accrued leave balance payouts, five years of unemployment compensation, one year of Miami-Dade County recycling container cancellation fee, proceeds from one time sale of assets, vehicle/equipment replacements, and contribution to the general fund. Likewise, the figures used on page 19 were also identified on the Analysis.

The financials reviewed in preparation of the Presentation were audited numbers.

04/19/12 – Memorandum from former City Manager Lyndon L. Bonner to Mayor and City Council submitting the evaluation committee's recommendation that the City Council authorize the City Manager, or his designee, to enter into negotiations with the top ranked firm with regards to RFP No. 2012-04.

Interviews/Contacts

07/18/14 – Janette Smith, CPA, Finance Director and Jose Smith, City Attorney –

City Attorney Jose Smith explained that Kazan is an area activist who for years has been making allegations about the process toward the privatization of the city's solid waste and recycling services. Kazan has not divulged his sources, but he claims that a source told him that the figures used in the assessments were fabricated.

Smith explained that the City has been trying to privatize their city sanitation and recycling services for some time, and Kazan has been at the forefront of the effort to stop the process. Kazan copied the COE and the SAO with his e-mail dated 5/20/14. For this reason, Smith said he felt that the allegations needed to be addressed in order to proceed with the RFP process.

Janette Smith said that she and the former Director of Public Utilities provided the first set of numbers. The first time she looked at the analysis, the forecast for 5 years of savings was \$3m per year. They proposed to retain a core group of 4 or 5 individuals to work in sanitation and other departments. The second set of numbers was provided by Barbara Trinkka, Director of Public Works, who used her additional knowledge to refine the original forecasted figures. Smith added that employees with a criminal record or those who do not pass a drug test will be terminated. The Sanitation Department has 35 positions, but some are not filled.

Smith explained that there are many other benefits to privatization aside from the \$3 million dollar savings. There is a \$4 million dollar enterprise fund that would go to the general fund to be used for projects. Also, there is less liability for the city if their sanitation and recycling services are privatized. The city could offer some other public benefit, as he has seen in the City of Miami Beach, as well as perks given to customers from private providers. The City of Miami Beach has privatized and it has been very beneficial. Smith stressed that the city would still be responsible for the vendor's actions.

Smith said that the city is going through a new solicitation process and needs to clear the cloud of doubt placed by Kazan. Janette Smith added that Kazan's allegations reflect a violation of a Citizens' Bill of Rights provision which states that an official could lose their office for giving misleading or false information.

Janette Smith explained that in their presentation they could not provide real numbers because in order to do the analysis the numbers had to be forecasted. The numbers were not pulled out of thin air. Assumptions used in the forecasts were applied consistently. They use a CPI of 3%, and COLA increases of 1.5% annually. The figures are estimates. This is how you do forecasting.

08/05/14 – Ana Garcia, City Manager of North Miami Beach –

Ana Garcia (Garcia) was aware of the reason for COE's inquiry. She explained that she is the third city manager that has recommended the privatization of sanitation and recycling services in the city. The process to privatize has been on-going for over two years and has

been assessed by two separate committees. Kazan believes that sanitation and recycling should be done in-house. City Finance staff has spent 2-1/2 years trying to appease Kazan and the others who always complain. Garcia said that a couple of weeks before the 05/20/14 council meeting where Kazan made the allegations, she and Councilwoman Kramer, Janette Smith, Esmond Scott (PW Director), and Barbra Trinko, Public Utilities Director, met with Kazan and basically gave him the VIP treatment discussing with him all of the relevant analyses related to the process, but he did not accept it as true.

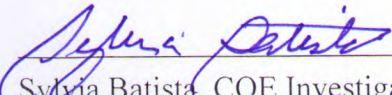
Garcia advised that they are putting the RFP out again. She explained that her intent was always to see that no one presently employed in the Sanitation Department is left without a job. Garcia explained that under her plan they would keep 11 employees as a sanitation crew and would save \$2m per year. Under former City Manager Bonner's plan they would have gotten rid of the entire department and saved \$3m a year.

Garcia said that the numbers reviewed and used in the analysis were audited numbers resulting from the annual city audit. Garcia advised that the numbers used were audited numbers from 2013. These numbers are more legitimate.

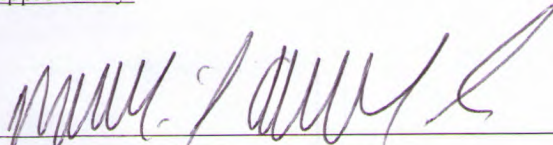
Garcia explained that when Kazan made his accusation, Mayor Vallejo suggested that we do an investigation and take action if they've done anything wrong.

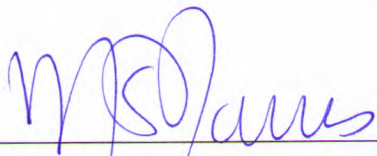
Conclusion(s):

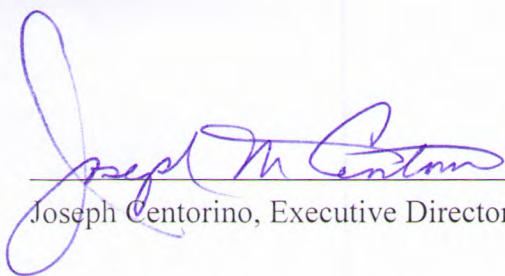
In view of the documentation and statements obtained in this investigation, it appears that the figures used in the presentation were not fabricated as was alleged, but were identified on the five year analysis and other analyses prepared by the City's financial staff. For that reason, no further action will be taken by the COE on this matter.


Sylvia Batista, COE Investigator

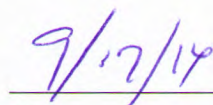
Approved by:


Michael Murawski, Advocate


Miriam S. Ramos, Deputy General Counsel



Joseph Centorino, Executive Director



Date