



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Robert Steinback

Case No: PI 14-051	Case Name: Isaac Aelion	Date Open:	
Complainant(s): Magaly Gordo	Subject(s): Isaac Aelion	October 9, 2014	CASE CLOSED

Allegation(s):

7/26/2015

Complainant Magaly Gordo (Gordo) alleges that subject Isaac Aelion (~~Aelion~~) exploited his position as a commissioner in Sunny Isles Beach (SIB). Aelion serves as board president of Sands Pointe Condominium (Sands Pointe), the building he lives in. In his capacity as board president, he engaged in negotiations with Fortune International Group (Fortune), developers of the Jade Signature condominium now under construction on property just north of Sands Pointe. Gordo alleges that Aelion failed to disclose the nature of his ex-parte discussions with Fortune representatives when the project came before the SIB Commission, which she claims is required by SIB ordinance. Gordo also alleges that Aelion, as condominium president, did not disclose to his Board members or other residents that he was involved in negotiations with Fortune.

Relevant Ordinances:

Complainant alleges a violation of Miami-Dade Conflict of Interest and Code of Ethics Ordinance 2-11.1 (g): Exploitation of official position prohibited. *No person [covered by this section] 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.*

Complainant also alleges a violation of the Sunny Isles Beach Code of Ordinances Section 67-4 D (1)(a): *The subject and substance of any ex parte communication with a local public official representing the City of Sunny Isles Beach which relates to quasi-judicial action pending before the official, as well as the identity of the person, group or entity with whom the communication took place, is disclosed and made a part of the record before final action is taken on the matter.*

Investigation:

Interviews

Magaly (Maggie) Gordo, October 29, 2014, 2:30 p.m., by telephone.

Gordo is a condominium owner at Sands Pointe. During the times relevant to this investigation, Gordo took over as president of the Sands Pointe Condominium Association Board, replacing Aelion, who remained on the board. Also during times relevant to this investigation, Gordo was “deposed” as president, though she remained on the board.

Summary of Interview

In her first conversation with the investigator, Gordo said, “I was president at the time. Aelion lied to me, saying he hadn’t agreed on anything with the developer.”

Gordo said she believed SIB charter allows ex-parte communications under specific conditions. She said the charter requires that the nature of any ex-parte communications must be disclosed. She said that while Aelion did acknowledge ex-parte communications with Fortune representatives before the January 8, 2013, site plan review hearing, he did not publicly provide any details regarding the content of the communication.

Gordo said Aelion was condo board president before December 19, 2012, and met unilaterally with the developer and got various abatements and concessions that his own association knew nothing about. She obtained a copy of a letter to Aelion dated December 18, 2012, explaining all that was agreed to.

This caused a problem with the SIB commission which was hearing complaints from Sands Pointe residents even though the attorney for the developer claimed to have met with the condo – Gordo says all he (the developer’s attorney) really did was meet with Aelion.

Gordo understands that COE has no jurisdiction over Aelion’s actions as a condominium board member or president.

Gordo also said that she felt Aelion had misled the full SIB Commission by representing that the developer had met with the condo board and/or condo residents, when in fact he alone had met with the developer.

Investigator meeting with **Gordo**, November 7, 2014, at Sands Pointe Condominium, 16711 Collins Ave., UPH 8, 4 p.m.

Summary of Interview

Gordo said that her first complaint was that Aelion never disclosed the nature of his ex-parte discussions with Fortune, although he did acknowledge at the January 8, 2013, site plan review meeting that they had occurred. She stated that the SIB code requires that anyone declaring such ex-parte communications file a notice (or otherwise disclose) the nature of the ex-parte communications. This investigator, as I had on the telephone earlier, reiterated that I could not find in the SIB code where that requirement was enshrined, and again asked Gordo,

if she knew where in the code this requirement lay, to please forward a reference to it to me.

Gordo expressed concern about what she described as the lack of underground setbacks (there is a setback at ground level), particularly regarding the parking garage, which will extend 2-1/2 levels below ground.

She also expressed concerns about the retaining wall currently existing on the Sands Pointe side of the property line. Gordo said it was “still not clear what they are doing with the retaining wall on the property line.” Gordo took credit for stopping Fortune’s plans to build their own wall.

Gordo said that the “agreement between Isaac and the developer is to remove the wall in exchange for \$25,000, and they would build for us the separate [wall].”

Gordo, summarizing, said there were two issues as she saw the situation. One was that on January 8, 2013, SIB approved the site plan (she says Isaac bankrupted the condominium association at Sands Pointe.) She said Mr. Schulman, the developer’s attorney, says in the video of the site plan approval meeting that they [the developer] approached the association. But Gordo said the developer spoke only with Aelion, “so the perception was that the other four [SIB commissioners] thought there was enough time for the residents to consider” the project.

Gordo said that Aelion violated ethics for not entering the mitigation letter from Fortune into the record, and that he did not clarify the nature of his ex-parte communications, and that he then voted on the site plan. Gordo promised to send the SIB code citation referring to filing details of ex-parte communications, and also a copy of a judge’s ruling.

Gordo acknowledged that she engineered a “takeover” of the Sands Pointe board by four new commissioners, with Aelion remaining on as the fifth. But according to Gordo, two of those four new commissioners ended up siding with Aelion. She said Aelion and these two newly realigned commissioners “reorganized” the board without telling her. Gordo said the reorganization “demoted” her to the fifth and least consequential board member position. Gordo said this new board voted for a new assessment “to cover the Aelion corruption.” [This apparently referred to financial mismanagement claims she alleges against Aelion during his time as condominium board president. Our discussion did not cover these allegations.] Then Gordo said her sole ally on the board, the vice president, resigned, and the three-member majority selected a fourth member. Gordo said this newly arranged board “reaffirmed” the first agreement between the developer and Aelion, and also added the retaining wall issue.

Gordo claims SIB hasn’t released plans for the proposed new retaining wall.

Gordo later referred to what she believes as violations of SIB’s noise ordinance, which normally only allows for after-hours excessive noise in emergency situations, but which in fact have been routine. Gordo claimed the noise ordinance requires SIB to issue a written ruling on an emergency need to exceed after hours limits, but added that SIB Attorney (Hans Ottinot) claimed that the city didn’t need to provide written authorization. [This investigation will not address alleged noise ordinance violations.]

Ron Choron (Choron), vice president of construction for Fortune International Group, and **Clifford A. Schulman**, attorney representing Fortune International, on Thursday, November 13, 2014, at 4 p.m., at the offices of Jade Signature, 17070 Collins Ave, Suite 267, Sunny Isles Beach.

It is in the plaza across from the development itself. Fortune is the developer of the Jade Signature high-rise condominium development, immediately north of the Sands Pointe condominium. Schulman is a partner with the law firm of Weiss, Serota Helfman Pastoriza Cole & Boniske P.I.

Schulman joined a conversation with Choron that had been in progress about five minutes.

Summary of interview

Choron started by addressing his approach to mollifying residents who live adjacent to very disruptive high-rise developments. He said, "I want to be proactive to keep the neighbors calm. It's a disruptive process to build a high-rise condominium." Meeting with neighbors is a process the city of Sunny Isles Beach "recommends," but it is not law, Choron said.

Choron described the people of Sands Pointe, the development to the south of the proposed new construction site, as "very difficult" to deal with. Choron felt the residents there wanted to "take advantage" of the situation, and not simply be assured of no detrimental effects.

Schulman arrived. He pointed out that Aelion actually voted against the development's site plan, but recognized that this was merely a political move for Aelion to claim he was fighting for the people. [Schulman later by e-mail corrected this statement, stating that Aelion had, in fact, voted in favor of the site plan approval, but had cast a "no" vote in a subsequent matter.] In fact, Schulman said, the planned development is what he called a "no variance project," meaning it conformed with all site-plan requirements from its inception, and thus the city commission, sitting as a quasi-judicial body, had no choice but to accept the site plan.

Schulman said with Aelion still serving as Sands Pointe board president, the Fortune people held numerous meetings with "20 to 25 people at a time," referring to Sands Pointe residents. Schulman said that when Gordo and a new board took over at Sands Pointe, "the new board didn't want to meet with us alone." [Schulman later forwarded to the investigator a timeline of meetings held, and affirmed that Fortune had held only one meeting with Sands Pointe residents.]

Schulman said, "They wanted things like [our] building a new swimming pool" because dust from the construction site might damage the existing one. "We made reasonable accommodations to them to try to reach consensus...we tried to show the commissioners that we made reasonable concessions."

Schulman and Choron said they had made similar offers to residents of the development to the north, Jade Beach, but without the same degree of difficulty as when dealing with Sands Pointe.

The concessions included a photo survey to document any adverse impact of construction on

the Sands Pointe property; the installation of vibration monitoring devices, even though Fortune had also agreed to use auger piling (driving piles with a screw-type device) rather than pile driving (pounding the piles into the ground by repeated impact). Auger piling is more expensive for the developer but produces far less vibration, Choron said.

Although these concessions were made to both Sands Pointe and Jade Beach, Choron observed upon looking through his file that neither development actually signed the agreement.

Schulman said that the company opposed attorney Ron Book's (Book) request for a deferment on behalf of Sands Pointe residents. [Book was hired by the Sands Point residents just hours before the hearing]. Schulman "proffered this [agreement] into the [commission meeting] record."

Choron said that when Fortune was dealing with Aelion and one-time board member Jane Soybelman (Soybelman), negotiations went smoothly, and the developer did not feel as if they were being extorted or taken advantage of. They "were very professional and respectful," Choron said. "The next board was trying to make my life miserable." He accused Gordo of "having a split personality."

Schulman said the developer held "6 to 7 meetings with their group." Choron said, "Gordo would not meet with us." [The timeline provided later identified one cancelled attempt to arrange a meeting, and one successful meeting.]

Choron said, "I can't say anything negative about Isaac. He did nothing wrong. He tried to represent the building to the best of his ability." He also noted that Aelion has some background in engineering and "is intelligent," and asked intelligent questions about the project.

Choron also spoke favorably of Soybelman, whom he described as the other Sands Pointe board member who worked alongside Aelion during negotiations.

Regarding the retaining wall issue. Choron said that the existing wall on the property of Sands Pointe was old and in disrepair. His project called for a retaining wall on their side of the property line, which would be right next to the existing Sands Pointe wall, so he offered to Sands Pointe to tear down their wall and build a single, stronger and more attractive wall to serve both properties. "I offered to tear it down, put a new wall up and re-landscape it. They will not get back to me. ... They won't even meet with us."

Schulman said even though they keep threatening lawsuits, the Sands Pointe people have no legal footing at all. "They had 30 days to appeal the zoning ruling. After 30 days, there are no options. They are S.O.L."

Schulman said that after many years of representing Fortune in land development deals, including some in SIB, he has never dealt with a more difficult neighboring property, nor has his client ever offered as much mitigation as Fortune has offered to Sands Pointe.

Isaac Aelion, SIB Vice Mayor, and **Hans Ottinot**, SIB City Attorney, on Monday, December 01, 2014, 11:40 p.m., at City Commissioners' offices at SIB.

Summary of Interview

Ottinot said that in general, with zoning issues, the law requires disclosure of the conversation, with whom it was held and the nature of the information discussed. He said only the broadest references are necessary. "Specific details of the conversation are not required. ... It does not take a rocket scientist to know that if ex parte communication occurs, it relates to the [zoning] application."

Ottinot said he instructs commission members to disclose ex-parte communications, and the parties involved in the communication. He described disclosure as a due process issue, allowing contesting parties to object or question the discloser about the communication. Ottinot said, "There is no requirement that they give exact details."

Ottinot referred to the *Jennings* case, Third District Court of Appeal 589 Southern 2nd 1337, which ruled that ex-parte communication were detrimental and anathema to a quasi-judicial proceeding. Ottinot said that the state legislature subsequently mitigated *Jennings* with a law saying that if a city allows ex-parte communication, it need only be disclosed. (Ottinot cited SIB ordinance 67-4 (b) as SIB's policy allowing such ex parte communication.)

Ottinot said that the "subject and substance" requirement of the ex-parte communication is met because it is obvious that the subject is the developer and that the substance is the developer's site plan application, and that further details need not be volunteered at disclosure. Ottinot said disclosure allows any contesting party to question or cross-examine the commissioner involved to determine more about the nature of the ex-parte communication if desired. Ottinot also noted that the complainant and her faction were represented by two attorneys at the site plan approval hearing, one of whom is experienced lobbyist and attorney Book, so that there was not only the opportunity but sufficient legal expertise present to have challenged Aelion's disclosure.

Ottinot said, "A general statement is sufficient to meet the requirements of the law." He said further, of the opponents, "They had every opportunity to inquire further about the ex-parte communications."

Aelion added that during his four years on the Commission, virtually every meeting he has ever had with developers have been about site plans and the related details, implying that the content of such communications should be obvious to all.

Aelion stated that while he voted in favor of the site plan application in January 2013, the developer later came to the commission for a site plan modification. In that instance, Aelion voted against approval, although the Commission voted 4-1 to approve the modification.

Ottinot also took indirect responsibility if any part of Aelion's disclosure proves to be insufficient. "I am the one who is responsible for make sure disclosure was made. If there was any oversight, it's my responsibility."

Aelion stated that he believes the complaining parties at Sands Pointe “heard what happened with Ocean Four.” They got a settlement, and figured, if it happened for them, [maybe it can happen for us]. Aelion explained further that Ocean Four had sued a developer, and that the developer later sold the property to a new developer who, in the interest of expediency, offered a settlement to Ocean Four rather than continue to litigate the lawsuit.

Asked about the matter of the retaining wall, Aelion stated that his condominium’s existing wall, built with the condominium in 1995 (or 96) was now deteriorating, and the developer of Jade Signature had offered to tear it down and build a new, more attractive common wall between the properties. Aelion said that a crane accident that caused some damage to Sands Pointe ruined any hope of accord between Sands Pointe and Jade Signature, and the dividing wall remains an unresolved matter.

Document/Audio/Video Review:

Received from Gordo:

- A copy of the January 8, 2013, SIB City Commission Zoning hearing agenda.
- A copy of a December 18, 2012 letter from Schulman to Aelion outlining proposed mitigation measures offered by Fortune to Sands Pointe.
- An October 8, 2014, letter to COE itemizing Gordo’s ethics complaint against Aelion. In this memo, Gordo states that she did not become aware of the above-cited December 18 letter until October 2013.

Received from Choron and Schulman:

- A copy of a January 7, 2013, letter from Schulman to Gordo outlining a revised set of proposed mitigation measures offered by Fortune to Sands Pointe.
- A timeline of meetings held or scheduled with Sands Pointe residents or representatives between November 26, 2012, and January 8, 2013.
- Copies of SIB resolutions 13-Z-136 (Approval of site plan application) and 14-Z-139 (Approval of site plan modification) for Jade Signature development.
- Certain e-mail threads between representatives of Fortune and Sands Pointe.

Received from Ottinot:

- Summary minutes from the January 8, 2013, special meeting of the City Commission to consider site plan approval for the Jade Signature development.

Analysis

Gordo’s complaint against Aelion are centered on his dual roles as president (and later, board member) of the Sands Pointe Condominium Board of Directors and as a sitting commissioner (vice chairman) of the SIB City Commission.

The portions of Gordo’s complaint related to Aelion’s alleged failure to communicate with the

full Sands Pointe board, or the community's residents, fall outside the jurisdiction of the COE and will not be addressed herein.

Gordo alleges that while Aelion did, at the SIB January 8, 2013, site plan review meeting, acknowledge ex-parte communications between himself and representatives of Fortune, he did not disclose the substance of that communication as required by SIB law. The investigator viewed a video recording of the meeting posted at the SIB website, and was able to confirm that Aelion did disclose ex parte communications with Fortune, but said nothing further in open meeting about the content of those discussions. However, this portion of the SIB Code, section 67, is not included in the ethics portion of the SIB Code, and so also falls outside of the jurisdiction of the COE.

Gordo states in her original written complaint that she was not aware of the December 18, 2012, letter from Schulman to Aelion until October 2013. But Gordo herself received a revised version of the letter just three weeks later, dated January 7, 2013. It is possible she never knew of the earlier discussions between Aelion and Fortune representatives, but even if that is the case, there is no basis for suspecting subterfuge or intrigue; it could simply have been because Gordo wasn't on the Sands Pointe board at the time.

Gordo writes in her original complaint that "[I]t is also my concern that a Commissioner meeting with a Developer in his capacity as President of an Association represents an inherent conflict of interest that jeopardizes both the rights of the Association and the integrity of the City's procedures." The investigator has determined that there is no portion of the Conflict of Interest and Code of Ordinances that prohibits a City Commissioner from hearing a zoning application case before that Commission if he simultaneously negotiates with that developer on behalf of his condominium association, as long as there is no explicit or implied quid pro quo that exchanges any special consideration for that Commissioner's vote, and as long as the existence of ex parte communications is disclosed.

The complainant has provided no evidence, nor has the investigator uncovered any evidence, that subject Aelion used or attempted to use his status as a City Commissioner to extract unusually favorable mitigations from developer Fortune during his negotiations on behalf of the Sands Pointe condominium. Indeed, it is the explicit view of Choron, the Fortune vice president involved in the negotiations, that Aelion, if anything, was more reasonable and amenable to agreement than was the condominium board when it was headed by Gordo. Gordo's board extracted even more generous terms of mitigation from the developer than did Aelion.

City Attorney Ottinot advises that he directed City Commission members at the January 8, 2013, site plan approval meeting to disclose ex-parte communications, and was satisfied that Aelion did so in adequate compliance with the SIB code.

The investigator reviewed the video of the January 8, 2013, site plan approval meeting of the SIB City Commission. At the approximate time stamp of 35:40, the following exchange takes place:

Ottinot: *Any ex parte communication before the public hearing?*

Commissioner George "Bud" Scholl: *I had conversations with Jennifer Altman of Boies, Schiller & Flexner. She's representing one of the neighbors, I'm not sure if it's Ocean [sic] or Sands Pointe.*

Aelion: *I also met once with the developer and the attorney for the developer and discussed the project and the impact on the adjacent properties.*

The excerpt confirms Ottinot's account that Aelion declared the ex-parte communication and described generally the topic of those discussions.

The investigator also notes that immediately after the above exchange, Schulman entered into the record the letters the mitigation agreement letters the he sent to Gordo and John Kearny, president of Jade Beach Condominium Association. The mitigation letter sent to Gordo is varies only slightly from the one the developer previous addressed and sent to Aelion, the letter Gordo complains was agreed to in some furtive manner beyond the awareness of other Sands Pointe condominium owners.

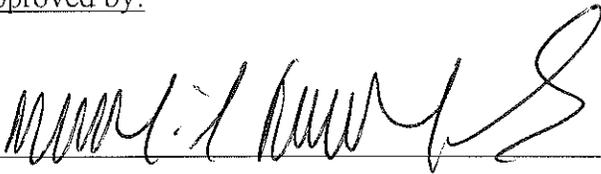
Conclusion(s):

After consultation with the Ethics Commission's Advocate, it was determined that there were no facts uncovered that support an ethics complaint against Aelion and this matter should be closed.

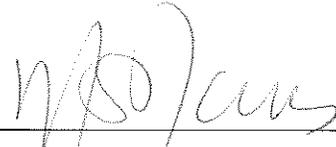


Robert Steinback, COE Investigator

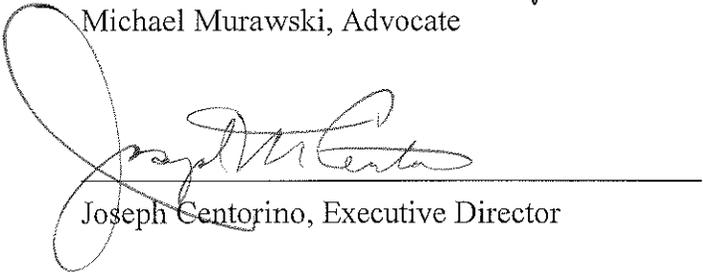
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2/26/15

Date