



Miami-Dade Commission on Ethics & Public Trust
Report of Inquiry

Investigator: Sylvia Batista

Case: PI15-053	Case Name:	<u>Date Opened:</u>	CASE CLOSED Date: 1/25/2016
Complainant: Noel Chavez, City of Miami, Finance Dept.	Subject(s): City of Miami, Members of the Management Staff.	12/02/15	

Allegation(s):

On or about October 23, 2015, the COE received information from Noel Chavez (Chavez), Supervisor, Business Tax Receipt Section of the City of Miami Finance Department. Chavez informed that the City requires yearly renewals of Certificates of Use (CU) of any entity conducting business activity in a commercial location. Chavez informed that the CU is comprised of three component charges billed to the business entity: Zoning, Fire Safety Inspection, and Supplemental Waste Fee. The Supplemental Waste Fee is the subject of Chavez' information.

Chavez informed that the fee for the Supplemental Waste Fee (SX01) for the renewal billing that covered FY '13 was removed for one type of business—rental apartment buildings. Chavez said that he was told that the reason the fee was not billed for that fiscal year was because the then CFO of the City, Janice Larned (Larned), pushed for its removal along with the City Manager at the time, Johnny Martinez. Written instructions were provided to the Accounts Receivable Supervisor and the billing was adjusted accordingly. The amount of the lost revenue to the City for not collecting the SX01 fees for that fiscal year was \$464,695.20.

Chavez informed the new City Treasurer, Armando Blanco (Blanco), of the reduction in CU fees collected for FY '13, and inquired as to how or when the SX01 fee that did not get billed would be billed. Blanco subsequently met with the new City CFO, Fernando Casamayor (Casamayor), who advised that they had to bill pursuant to City Code which means that they must bill for everything that they can bill for. Thus, in the billing for FY'14 the SX01 fee was again collected. However, the SX01 fee for FY'13 still has not been billed.

Chavez asked Blanco about the uncollected SX01 fee, but was not given a reply. At the point when it had been three (3) renewal periods since the incident, nothing had been done to correct the wrong, and there was no record in the City Attorney's Office reflecting a request for a legal opinion on the matter. Of note is the fact that the SX01 fee was not billed in FY2013, a year in which the City claimed it was under a "financial emergency."

The COE initiated an inquiry to determine why the billing of the SX01 fee for FY2013 was withheld, and why subsequently nothing was done to correct the City's action.

Relevant Law:

Sec. 2-11.1, Conflict of Interest and Code of Ethics Ordinance, (g) Prohibition on Exploitation of Official Position.

Investigation:

Records Review:

12/05/12 – E-mail from Edith McCray (McCray), Administrative Assistant in the City Manager's Office to Demetrio Constantiny (Constantiny) stating that, on behalf of Larned, and with the approval of the City Manager, he is authorized to set the rate to "0" for CU for Solid Waste designation (SX01). Any future billing at this rate will require a legal opinion, research and approval of the City Manager. Constantiny is the Finance Accounting Supervisor – Accounts Receivable.

12/05/12 - E-mail from Constantiny to Larned advising that, as per her request, the SX01 rate is now "0" for the FY'13 CU renewal billing.

06/12/14 – E-mail from Constantiny to Blanco and Chavez producing the e-mails requesting not to bill rate SX01, and advising that the revenue lost based on FY'12 numbers are close to \$500K. Report reflecting the lost revenue is attached.

06/12/14 – E-mail from Blanco to Director Jose Fernandez (Fernandez) advising of the decision made by Larned last year that CUs would not charge the SX01 fee for apartments, and noted that in MiamiBiz, ITD is billing for the fee again this year. Blanco points to the 12/05/12 e-mail from McCray where she states that any future billing at this rate will require a legal opinion, research and an approval by the City Manager. Blanco notes that it appears that Assistant City Attorney Robin Jones Jackson (Jackson) had been researching the issue, and asks whether a legal opinion had been rendered, or if the City Manager had approved the change. If not, should the rate be set to 0 for CU for SX01 as was done last year?

06/12/14 – E-mail from Blanco to several persons including Fernandez, Constantiny,

Casamayor, and Chavez advising that Fernandez spoke to Casamayor concerning SX01 and Casamayor told Fernandez, who told Blanco that for FY'14 renewal billing the City should bill for everything that the code allows.

06/18/15 – E-mail from Chavez to Blanco and Constantiny regarding the discrepancy between what was collected in SX01 fees for FY'13 and for FY'14. Constantiny found that the reason for the large discrepancy was because the SX01 fee was not billed in FY'13. The reason given at the time was that the owners of Multi-Unit Apartment Buildings had complained that since the condominiums were not being billed, neither should they. They were all advised that it was so ordered until a legal opinion is provided. Chavez said that this is why he asked Constantiny about it this year—because the issue had “stuck with him.” Chavez said that he found that the fee in question was billed for FY'14 and FY'15, but asks why no payment was required for FY'13. Wants to know what happened.

06/19/15 – E-mail from Blanco to Chavez, cc: Constantiny, Fernandez and Finance Manager, Emil Lopez (Lopez). Advises that as long as he has been Treasurer and Fernandez the Director, the fee has been charged. Points to a communication from last year that the CFO approved to have these fees billed. The e-mail received for the year that the fee was not billed includes the City Manager, CFO and attorneys from that time period. He (Blanco) is not aware of why the fee was not billed. They will reach out to the City Attorney's Office for clarification.

06/19/15 – E-mail from Chavez to Blanco thanking him for addressing the issue.

06/19/15 - E-mail from Blanco to Chavez, cc: Casamayor, Fernandez, Lopez and Constantiny. Advises Chavez that he found out about the discrepancy because he was included in a meeting with ITD last year. The City Manager, CFO, Solid Waste Director, City Attorneys, and ITD during that time were included in the decision not to bill the SX01 fee in FY'13. Constantiny was the one who made the change in the system based on their direction. Casamayor and Fernandez were made aware of it last year. Blanco advised that Chavez' concern will be communicated to them and to the City Attorney's Office.

01/08/16 – Legal opinion from Dooley to Blanco regarding the CU fee billing of the SX01 fee. Dooley opined that there is no language in the City Code that specifically prohibits either the City Manager or the CFO from setting the rate as was done herein.

Interview(s):

12/05/15 – Armando Blanco, City Treasurer, and Emil Lopez, Finance Manager, Department of Finance -

Blanco was contacted and arranged to meet with this investigator. Present at the meeting was Blanco and Emil Lopez, Finance Manager. Blanco explained that the directive not to bill the SX01 fee for FY'13 came from the then CFO, Larned. The chain of command from top down is the City Manager, the CFO who reports to him, the Finance Director, the Treasurer, the Finance Manager, Chavez and Constantiny, who both report to the Finance Manager.

Blanco said that he started his post as Treasurer in June 2014. At a meeting with ITD regarding the billing system they talked about the result of changing the billing system from ARCV to MiamiBiz. At the meeting they wanted to do a comparison between the two systems. Constantiny is the supervisor and does all billing of Business Tax Receipts (BTR) and CU. Chavez gives people the initial BTRs. In assessing the billing system, Constantiny recognized the difference in the revenue collected between the two. The CFO, Larned, directed Constantiny not to bill the SX01 for FY'13. The bills for FY'13 went out in December 2012. Blanco asked why this was done and Constantiny said that he has the e-mails instructing him to do it this way for that fiscal year.

Blanco said that the SX01 fee has been billed again because there was no legal opinion issued in support of not billing it. The present CFO, Casamayor, did not give a reason why the fee is being billed again. Blanco said that he does not know about the reason given by Chavez in his e-mail dated 6/18/15 about the condominium owners' complaining.

Blanco said that the Assistant City Attorney working on a legal opinion on the matter is Rachel Dooley. The questions are: Does the City Manager have the discretion to not bill fees? Do they have the discretion to go back and bill them again; and if we can go back and bill again, how do they handle things like change of ownership. Blanco said that he has looked for a previous legal opinion, but has not found one. Rachel Dooley is now working on a legal opinion as to the above questions. Blanco said that this incident appears to have been a bad business decision. Blanco does not agree nor does he fully know what Chavez thinks may have been the cause of the decision not to bill SX01 for FY'13.

01/04/16 – Demetrio Constantiny, Finance Accounting Supervisor, Accounts Receivable –

Constantiny was contacted for additional information regarding the decision to withhold billing the SX01, which is the Certificate of Use rate for apartments, for FY'13. Constantiny explained that the decision was made by the former CFO, Larned. Constantiny said that does not know how she came up with the idea, but she said that it was discriminatory that they were billing rental apartments and not condominiums. Larned said that she asked Solid Waste and then said we are going to do it this way. Constantiny said that he told her that he could not do it unless he got something in writing. This is why he received the e-mail from McCray. Constantiny said that Larned was supposed to get a legal opinion, but she never did. Billing of the SX01 fee was recommenced for FY'14 and FY'15.

01/05/16 – Armando Blanco, City Treasurer –

Blanco contacted the COE investigator and advised that he reached out to the City Attorney working on this issue, Rachel Dooley. Dooley advised that she is meeting with the City Attorney in order to prepare the legal opinion. The person who can help us identify the reason that this happened may be the present CFO, Casamayor, and his assistant, McCray, who was Larned's assistant what Larned was the CFO.

01/05/16 – Fernando Casamayor, Chief Financial Officer –

Casamayor contacted the COE investigator and advised that he is aware of the subject of the

inquiry. Casamayor said that he was working for Miami-Dade County when Larned was the CFO who gave the directive not to bill SX01 for FY'13. Casamayor said he has no knowledge of what prompted Larned to give these instructions. When Casamayor was asked about it he asked, "why would we not bill for this if we are entitled to it." Casamayor said that he has no information which would indicate how she came to this decision while she was there.

Casamayor said that his decision was to bill for all of it going forward. He used to be the county tax collector and knows that in order to go back and bill there are issues, such as changes of ownership of the rental properties. It becomes very problematic to do something like that.

Casamayor said that he asked McCray, who was Larned's assistant, and she said that she does not know why Larned gave the directive. Casamayor said that he has heard that Larned was very guarded, did not make decisions in committee, made questionable decisions, and did not bring people in to look for solutions. Casamayor said that he and McCray do not know what Larned's motivation was for making this decision. McCray does not remember why it was made.

Casamayor said he would try to find contact information for Larned and will provide it.

01/14/16 – Janice Larned, former CFO -

Research on Larned located her in the Orlando area. A contact letter was mailed to Larned, and Larned contacted the COE investigator to provide her with input on the question of why the SX01 fee was not billed for FY'13.

Larned said that there was a lot of conversation about the supplemental waste fee and the regular solid waste fee. They became concerned that they were collecting a fee to they were not entitled. It was the subject of conversations between Keith Carswell of Solid Waste and Danny Alfonso, the former budget director, who is now the City Manager. Alfonso was budget director at the time of the conversations with Johnny Martinez, the City Manager at the time.

Larned said that the reasoning for billing the fee had to do with construction waste, but no one determined that there was more cost associated with construction waste than any other commercial pickup so it was a charge that they could not connect to a service.

Larned said she does not know who gave the order to remove the fee. Larned said that it was more the City Manager's decision than Alfonso's. One of the City Attorneys also was made aware of it, but she cannot recall the name. There were conversations with the law section. Their conclusions were sketchy at best. They did not know if the fee was properly authorized. Alfonso, the former budget director, did not know. They needed to find out what it cost to perform the service before billing for it. They could not charge a fee because they want a revenue stream. They need to bill a fee when they know that the service provided in exchange merits it.

Larned said that the crux of it is with Alfonso and Carswell in Solid Waste. Alfonso told Keith Carswell, that if this is not a legal fee they cannot bill it. Larned said that she cared whether it

was a legally accessible fee and whether they had the authority to charge it. The fee may have been suspended until they got an answer. This became important because of the SEC investigation that was going on at the time.

Larned said that she would not have ordered not to bill the fee unless it was researched and supported. She said at the time that she could not do anything else on this unless she had the proper authority.

Larned said that she does not know why the fee was not billed. If someone took an overt action, she is not aware of it. Larned said she remembers the conversations, but that is the extent of it. The budget office dealt mostly with the issue. Larned said that she was asked and she told them she did not know enough about it to make a decision.

Larned recalled that part of the discussion was that the fee was not charged to everybody, so it became a question of what is the cost of the service rendered for the fee. The bill for the fee was going to one class of property ownership (rental apartment buildings), and not the other (condominium owners). There was a supposition that it was a break for condo owners. When asked, she said she did not know enough about it. The question had to be brought to the Manager. Larned said that she did not bring it to the Manager.

Larned said that there was a time when Edith McCray got direction from an assistant who worked for her who said that she had said things that she did not say. This may have been one of them.

01/22/15 – Rachel S. Glorioso Dooley, Assistant City Attorney –

Assistant City Attorney Rachel S. Glorioso Dooley was contacted in connection with the subject inquiry. Dooley advised that she was not working for the City when the SX01 fee was not billed a couple of years ago. Dooley explained that what she knows is that they amended something which has always been in the billing system by changing the billing code to zero. Nothing says that you cannot change the billing amount to zero and then back again.

Dooley said that she has searched everywhere to find documents that would explain why it was done this way, but did not locate any. She is not sure why it was done. Dooley confirmed that the City could not bill the sum now even if they wanted to because of the changes in ownership which have undoubtedly occurred since that time.

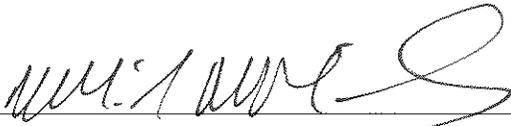
Conclusion:

When the City of Miami opted to cease billing for the Supplemental Waste fee designation SX01, it was done because there were doubts as to the legality of the fee. Although the question of the fee's legality remains unanswered, the City decided to continue billing the fee for the subsequent years. There is no indication that the decision not to bill the fee was made to benefit any one group or person over another, nor is there anything in the City Code which

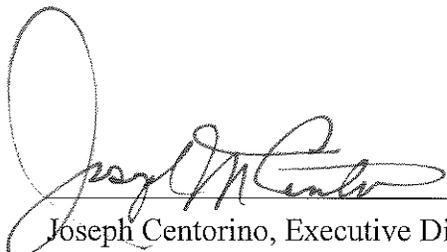
prohibits the City Manager or the CFO from the setting the rate accordingly.
For this reason, this inquiry is closed.


Sylvia Batista, COE Investigator

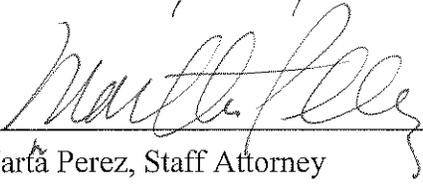
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