



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case No: K14-081 (PI-14-025)	Case Name: Jose M. Diaz/ Finish Line Gas Station/ City Vendors	Date Open:	CASE CLOSED Date: 11/21/14
Complainant(s): Anthony Cuevas	Subject(s): Jose Diaz, mayor of Sweetwater	May 8, 2014	

Allegation(s):

It had been alleged that Sweetwater Mayor Jose Diaz (Diaz) interceded in a commercial dispute on behalf of the owner of a shopping center located on the SW corner of Flagler Street and SW 109 Avenue by improperly issuing a code violation against the owner of a gas station, complainant Anthony Cuevas (Cuevas), owner of J.J.C. Group Inc., d.b.a., Finishline Petroleum Inc.

The mayor allegedly altered a business license held by the complainant to prohibit the storage of rental vehicles when said license previously made no such exclusion. The complainant said he had rented vehicles at that location for the past 21 years, without incident. It was further alleged the mayor used his influence to intimidate and harass the complainant by dispatching city employees and police to interfere with the operation of his business.

Cuevas alleged that Diaz's actions in this matter were politically motivated, and were triggered by the placement of a political sign in front of his business supporting his rival in the May 2015 municipal election, Vice Mayor Orlando Lopez (Lopez).

Additional allegations were received concerning similar acts of retaliation and/or exploitation against city vendors and businesses allied with Diaz's main challenger.

Relevant Ordinances:

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (Sec. 2-11.1) states in subsection (g) titled *Prohibition on exploitation of official position*, that “No person ... shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others ...”

Florida Statute 839.13, titled *Falsifying records*, states in subsection (2)(a) that ... “Any person who knowingly falsifies, alters, destroys, defaces, overwrites, removes, or discards an official record relating to an individual in the care and custody of a state agency, which act has the potential to detrimentally affect the health, safety, or welfare of that individual, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.”

Investigation

Interviews

On June 4, 2014, COE interviewed Cuevas at his gas station. Cuevas advised that he has a long-standing dispute with the owner of the shopping center over parking spaces he is entitled to under the terms of his lease. Cuevas said the owner of the shopping center is romantically involved with the owner of the *Mi Pueblo* restaurant located directly behind his gas station.

Cuevas alleged the owner of the restaurant expanded her business without required permits, and cannot open the renovated area without additional parking spaces. He said the restaurant was given a cease and desist order by city zoning officials, but that the mayor overrode this order and issued a notice to proceed by contending that the business will obtain the required number of parking spaces at some unspecified time in the future.

Cuevas said that he angered the mayor by allowing the campaign of Lopez to erect a campaign sign in front of his gas station, and that since that time the owner of the shopping center has consorted with the mayor and the owner of the restaurant to pressure him to relocate his rental vehicles and to abandon his lease.

Cuevas stated he was served a Warning of Violation notice on May 2, 2014, citing Municipal Code Section 2.04.00. The notice further referenced “no vehicle storage.” He provided a copy of the notice, showing that his business was allotted until May 13 to comply.

Cuevas alleged that sometime after the notice was issued but before it took effect, he was visited by the city’s maintenance director, Alan Abolia (Abolia), who parked a city vehicle in one of the spaces in question. He said the purpose of the visit was an act of provocation, and that a tow truck was dispatched to the scene. He showed video of the encounter in which Abolia argued with the tow truck driver, then pulled out his cell phone to make a phone call, allegedly to Diaz and did so while yelling that “the mayor shut down” the business. He said Abolia yelled at a store employee for several minutes before leaving.

Cuevas alleged that the following day, the mayor arranged for a police sting of the business

and orchestrated media coverage of the event in an attempt to make it appear that Cuevas was unlawfully towing the cars of innocent motorists as part of alleged scam. He said a woman made a small purchase, then handed the receipt to an individual who had parked in one of the spaces and that he felt the mayor was trying to entrap and embarrass him. He said he did not call to have the vehicle towed. He noted the woman who made the purchase seemed nervous. He said he is fearful that the mayor may further attempt to sabotage his business.

On June 4, 2014, COE interviewed Mario Miranda (Miranda), a former Sweetwater police commander and the city's former code enforcement supervisor. Miranda said he was separated from his city service about seven months ago. He said he has filed a lawsuit against the city with reference to this matter, and that it remains under litigation.

With respect to the shopping center controversy, Miranda advised that the owner of *Mi Pueblo* did not obtain either a demolition permit or a construction permit for her expansion. He said the build-out cost approximately \$100,000, and that no plans were submitted for review.

On June 5, 2014, COE made a request to inspect files for the gas station and *Mi Pueblo* restaurant through the office of the City Clerk.

On June 5, 2014, COE spoke to Miranda again. He advised that Carlos Lanza (Lanza), the city's building official, oversees code enforcement. He said the division is run mainly by Jorge Vega (Vega), one of the inspectors. He said Vega has more expertise in code enforcement matters. He said the code enforcement office is located on NW 112th Avenue and 14th Street. On June 9, 2014, made appointment to inspect files on June 11 at code enforcement offices.

On June 12, 2014, COE met with Vega, code compliance supervisor for the city of Sweetwater, and reviewed compliance files for the restaurant and gas station. Vega advised the restaurant had certificates of occupancy and use issued on May 23, 2014, following a compliance action for lack of permits and plans in 2013. He advised that the owner of the restaurant paid a \$500 fine and submitted required plans and applications for a permit. He advised that three additional parking spaces were created in the rear of the restaurant to comply with code enforcement requirements for the expansion.

As it relates to the gas station, Mr. Vega advised that the case in question had been closed after Cuevas removed his rental vehicles from the property. He said that customers returning vehicles overnight are allowed to drop off the vehicles at the property, so long as they are removed the following day. He said the vehicles are now stored off-site.

With respect to the Warning of Violation, Vega further advised that the issue of alleged non-compliance dates back to 2010 when former Mayor Manuel Maroño took action with respect to the rental trucks. He said that the gas station only had two to four rental trucks in use at that time, far fewer than the 10 to 12 that belong to the present fleet of vehicles.

Vega further advised that Maroño directed him not to pursue further action against the gas station because he was advised that the owner would request a variance for change-of-use from the City Commission. He said no further action was taken until recently when it again came to his attention that no such waiver had been obtained. He said Diaz called him shortly before the latest Warning of Violation was issued on May 2, 2014, and inquired as to how many rental trucks the owner of the gas station was allowed to keep on-site.

Vega said the mayor called him again a couple of days after the warning had been issued to ask whether Cuevas had complied with the warning notice. He said that he contacted Alexis Adams (Adams), the clerk overseeing building licenses, to request a copy of Cuevas' license and learned that no rental vehicles were permitted to be stored on the property. He noted that the license was for the present fiscal year from Oct. 1, 2103, through Sept. 30, 2014. He said he did not have a copy of the previous license on file and could not explain any discrepancy between the copy of the license provided to him and the one on display in the gas station.

Vega said that, in either case, rental vehicles are not permitted at the site in question under the zoning for Commercial District (CU), municipal code subsection 2.04.06. He said he could not explain why Cuevas was allowed to store vehicles on site for nearly 20 years prior.

Vega stated that he was unaware of any campaign of intimidation or harassment against Cuevas, and noted that customers were allowed to drop off vehicles after hours. He further noted that "motormen" or motorcycle riding police officers gassed their vehicles at Cuevas' gas station. He said he was unaware of any change to Cuevas' vendor status arising from the dispute with the restaurant. He said he did not believe the mayor overstepped his authority as it relates to questions about the gas station and its compliance with city code.

On June 16, COE spoke to Sydney Vincent, zoning services supervisor for the Miami-Dade County building office. He advised that the county does not intercede in zoning decisions made by municipalities. He said the county's regulations required that all parking spaces be 8.5' wide and 18' deep. He said each municipality enforces its own code.

On July 2, COE examined the business license files for JLC Group, and interviewed Adams who stated that, with respect to the license for rental vehicles, the restriction on storage of such vehicles was written in manually until about a year ago when the city upgraded its software system to a program called Logos. Even though the restriction was not printed on those licenses, Adams stated that Cuevas was aware of the restrictions because of the 2010 code enforcement action taken against his business. She said that she had not been contacted by either former Mayor Maroño or current mayor with respect to the licensing issue. "We knew he had restrictions but he still kept parking his vehicles there. We weren't picking on him."

On July 2, COE stopped by the office of Diaz to speak to him about the licensing issue, but staff advised that the mayor was in a meeting and could not be interrupted.

On July 3, COE contacted Sweetwater Building Official Lanza at (305) 485-4526, and inquired about the parking issues raised by Cuevas. With respect to the restaurant, Lanza advised that three additional spaces were created and allocated to the restaurant so that the expansion could be approved. He said they were not the three spaces along the western fringe

of the shopping center that were cited by Cuevas as being improper. He said the spaces must fall within the boundaries of the business. He did say it was possible that spaces were reallocated to the restaurant from elsewhere within the strip mall. He said the restaurant has complied with all fire and zoning requirements and has been approved.

With respect to the striping of the parking lot, overall, he said that the owner of the mall has an open permit and that the matter is under review by his staff. He said his office has not been asked to conduct a final inspection and the existing permit is good for up to six months. He said he might not be able to give an opinion on this matter since it was under review, but did suggest that the three spaces in question were in compliance with city code.

Lanza agreed to have photos of the spaces texted to him for his review, at (786) 236-5419. He replied to the text, saying they were not the spaces he was discussing. He was asked if they seemed like legal spaces, considering the lack of ingress/ egress and propane tanks. He replied they were not part of the permit application for the restaurant and would have to look at them.

Lanza referred COE to code enforcement and suggested a complaint be filed regarding the parking spaces on the western fringe of the mall. He said to call "Janet" at (786) 953-8308, and bring the matter to her attention. COE dialed the number and spoke to a male employee "Deyne," who said his office would look into the matter of the parking spaces.

On Oct. 17, 2014, COE spoke to the same employee – Deyne Hernandez – who advised that he inspected the parking spaces and found them in violation. He said he brought this to the attention of the mall owner, who subsequently removed the striping for said spaces. He said no formal violation was issued or fine imposed since the owner came into compliance.

Guillermo Chez and Annie Chez, former fleet manager and former finance director
Office of attorney Gerald Tobin
August 11, 2014

On the above date, Mr. and Mrs. Chez were interviewed at the office of their attorney, Gerald Tobin. Both are former city employees who were fired by Diaz.

With respect to possible exploitation relating to campaign matters, both Mr. and Mrs. Chez said they had been directed by the mayor not to purchase any fuel from Finishline gas station. Mrs. Chez said the mayor stated, "Why are we getting gas from them?" Mr. Chez said the mayor told him to stop using Finishline and to use a new station located on Flagler Street and 112th Avenue. He could not recall the name of the gas station.

Mr. Chez said the owner of the Finishline station would routinely allow the city to use one of his rental vehicles to deliver food to the elderly. He said the city now pays \$200 each time it needs to rent vehicles for the same purpose, using another rental company.

He said there may have been an email from the chief of police, Jesus Menocal, instructing police not to use the Finishline gas station or to use the rental vehicles.

Mrs. Chez stated she had been told not to use the Food Star grocery store, supposedly because it was outside of the city limits. She said she told the mayor that it was used by the elderly center, and that each department made its own decisions about procurement.

Mrs. Chez further stated the mayor instructed her not to purchase items from the Arnaiz hardware store, located in the same shopping center as Finishline gas. She said she could not recall who told her this, but the reason for boycotting Arnaiz was “because Orlando goes there,” the Orlando being the mayor’s opponent, Lopez. She said Arnaiz is a bit more expensive than Home Depot, but is located within the city and much closer. She said that for smaller purchases it would be cheaper to use Arnaiz because of time and gas savings.

On July 3, 2014, COE interviewed Lopez, who is running for mayor against Diaz in next May’s municipal election. Lopez advised several of his supporters were being targeted for reprisal by Diaz, and that the mayor threatened to terminate their city contracts if they supported his opponent.

He stated that Milagros “Millie” Bencomo (Bencomo), mother of former Circuit Court Judge Ana Maria Pando, operates an elderly meals program for the city through her company, Construction Catering. Lopez said Diaz didn’t want Bencomo to support his campaign and threatened her by stating in Spanish: *“Si yo fuera hijo de puta, yo echaria cinco o seis cucarachas en su comida y llamaria los noticieros y cancelo tu contrato.”* (If I was a son of a bitch, I would put five or six cockroaches in your food and call the news media and cancel your contract.) The message was a veiled threat, he said, because this is what happened to Bencomo in Hialeah after a falling out with Hialeah Mayor Carlos Hernandez.

Lopez said that Guillermo Cuadra (Cuadra), the mayor’s former chief of staff, was present during the conversation with Bencomo in which the alleged cockroach remark was made and could be reached at [REDACTED]. He said Cuadra is now working for a law firm.

Lopez stated the owner of the Food Star grocery store on Flagler and 107th Avenue angered the mayor by giving him a check for his campaign. He said the grocer – Diosdado Hernandez – refused to help Diaz’s campaign, so Diaz instructed employees running the city’s elderly center to stop purchasing food there. He said he told them to use Sedanos even if it were more expensive. He identified the employees as Mari Elena (last name?) and Mayte Alvarez.

Lopez noted Diaz’s campaign received \$2,000 in contributions from businesses linked to the owner of the Orion gas station, which started doing business with the city after the dispute between the owner of the Finish Line station and the mayor turned nasty. He said checks were written in the name of the gas station and merchant services for the Orion station.

On Oct. 16, 2014, COE sent an email to Police Chief Menocal requesting an interview regarding a memo he issued on May 13 regarding the purchasing of gasoline for the city’s motor patrol unit. On Oct. 17, COE called the chief’s office to follow up on this request, but was told the chief was off duty that day and a message was left with his secretary. Messages were subsequently left for COE to contact Chief Menocal at [REDACTED].

On Oct. 17, 2014, COE left a second message requesting to speak to Benecomo at Construction Catering regarding the pending contract with the city of Sweetater.

Diosdado Hernandez, owner
Food Star Grocery Store
10751 W Flagler St, Miami, FL 33174
Phone:(305) 559-1487
Oct. 17, 2014

Left a message requesting an interview with an employee, Dayton Blanco (Blanco). On Oct. 20, COE called back and spoke to Blanco again and explained the purpose of the call. Blanco said he would talk to the owner and relay the message.

Milagros "Millie" Bencomo
Construction Catering Inc.
Phone: (305) 633-5668
Oct. 17, 2014

Left a message for Bencomo. (Note: She did not return prior message requesting she contact COE). Have since learned that contract was renewed this month by 7-0 vote.

A second message was left for Bencomo on Oct. 20. Following a subsequent visit to the office of Construction Catering by this writer, Bencomo contacted COE and stated that she and the mayor never had any problems and denied he made any threatening remarks.

Amaury Gejo, owner
Arnaiz Hardware store
Phone: (305) 559-4003

Oct. 20, 2014, COE called and left a message for the owner.

Isolina Maroño, City Commissioner
City of Sweetwater, FL
Phone: (305) 226-8575
Oct. 17, 2014

Comm. Maroño advised that after repeated delays Diaz approved a check request dated June 12, 2014, to purchase vouchers for turkeys for needy families to be distributed prior to Thanksgiving. She said that she believed the mayor was doing this to benefit his political campaign, and to punish his perceived adversaries. She said she had been told by the city employee supervising the Mildred & Claude Pepper senior center that the mayor was trying to embargo any purchases from the Food Star grocery store because the owner did not support his political campaign (or supported the political campaign of a rival). She identified the employee as Mayte Alvarez, and said she could be reached at [REDACTED]. The senior center is located at 10600 SW 4th Street, and serves meals to approximately 200 seniors.

Jesus Menocal, Chief of Police
City of Sweetwater, FL
Oct. 20, 2014

With respect to the memo dated May 13, 2104, Menocal stated in a telephone interview that he prepared the memo on his own initiative and without any prompting from Diaz. He stated that it was his view at the time that the city had allowed Finishline petroleum to, in effect, “monopolize” the city’s business for the police motor unit and that it was time to make a switch to another gas station in the interest of fairness and economic development. He stated that he decided to recommend purchasing gas from the Orion Gas Station because it was a new business, opened after the station had been closed for a couple of years. He said he “wanted to stimulate a new business,” and reiterated that the dispute between Diaz and the owner of Finishline in no way influenced his decision to recommend changing vendors. He said that his department does not have a formal procurement process, and that as a department head he makes recommendations to the mayor and that the mayor makes the final decision. He said, “I’m on the first floor of city hall. I have no idea what he (the mayor) does upstairs.”

Menocal said the decision to recommend Orion had nothing to do with price, that no market research was conducted. He said Orion was one of three other gas stations near city hall, aside from Finishline. He said only the motor unit and police maintenance vehicles fuel up at local gas stations, while the patrol vehicles use the Miami-Dade police gas pumps. He said the department’s maintenance vehicles still use Finishline for their purchases.

Document/Audio/Video Review:

Enforcement files for the subject properties were examined at the city’s Code Enforcement office on June 12. Copies of relevant documents were made and added to the file.

On July 2, COE reviewed copies of the business license file for JLC Group, which is the corporate owner of Finish Line Petroleum. JLC has five city licenses – for retail, soda fountain, gas/ diesel fuel, car and truck rentals, and administrative offices. Copies of licenses dating back to 2009 were obtained and added to the file.

On July 3, a public records request was made for the history of payments to JLC Group to see if it could be verified that the city stopped doing business with JLC at the time in question. It was further disclosed that the city now purchases gas from the Orion gas station on Flagler and NW 114th Avenue for its police motor unit, or “motormen.” A review of the corresponding records shows that the city stopped doing business with Finishline on or about May 2014, and since that time has commenced purchasing fuel at Orion Fuels (vendor No. 971).

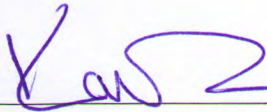
On October 13, COE reviewed a copy of a memo from Menocal regarding the purchase of

purchase gas at the Orion station. He said he did not instruct Menocal to order the patrol officers to stop using Finishline, but rather that he wanted to give another local business owner an opportunity to serve as a city vendor. He said he told Menocal "to contact the guy at Orion," and observed that he later approved the May 13 memo from Menocal. It should be noted that Menocal's account was inconsistent with that of Diaz'.

Conclusion(s):

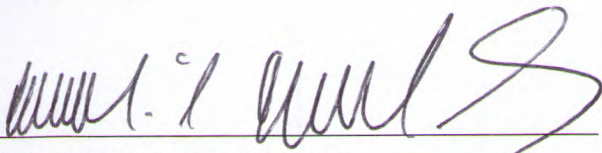
In light of the foregoing and in consultation with the Ethics Advocate, it was determined that no further action should be taken by this agency and the investigation closed. While there may be circumstantial evidence to suggest that Diaz displayed a political bias, in the case of Cuevas it would appear that a dispute with the owner of the shopping center triggered the inquiry with the city's Code Enforcement Office and that Cuevas was in fact in violation of the city's code with respect to the storage of rental vehicles. Attempts to get other business owners to corroborate reports of political retribution were unsuccessful, so any adverse actions against Finishline Petroleum could not be seen as part of a larger pattern of abuse.

As for any ancillary issues regarding the enforcement of the city's building code, COE has no jurisdiction over these matters and the issues should be addressed at the local level.

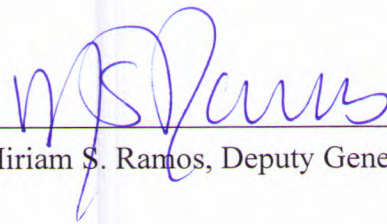


Karl Ross, COE Investigator

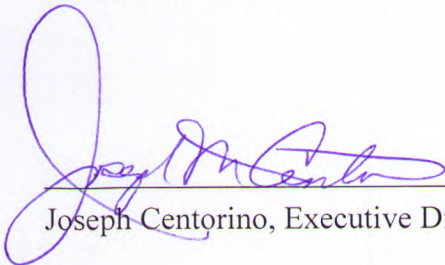
Approved by:



Michael Murawski, Advocate



Miriam S. Ramos, Deputy General Counsel



Joseph Centorino, Executive Director

10/21/14

Date