

CLERK OF THE BOARD

2019 MAR 22 PM 12:56

CLERK, CIRCUIT & COUNTY CTS  
MIAMI-DADE COUNTY, FLA.  
#1



FILE COPY

C 18-51-12

In re:

MIAMI-DADE  
COMMISSION ON ETHICS & PUBLIC TRUST

Jose Smith

---

### PUBLIC REPORT AND FINAL ORDER

Attorney Norman C. Powell (Powell) filed this complaint against attorney Jose Smith (Smith) alleging that Smith engaged in unregistered lobbying in violation of Section 2-11.1(s) of the Miami-Dade County Conflict of Interest and Code of Ethics and alleged a possible violation of the Sunshine Law.

Powell alleged that Smith improperly lobbied NBV Commissioners Julianna Strout (Strout) and Andreana Jackson (Jackson) to terminate Powell as NBV Attorney and replace him with Smith's law firm, Bryant Miller Olive (BMO).

Investigation determined that Smith's contact with Commissioner Strout in allegation #1 did not constitute lobbying. The investigation determined that Strout ran her campaign on a platform of "cleaning house" once she was elected and getting rid of the Village Attorney from the previous administration. Strout became acquainted with Smith during her campaign and consulted him, as well as other individuals for advice and guidance. Strout reached out to Smith for some help in drafting the agenda item calling for the termination of Powell and Smith provided that requested assistance. Smith's assistance with the drafting of the agenda item and reviewing it, did not constitute "lobbying" of Strout. It was Strout's idea to terminate Powell and replace him, on an interim basis, with the services of BMO, Smith's firm. There's no indication that Smith needed to "encourage" Strout to vote in favor of the agenda item, rather, it was Strout's idea.

The text message contact between Smith and Commissioner Jackson in allegation #2 was essentially a "meet and greet" which did not require lobbyist registration.

The third instance of alleged lobbying occurred in an e-mail dated November 28, 2018 from Smith to Commissioner Jackson. It is not unreasonable to view this writing as a lobbying effort by Smith. Smith sent this e-mail knowing, or with the reasonable belief, that the agenda item to terminate Powell and appoint BMO (specifically Smith) as Interim Village Attorney was to be heard at the December 11, 2018 NBV Commission meeting and that Jackson would be voting on it.<sup>1</sup>

<sup>1</sup> It should be noted however that Smith did register as a lobbyist on December 5, 2018, six days prior to the December 11, 2018 Commission meeting and just four working days after his interaction with Commissioner Jackson.

On March 13, 2019 the Ethics Commission agreed with the recommendation of the Advocate that there was No Probable Cause to proceed against Smith with regard to his contacts with Commissioner Strout in allegation #1 and that count was dismissed. Further, the Ethics Commission found No Probable Cause to believe that Respondent, Jose Smith, engaged in unregistered lobbying with regard to his text message exchange with Commissioner Jackson in allegation #2.

The allegation regarding a possible violation of the Sunshine law was dismissed as not legally sufficient; the Sunshine law is beyond the jurisdiction of the Ethics Commission to enforce.

Respondent stipulated to probable cause in the one instance where he sent the e-mail dated November 28, 2018 to Commissioner Jackson in allegation #3.

The Ethics Commission accepted Respondent's plea of No Contest to engaging in unregistered lobbying with regard to allegation #3, waived all fines and costs and ordered a Letter of Instruction to be issued to Respondent.

Wherefore it is:

**ORDERED AND ADJUDGED** that COMPLAINT C18-51-12 against Jose Smith is concluded.

**DONE AND ORDERED** by the Miami-Dade County Commission on Ethics & Public Trust in public session on this 13<sup>th</sup> day of March 2019.

MIAMI-DADE COUNTY COMMISSION ON  
ETHICS & PUBLIC TRUST

By:



H. Jeffrey Cutler

Chairman

Signed on: 03-19-2019



IN RE:

CASE NO. C18-51-12

Jose Smith

---

**SETTLEMENT AGREEMENT**

Pursuant to section 5.13 of the Miami-Dade County Commission on Ethics and Public Trust (COE) Rules of Procedure, Petitioner and Respondent do hereby enter into this settlement in full satisfaction of the above captioned matter based upon the following terms and conditions:

1. Respondent, JOSE SMITH, believes it to be in his best interest and the best interest of all the parties involved to avoid the expense and time of litigation in this matter. Accordingly, Respondent agrees Not to Contest and neither admits nor denies the allegation contained in Ethics Complaint No. C18-51-12 regarding the November 28, 2018 e-mail from Respondent to Commissioner Andreana Jackson.
2. Petitioner and Respondent agree that all other allegations in the complaint are either not legally sufficient or lack probable cause.
3. Pursuant to this agreement, Respondent agrees to accept a Letter of Instruction in full satisfaction of the complaint, fines and costs are waived.
4. Failure by Respondent to fulfill and abide by his obligation under this Agreed Settlement Order may result in contempt proceedings against Respondent.
5. This agreement, consisting of two (2) pages, embodies the entire agreement of the parties respecting the subject matter herein. There are no promises, terms, conditions

Jose Smith C18-51-12

or obligations other than those contained herein. This agreement supersedes all previous communications, representations, and agreement either verbal or written between the parties.

6. By signing this agreement, Respondent acknowledges that he is doing so freely, voluntarily and without duress; that he is competent to enter this agreement; that he has consulted with an attorney and has fully and completely read and understands the terms and conditions of the agreement.
7. Respondent also understands that this agreement, constitutes a finding by the Ethics Commission that Respondent violated section 2-11.1(s) of the Conflict of Interest and Code of Ethics ordinance as it pertains to the November 28, 2018 e-mail from Respondent to Commissioner Andrea Jackson.
8. Petitioner and Respondent agree that settlement of this action in the manner described above is just and in the best interest of the Respondent, and Miami-Dade County.
9. Should the Ethics Commission reject this Agreement, then evidence of this offer of compromise, settlement and stipulation is inadmissible to prove any of the allegations alleged or for any other purpose in future proceedings.

Done and Ordered in Miami-Dade County, Florida this 13<sup>th</sup> day of March, 2019



H. Jeffrey Cutler  
Chairperson



Michael Murawski  
Advocate

Jose Smith  
Respondent



Jean Olin, Esq.  
Attorney for Respondent

MIAMI-DADE COMMISSION ON  
ETHICS AND PUBLIC TRUST

IN RE:

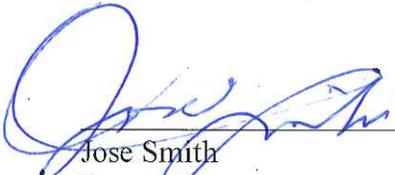
COMPLAINT # C18-51-12

JOSE SMITH  

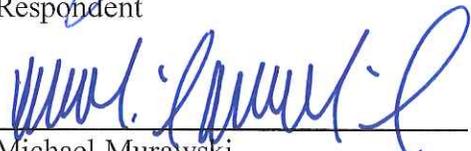
---

STIPULATION TO PROBABLE CAUSE

1. Respondent, Jose Smith, does hereby stipulate and agree that the one allegation enumerated in the above referenced Ethics Complaint regarding section 2-11.1 (s) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance that is supported by probable cause is the allegation regarding the e-mail from Respondent to Commissioner Jackson dated November 28, 2018.
2. Respondent agrees with the Advocate's recommendation that all the other allegations in the complaint are either not legally sufficient or lack probable cause.
3. Respondent specifically waives any hearing or proceeding he may otherwise be entitled to before the Ethics Commission for the purpose of having a probable cause determination made in the above matter.
4. Respondent understands and agrees that a stipulation to probable cause in this matter in no way constitutes an admission to any of the material allegations made in the Ethics Complaint.
5. Respondent specifically WAIVES a hearing to determine probable cause.

  
\_\_\_\_\_  
Jose Smith  
Respondent

2/28/19  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Michael Murawski  
Advocate

  
\_\_\_\_\_  
CHAIRPERSON, Commission on  
Ethics and Public Trust