

OFFICE OF THE INDEPENDENT ADVOCATE

REPORT OF INVESTIGATION

K 09-165

Date Opened: 12/07/2009

Date Closed: 3/29/2010

Name of investigators: Breno Penichet and Art Skinner

Allegation:

This Investigation ~~was is~~ predicated upon information received in the form of a telephone complaint alleging that the Mayor of Florida City is ~~targeting targeting a business owned by David Ziencehis Business~~ in order to close him down.

Exploitation of Official Position: Section 2-11.1 (g) Miami-Dade County, Conflict of Interest and Code of Ethics Ordinance.

Investigation:

According to the information provided by complainant Mr. David Zience, he along with his father ~~Irwin Zience~~ are the owners of a business in Florida City. The business ~~is l~~ located at 226 W. Palm Dr. d/b/a ~~ba~~ "Cycle Wizard" has been in operation for many years in the same location. ~~z~~ Zience advised that several months ago Florida City Mayor Otis Wallace accused him of purchasing a camera that was taken in a burglary ~~fromat~~ the Mayor's house. Zience denied the allegation. ~~H~~ He also stated that a friend of the ~~Mayors Mayor~~ attempted to purchase a bicycle at a discounted price rate ~~from Zience~~. Zience advised he did not sell the bike for the price requested and as a result the Mayor started this vendetta against him.

According to Zience within the last several months the store has been visited by a series of code inspectors from ~~Florida the~~ City and from Miami-Dade County. The business has also received citations from the Miami-Dade Fire Marshall's office which according to Zience all ~~were~~ instigated by Mayor Wallace.

Zience provided several documents that he claims were proof that the City was intentionally signaling him out for harassment, because the Mayor had a personal problem with him.

COE Investigators reviewed the paper work provided by Zience which included the following:

1. Notice of Violation dated 9/2/2009: for unsafe structures 2 ~~counts~~sets, (accumulation of junk and debris/ with respect to means of egress)
2. Citation from the MDC Fire Dept. dated 12/9/2009: Failure to maintain building free of debris.
3. Notice of Hearing, Dated 11/30/2009: Failure to comply with citations.
4. Summons to Appear before Code Enforcement Board, Dated 11/25/2009.
5. Notice of Violation, Dated 11/18/2009: for 4 violation of the City Code including operating without a valid license.
6. Permit Certificate Miami-Dade Fire Rescue Department, Permit # 01125-04542 the permit expired 12/8/2009 (above citation issued 12/9/2009)
7. Occupational license renewal notice with instructions on what was needed in order to obtain the new license.
8. City Code Enforcement Posting.

After reviewing the paperwork COE Investigators asked Zience why did he not simply comply and allow the Inspectors access to the inside of ~~his~~the building in order to pass the Fire inspection ~~and ? Zience was also questioned as to~~ why he did not appear at the Code Enforcement Board Hearing in order to present his side of

the story. Zience did not have a plausible explanation; he also was very evasive when questioned as to why he did not pursue the case in civil court. Zience could not provide specific information, including times, dates, or names of the customer that allegedly was the Mayor's friend.

Zience was very insistent that he was in the process of selling the property to Miami-Dade County and wanted to make sure his license (WHAT LICENSE?) was active by January 2010.

COE Investigators contacted the MDRF and spoke with Paulette who conducted a records check and advised that Zience d/b/a "ba-Cycle Wizard" does not have a valid Fire safety certificate.

COE Investigators interviewed Code Inspector Paul Henderson MDRF who advised that he is the Code Inspector assigned to the above case. Henderson advised that he spoke to Zience on several occasions in order to gain entrance into the building to conduct an inspection but was always denied entrance by Zience. Henderson also advised that Fire Inspector Jose Rodriguez also attempted to conduct an inspection as required by City and County Code, but was unable due to the fact that he was also not granted access to the property by Zience. Rodriguez issued a Notice of Violation on 9/3/09 for Failure to maintain the building out-side and inside clear of debris and waste. The property was also cited for failure to provide 28" wide aisles clear of debris and waste. (See attached Notice).

Henderson further stated he never advised Zience that Mayor Wallace had complained and that he had been sent by him to close his business.

Henderson advised that he issued the Final notice of violation on 11/13/09.

COE Investigators interviewed Mr. Wesley C. Maltby Director of Building and Zoning Department, and also Building Official for the City of Florida City. Also present was Mr. Victor Straker Chief Code Enforcement Officer.

Both Maltby and Straker were familiar with the case and with Mr. Zience. ~~T~~hey ~~in fact~~ were well aware of the allegations and the status of the case. Maltby advised that when he took over the building department which also included business licenses it was found that many licen-sens were missing some requirements. It was decided that as these licenses came due the business owners would have to meet the standards required for the business license applied for.

In the case of "Cycle Wizard" there were several problems that needed to be addressed including an inspection and Fire certificate.

Maltby and Straker both stated that another serious problem was the storage of property outside of the building along with the lack of ingress and egress making it impossible to walk ~~UN-un~~obstructed from the front of the building to the rear due to the fact there were no isles.

Straker provided pictures of the property ~~which~~~~hitchwitch~~ clearly showed the front of the property blocked and what appeared to be the inside also well stocked with property causing a life safety issue.

COE Investigators interviewed Florida City Mayor Otis Wallace, regarding the allegations that he ordered the inspections on Cycle Wizard. Mayor Wallace advised that he was aware of the case against the above but he did not have anything to do with it. Mayor Wallace advised that he never accused Zience of having any stolen property or refusing to sell anything to any one he knows. Mayor Wallace did state that Zience's

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property needs to be cleaned up do to the safety violations and that he did notify the Building department.

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CONCLUSION:

After discussing these facts with the Advocate, he decided that no ~~by him that no~~ violation of the Conflict of Interest and Code of Ethics ordinance occurred.

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