

OFFICE OF THE INDEPENDENT ADVOCATE  
REPORT OF INVESTIGATION

K #:09-087

Date Opened: July 28, 2009

Date Closed: November 6, 2009

Name of investigator: Kennedy Rosario  
.....

**Allegation**

Miami-Dade County District 7 Commissioner Carlos A. Gimenez (Gimenez) requested the Miami-Dade County Commission on Ethics & Public Trust (COE) investigate a possible violation of the **Miami-Dade County Home Rule Charter Sec. A. 'Citizen's Bill of Rights' 2. Truth in Government** to wit: No County or Municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.

On August 10, 2009, COE Investigators Breno Penichet and Kennedy Rosario met with Gimenez as well as staff members, Chief of Staff Roger M. Carlton (Carlton) and Commission Aide Inson Kim (Kim).

Commissioner Gimenez' concern centers around a discussion he had with Miami-Dade County Finance Director Carter Hammer (Hammer) during a July 14, 2009 regularly scheduled public hearing/meeting of the Budget Planning and Sustainability Committee (BPSC).

During this discussion, Gimenez asked Hammer to provide an explanation for a \$36 million loss on the Marlins' stadium bond transaction.

The dialogue between Gimenez (G) and Hammer (H) is set forth below:

- G "this is off the subject...this is basically about a July 9<sup>th</sup> 2009 memo from the manager to us ...Mr. Hammer did you write this memo?" (Holding up the memo)
- H "Uhh...actually I can't speak to that memo at this point in time, I, it's ... I'm sorry, but I can address it with you after the meeting."
- G "No...why can't you speak to it now?"
- H "I'm not familiar with the memo you're speaking to."
- G "It deals with the stadium...sale of the stadium bonds (still brandishing the memo)...it should be right up your alley."
- H "Well, I'm sorry...I...I...can't speak to it at this point in time...I have to sit down with you separately to be able to speak with you and understand...."

G "Well, I mean, the questions I'm going to ask...when we refinanced the professional sports tax..."

H "Yea"

G "The 1998 bonds...where in it...it says...any where in it, it says that we lost 36 million dollars in that transaction?"

H "I can't...I can't say right now."

G "Were you part of the bonds sales?"

H "Uhh...I was, but I don't have the information with me here."

G "Well. Ok. I will be asking that at the full BCC so maybe you'll be prepared."

H "Yes"

G "Well thank you sir. I appreciate that"

There was a brief pause to the discussion whereupon Gimenez asked the following question:

G "I have another question of the Finance Director....I have here a, uhh, a separate set of documents which is the Table of Contents Miami-Dade PST Bonds...the final numbers...are you familiar with this document? (Holding up the document)"

H "Uhh...I don't have it in front of me, I'm sorry."

G "I know you don't have it in front of you. Are you familiar with this document?"

H "I'm certainly familiar with the PST financing, yea."

G "You are....OK... in that document it has this number which says, net present value savings negative 36 million dollars...if you're familiar with this document, how come five seconds ago you couldn't talk to me about it?"

H "Uhh...Because I need to see the document. I need to have it in front of me...this is a very, a very complex transaction which requires, you know, really being able to sit down with the document and go through all the details related, because they're so many components to that transaction."

G "I just asked about one component of it... so you weren't aware that we had lost 36 million dollars on that one sale of the refinancing of the professional sales tax? Is that what you're saying on the record?"

H "I'm saying on the record I have to have all the information in front of me in order to be able to answer that question. There were so many components to this particular transaction."

At this point committee Chair Katy Sorenson asked Hammer to get with Gimenez who then stated...  
"It has to be on the record."

## Investigation

On August 21, 2009, COE Auditor Christina Seymour (Seymour) and COE Investigators Penichet and Rosario met with Bond Administration Division Director Lidia Monzon-Aguirre and Bond Analyst Frank Hinton in order to better understand the role they played in the Marlin's stadium bond transactions. The Bond Administration unit is a part of the Finance Department whose director is Hammer.

For complete details of this meeting refer to Seymour's report dated August 21, 2009, which is attached hereto as **Exhibit A**.

On September 2, 2009 Seymour and Rosario met with Director Hammer in the COE offices.

For complete details of this meeting refer to Seymour's report dated September 2, 2009, which is attached hereto as **Exhibit B**.

It is also noted that Director Hammer, subsequent to the above referenced meeting, forwarded to the COE a "Points of Clarification" memorandum dated September 3, 2009. This memorandum is attached hereto as **Exhibit C**.

At the request of the COE, Bond Division Director Monzon-Aguirre supplied the investigation with a "flash drive" containing all electronic communications on the Marlin's Stadium Bond issue dating from October 1, 2005 through August 21, 2009.

On September 21, 2009 COE investigators Penichet and Rosario met with Office of Sustainability Department Director Ms. Susanne Torriente (Torriente).

On July 14, 2009 Torriente was the Assistant County Manager that oversaw the Finance Department.

Torriente was questioned as to activity during and after the Gimenez/Hammer dialogue chronicled above.

Torriente was aware of the July 14, 2009 BPSC meeting stating that, in her opinion, Hammer was simply "nervous" in his response to Gimenez' questioning and was inexperienced in addressing the BCC.

Torriente recalled that two days after the incident she and County Manager George Burgess met informally with Hammer. The purpose of the meeting was to counsel Hammer on his performance as it pertains to addressing members of the BCC. According to Torriente, Burgess' was "trying to help" Hammer as it relates to addressing BCC members in the future.

Questioned if the substance of Gimenez' questioning was discussed during this informal counseling, Torriente answered that it was not part of the conversation.

Torriente, when asked, could not explain why Gimenez' concerns were not subsequently addressed by her, or others, in Hammer's chain of command stating that "it fell through the cracks."

Subsequently, COE investigators Penichet and Rosario met with County Manager George Burgess.

Burgess stated that he was advised of the exchange between Gimenez and Hammer and sought to counsel Hammer. However, Burgess contends that the counseling session was as a critique of Hammer's post presentation encounter with Gimenez and not the substance of the questions addressed at the meeting.

## Conclusion

The section of the Home Rule Charter, as cited above, deals with “knowingly” furnishing false information...one of the documents in question is the Table of Contents of the Miami-Dade-PST Bonds which was prepared by Merrill Lynch. There is no evidence to believe that Hammer had any input into the actual figures delineated in this document and no indication that any of the figures contained therein are “false”.

The document itself, as stated by Kim, was furnished to Commissioner Gimenez by Miami-Dade County Assistant Attorney Gerald Heffernan. This was confirmed via a telephone conversation between Heffernan and Investigator Rosario. Heffernan further stated that this document could have just as readily been supplied to Gimenez by County staff.

The second document under discussion is that of the County Manager’s memorandum. Gimenez questioned Hammer about a certain figure, to wit: “the net present value savings negative 36 million dollars”, this is not mentioned or explained in the Manager’s memorandum. Heffernan also stated that there was no requirement mandating an explanation of that line item amount.

As to the verbal exchange between Gimenez and Hammer that is the basis of this inquiry, Hammer and County staff explained that Hammer essentially had a “deer in the headlights” reaction to Gimenez’s questions. While it may be the opinion of some that Hammer should have been able to answer any and all questions pertaining to the Stadium Bonds at a moments notice, it is also reasonable to assume that Hammer’s decision to delay his response was simply to ensure an accurate answer.

It is however troubling that a BCC member’s inquiry into an item of considerable import “falls through the cracks” and no one, neither Hammer, Torriente, nor the County Manager followed through with an answer to Commissioner Gimenez’ inquiry.

The COE did obtain an explanation to Gimenez’ inquiry regarding the \$36 million dollar loss from Bond Administration Director Monzon-Aguirre as follows:

**The County previously issued PST Bonds secured by PST revenues and TDT revenues. In order to sell the 2009 Bonds in a highly volatile marketplace, the County had to add additional security in the form of a covenant to annually appropriate from legally available non ad-valorem revenues sufficient funds to cure any shortfalls in debt service. Rather than issue subordinate bonds which would have been more costly, the County elected to enact a new bond ordinance authorizing the issuance of PST bonds for the Marlins stadium and the refunding of the outstanding PST Bonds. Therefore, the refunding was not based on economic savings but rather on a change of collateral and an extension of the maturity on the Bonds to be consistent with the baseball project. There was a \$36 million debt service loss as a result because the 2009 Bonds had a higher interest rate and longer maturity than the 1998 PST Bonds that they refunded.**

Our review of hundreds of electronic communications did not yield any evidence of a conspiracy to deny and/or falsify public information with regard to the 36 million dollars negative savings.

Thus we can not conclude that the **Miami-Dade County Home Rule Charter Sec. A. ‘Citizen’s Bill of Rights’ 2. Truth in Government was violated in any way.**

