



**Miami-Dade Commission on Ethics & Public Trust**

**CASE  
CLOSED**

**Investigative Report**

**Investigator:** Karl Ross

**Date:** 9/2/16

<b>Case:</b> PI 16-039	<b>Case Name:</b> Keys Gate Charter Schools issue	<b><u>Date Open:</u></b>	<b><u>Date Closed:</u></b>
<b>Complainant(s):</b>	<b>Subject(s):</b> Wayne Rosen	Aug. 22, 2016	Aug. 22, 2016

**Allegation(s):**

On or about June 13, 2016, Miami-Dade Public Schools School Board Attorney Attorney Walter J. Harvey made a referral to COE regarding any potential enforcement action against Wayne Rosen stemming from an alleged improper payment.

The payments in question – two wire transfer totaling \$500,000 from Red Apple LLC, a subsidiary of Charter Schools USA – were thought to be a possible illegal contingency fee, as provided in the Miami-Dade County ethics code. The code applies to registered lobbyists. Rosen acted as a lobbyist on behalf of CSUSA, the firm that developed the Keys Gate Charter School in Homestead, Florida, using bond proceeds obtained on or about June 2011.

As such, it is believed Rosen assisted CSUSA/ Red Apple in applying for and obtaining all necessary approvals from the City of Homestead and that this would include meetings with staff and elected leaders and that Rosen presumably lobbied city officials at this time.

**Relevant Ordinances:**

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, Sec. 2-11.1 of the Miami-Dade County Code, holds in applicable part, Section (s), titled *Lobbying*, and more to the point in subsection (7), that “No person may, in whole or in part, pay, give or agree to give a contingency fee to another person.” A contingency fee is further defined as “a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of ... an ordinance ... any action, decision or recommendation by the [City] Manager or any [City] board or committee ... or by [City] personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed ...”

**Investigation:**

Records provided by Mr. Harvey's office were reviewed, including a copy of the September 2015 audit report for the Keys Gate Charter High School, which was developed in 2010 and 2011 using Tax Exempt Educational Facilities Revenue Bonds.

The audit findings stated that \$500,000 had been paid to an "Undisclosed Party" in connection with the Keys Gate Charter High School project. A footnote in the disclosure states: "This \$500,000 amount, categorized as 3<sup>rd</sup> Party Development Costs by school representatives, was paid to an undisclosed party as part of a settlement agreement on a contract.

Based on information revealed in 2013 during the criminal proceedings against former Homestead Mayor Steve Bateman, it was believed that prominent South Dade real estate developer Wayne Rosen was the recipient of this \$500,000 payment.

A sworn statement of Mr. Rosen dated Feb. 8, 2013, confirms that Rosen was paid \$500,000 by a subsidiary of CSUSA (Red Apple LLC) in connection with this project, as do Wire Transfer Detail Reports obtained by auditors for Miami-Dade Public Schools.

The latter showed that two payments of \$250,000 each were made to Rosen – the first on or about Nov. 11, 22, 2011, and the second on or about Aug. 31, 2012.

**Conclusion(s):**

Based on the above findings, it appears that Rosen did enter into an illegal contingency fee arrangement with CSUSA/ Red Apple LLC during the development phase of Keys Gate Charter High School, and that said arrangement was consummated in 2011 and 2012.

Rosen himself confirmed this arrangement during his sworn statement, saying he originally negotiated a \$1 million fee with CSUSA CEO Jonathan Hadge. During the statement, Rosen was asked: "What was the fee contingent on?" His reply: "Approval of the charter school."

Rosen further stated that in exchange for the \$1 million fee he was expected to work with City of Homestead staff to submit CSUSA's application and seek necessary approvals. Asked whether this process involved any lobbying on his part, Rosen stated "I would presume so ...." He further stated that he believed he did register as a lobbyist on the part of CSUSA.

As described above, Rosen's arrangement with CSUSA would appear to violate the Miami-Dade County ethics code with respect to contingency fees. However, as a condition of his sworn testimony, Rosen was provided with "use immunity" against criminal prosecution relating to any information he divulged during the aforementioned statement.

At this time, it does not appear that COE can take any further action against Rosen or, by

extension, against CSUSA or its representatives because the three-year period for filing a formal ethics complaint under Section 2-11.1 has run out since the last payment.

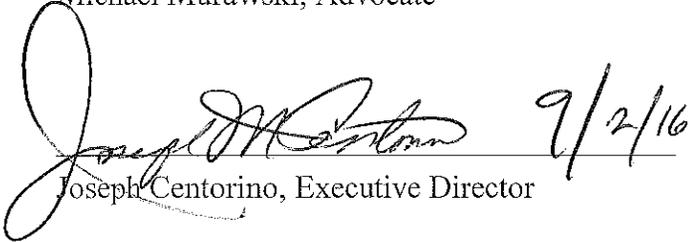


Karl Ross, COE Investigator

Approved by:



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