

OFFICE OF THE INDEPENDENT ADVOCATE
REPORT OF INVESTIGATION

K #:09-123

Date Opened: October 1, 2009

Date Closed: 2/26/10

Name of investigator: Kennedy Rosario

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Allegation:

That City of Coral Gables (City) Board of Architects (BOA) appointee / member Burton Hersh (Hersh) abused his official position as it relates to request for permits filed for BOA review by Ms. Caterina Boulton (Boulton).

Background:

On or about Wednesday September 30, 2009 COE Investigator Kennedy Rosario (Rosario) was contacted by MDPD PCIB Detective Noel Varela (Varela) regarding an investigation he was conducting. The victim / complainant was Boulton, her allegation is chronicled in PCIB Case # 09-064 an excerpt of their report reads:

On Thursday, September 17, 2009, Miami-Dade Police Department (MDPD), Public Corruption Investigations Bureau (PCIB) Detective N. Varela received information of possible Ethics Violations by City of Coral Gables Board of Architects member Burton Hersh.

On Tuesday, September 22, 2009, PCIB Detectives N. Varela and L. Rodriguez interviewed Mrs. Caterina Boulton, owner of BC Signs & Digital Graphics Inc at the PCIB Office. Mrs. Boulton advised she has been in business for over ten years in the City of Coral Gables. She stated that in the past year she has had multiple incidents in which Mr. Hersh has rejected her permit applications.

One of the incidents occurred on July 13, 2009, Mrs. Boulton presented the plans for her client Giovanni Palazotto Cigars & Things, 300 Aragon # 110 Coral Gables, Florida. Mr. Hersh rejected her application and requested a revision. Mrs. Boulton was later contacted by Mr. Palazotto and advised that Mr. Hersh went to his business and asked Mr. Palazotto not to do business with BC Signs and not to make any further payments to Mrs. Boulton. Mr. Hersh offered Mr. Palazotto a better company to do the job.

Mrs. Boulton advised that on another occasion, Mr. Hersh invited her and a female client to his office to discuss three separate applications which he had rejected. Upon entering Mr. Hersh's office, Mrs. Boulton and her client felt as if they were being treated like sex objects, Mr. Hersh paraded them through the whole office, and made sexual advances towards them; they both felt sexually harassed and insulted and walked out of the office.

Mr. Hersh has invited Mrs. Boulton to his office on several occasions to discuss plan rejections, however, each time Mrs. Boulton has rejected the invitation.

Mrs. Boulton feels Mr. Hersh is using his position on the Board of Architects to manipulate and control the permit process causing her to lose business in the City of Coral Gables.

Mrs. Boulton has complained to the City of Coral Gables Board of Architects Supervisor Carlos Mindreau, City Manager Assistant Maria Jimenez and to Code Enforcement and Zoning Department Chief Martha Salazar about Mr. Hersh's conduct with negative results.

This Detective conducted a background record check on Mr. Hersh which revealed a prior misdemeanor arrest.

Investigation:

On Monday October 5, 2009 Rosario spoke with Coral Gables Assistant City Manager Maria Jimenez (Jimenez).

Jimenez recalled that Boulton contacted her regarding the Hersh matter approximately two months ago.

Jimenez referred the complaint to Coral Gables Building and Zoning Director Ed Weller (Weller) and City Architect Carlos Mindreau (Mindreau).

Mindreau also sits as the Supervisor/Secretary of the Board of Architects.

Since her referral, Jimenez had no further discussion on the complaint with Boulton, Weller or Mindreau.

On this same date Rosario spoke with Weller who only recalls “bits and pieces” of the Boulton complaint.

Weller further commented that;

- He is not involved with the actual workings of the BOA
- Boulton is “not exactly a non problematic person” mentioning that she has in the past made complaints, but not related to Hersh.
- With regard to Hersh’s alleged actions (soliciting Boulton’s clients) he doubts that Hersh did so with “malicious intent” or attempting to take Boulton’s clients.
- He did however acknowledge that Hersh’s meeting with Boulton’s client outside of the BOA venue “was not really a Coral Gables policy”.
- He recalls speaking with another of Boulton’s clients, a conversation that included a comment that Boulton “was not a very competent design professional”.

Weller suggested a meeting be had to include Mindreau and City Code Enforcement and Zoning Department Chief Martha Salazar..

Arrangements were made to meet on Tuesday October 6, 2009 at CG City Hall.

Said meeting was conducted with Edward Weller, Mindreau, Salazar and COE Investigators Karl Ross and Kennedy Rosario.

The discussion included the function of the BOA, a City volunteer board that is the first step in obtaining City permits for construction / building projects within city limits.

The BOA is mainly concerned with the “esthetics”, and therefore “it is a subjective practice” that requires “some degree of knowledge” of the City’s codes.

Salazar related an incident two months prior in which Boulton came to her regarding Hersh “attempting to get her contract from a client” but could not shed any additional information.

Salazar however opined that Boulton and other females appearing before the BOA engaged in “flirting” and “they work it” in reference to their mode of dress.

It was explained that the BOA agenda consists of filed applications for review and is computer driven as it pertains to which BOA members view the applications. Usually BOA members work in teams consisting of two/ three members with the applicant or their representative.

In the instances in question the applications were submitted and represented for review by Boulton on behalf of her clients.

On October 7, 2009 COE Investigators Ross and Rosario met with Boulton and MDPD PCIB Detective Varela.

Boulton reiterated the scope of her complaint citing as primary witnesses two of her clients; Giovanni Palazotto (Palazotto) and Maria Fernanda Lopez (Lopez).

For further details of this meeting refer to Investigator Ross’ report.

On October 23, 2009 Detective Varela and Investigator Rosario met with Palazotto in his store, Cigar and Things, located at 300 Aragon #110 Coral Gables.

Note: Cigar and Things is located in the same building as Hersh’s office.

The purpose of our visit was duly explained to Palazotto.

Palazotto stated the following:

Contrary to Boulton’s statements; Palazotto initiated contact with Hersh through one of his customers who’s office neighbors Hersh’s.

Palazotto, citing the length of time the “store sign permit” was taking through Boulton’s efforts, asked this customer to speak with Hersh (Palazotto was aware that Hersh was a BOA member). It was this customer, Hersh’s neighbor, who called Hersh.

On the occasion when Hersh came by the store, Palazotto spoke about the store sign, he recalled Hersh advising him that putting up “sticker” signs was not acceptable. Further into the conversation Hersh inquired who was doing his signage, Palazotto answered it was Boulton and that it was she who had told him that the “sticker signs” were acceptable to the City.

Hersh at one point did mention that both Palazotto and Boulton were welcome to come up to his office.

Palazotto never took Hersh up on his offer.

Palazotto expressed displeasure with Boulton’s efforts.

Palazotto recalled that Boulton mentioned that Hersh “was giving her a hard time” and denies, as stated by Boulton, that Hersh attempted to take the job away from her.

Additionally, when asked if Hersh had asked him not to pay Boulton for her services, Palazotto stated that conversation never happened. This is also a contradiction of Boulton’s statement.

As to Boulton’s second witness: Investigator Rosario contacted Lopez via a telephone number supplied by Boulton. Arrangements were made to meet at COE offices on October 26, 2009; unfortunately Lopez failed to appear.. Numerous attempts in the ensuing months proved futile. Boulton was asked to contact Lopez but Lopez never responded directly with Investigator Rosario.

Boulton supplied the COE with numerous document examples that illustrate her graphic designs, City applications / permits, of projects through her company (CB Signs) that she believes are indications of Hersh’s BOA member abuse of power.

The COE commissioned and received from the City all “Project Applications” by CB Signs from October 2008 through September 2009 to include a complete compilation of each project’s status and City action.

A COE examination of these items noted numerous instances where Hersh was involved with their review. It is to be noted; however that Hersh did not solely review said applications, but in tandem with at least one other BOA member. Some applications were “administratively approved” by City Architect Mindreau.

Investigator Rosario, on December 15, 2009, commissioned City Architect Mindreau to undertake an individual review of each CB Sign application to determine if City procedures / norms were properly applied by Hersh.

On December 21, 2010 Investigators Breno Penichet and Rosario met with Hersh at the COE.

Hersh was informed of the Boulton allegations.

Hersh vehemently denied any ulterior motives in his dealings with Boulton. According to Hersh, he has no business reason to attempt a take over of CB Sign clients, stating that on occasion he has used CB Signs on some of his projects.

Hersh, in his review of CB Sign City applications only applied his knowledge of City codes and his concept of what he believes the City requires Vis a Vis norms and aesthetics.

Any allegations of improper behavior towards Boulton, Lopez or any other individual appearing before the BOA were false, Hersh maintained.

On January 29, 2010 City Architect Mindreau rendered the following assessment:

I've reviewed the history of applications and Board actions for projects submitted by CB Signs from October 2008 through September 2009 to the BOA in the City of Coral Gables. Eight of the projects submitted for review had direct involvement from Mr. Burton Hersh; of these, 5 were approved directly and 3 were deferred and subsequently approved. In total, there were 15 applications that ultimately were approved and one which received a Full Board rejection.

It seems to me that this applicant should be happy with the success ratio of applications to the Board in general. Additionally, I do not find it unusual in any way that 3 applications were deferred to be later approved after certain modifications to comply with possible suggestions by the Board at the time of the deferral. Additionally, I've searched my mind and do not recollect any unusual and/or inappropriate behavior on the part of Mr. Hersh towards this specific applicant.

If I can be of additional help, please be sure to contact me.

Sincerely,

Carlos A. Mindreau / City Architect

CONCLUSION:

The BOA is tasked by the City to “consider and act upon plans and specifications for building and sign permits”.

BOA members are registered architects with a minimum ten years experience.

By the City’s own admission BOA members apply “aesthetics” in approving, modifying and rejecting plans that come before them for review, a subjective approach.

The COE reviewed the CB Sign applications....commissioned the City Architect to independently review each application....interviewed many City officials.... the CB Sign client named by Boulton as a witness....and made every effort to interview another witness.

In consultation with both the Advocate and the Assistant Advocate, no material evidence or testimony was obtained to warrant a Miami-Dade County Conflict of Interest Ordinance violation.