

**OFFICE OF THE INDEPENDENT ADVOCATE
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST**



REPORT OF INVESTIGATION

#K10-111

Date Opened: 09/01/10

Date Closed: 07/05/11

Investigator: Sylvia Batista

This matter was referred to the OIA by Miami-Dade Fire Rescue Internal Affairs Bureau (IA). The matter relates to the outside employment of Tarlesha W. Smith ("Smith"), Human Resource Manager for Miami-Dade County Fire Rescue Department (MDFR). Pursuant to the IA report, Smith formed a Florida for-profit corporation called Brantay Management Systems, LLC (BMS) with a former co-worker, Allison Bivin-Grande ("Bivin-Grande"). Smith and Bivin-Grande are listed as the managers of BMS. Bivin-Grande was formerly the Grant Resources Manager in the Grants Management Bureau of MDFR. Bivin-Grande resigned her position with MDFR on 6/8/10 as a result of the IA's and other pending investigations.

The IA report informs that on 09/23/09 Smith created a contract on behalf of BMS with the Menlo Park Fire Department in Menlo Park, California (Menlo Park) where BMS agreed to write an Assistance to Fire Fighters Fire Prevention and Safety ("FP&S") grant application for a fee not to exceed \$12,250. The report

further discloses that on 11/05/09 Smith created a contract on behalf of BMS with Menlo Park where BMS agreed to write a Staffing for Adequate Fire & Emergency Response (“SAFER”) grant application for a fee not to exceed \$12,000.

Menlo Park Fire Chief, Harold Schapelhouman, advised IA about his concerns over the possibility that there might be a conflict of interest on the part of Bivin-Grande due to her position as a Grant Resource Manager for MDFR. Chief Schapelhouman advised that he was aware that the grants that BMS was contracted to submit on behalf of Menlo Park were the same type of grants as those being submitted by Bivin-Grande on behalf of MDFR. Chief Schapelhouman explained that he had a three-way conference call with Bivin-Grande and Smith to discuss his concerns about a possible conflict of interest. During the call, Bivin-Grande assured him that they had researched the possibility of a conflict of interest and that there was none. Chief Schapelhouman advised that he was aware that Smith was an attorney and therefore felt a “sense of relief” in their assessment that there was no conflict of interest, and agreed to enter into the contracts with BMS. The Chief stated that BMS wrote two grants for Menlo Park for which BMS was compensated.

The IA report questions whether Smith engaged in conflicting employment for the reason that MDFR, Smith’s public employer, was competing for the same grants that BMS applied for on behalf of Menlo Park.

Lastly, the report informs that Smith failed to submit a request for outside employment to the MDFR for BMS, but did file an annual report indicating the

outside employment with BMS and the sums received from said outside employment.

The OIA investigated the possible violation of the Conflict of Interest and Code of Ethics Ordinance Section 2-11.1 (j) *Conflicting employment prohibited*, and (l) *Prohibited investments*.

Investigation:

OIA requested copies of Smith's outside employment authorizations for 2007, 2008, 2009 and 2010 and all financial disclosure statements. Smith filed outside employment statements for 2007 and 2009; however, neither of the statements lists BMS as a source of outside income.¹ Smith filed source of income statements for 2007, 2008 and 2009. Smith listed BMS as a source of income in 2009.

OIA requested and received copies of the grant applications filed by Bivin-Grande on behalf of MDFR from her former supervisor, Scott Mendelsberg (Mendelsberg). Mendelsberg advised by e-mail dated 10/22/10 that MDFR applied for the "Staffing for Adequate Fire & Emergency Response" and "Assistance to Fire Fighters Fire Prevention and Safety" grants when Bivin-Grande was the Grants Bureau Manager at MDFR.

OIA investigator questioned Mendelsberg about Smith's knowledge of the grant applications being prepared and filed by Bivin-Grande on behalf of MDFR. Mendelsberg advised that Smith was aware that it was Bivin-Grande's responsibility to file grant applications for MDFR, but he was not sure how much she followed what they applied

¹ Smith had permission to engage in outside employment as an attorney not specifically as a partner in BMS.

for or not. Mendelsberg explained that Smith would have been aware of the SAFER grant because MDFR would be required to hire people and as the human resource director Smith would be involved. Mendelsberg advised that both of the grants applied for were awarded, but MDFR declined one because the terms and conditions were not in the best interest of MDFR.

11/10/10 – Rick Yabor, Esq.

Rick Yabor, Esq. represents Bivin-Grande in connection with a criminal case pending in the SAO. Mr. Yabor explained that Bivin-Grande told him that she would allow OIA investigator's to interview her after the criminal case settled.

12/6/10 – Luis Caso, Assistant State Attorney

OIA investigator contacted Mr. Caso regarding Bivin-Grande's case. Mr. Caso is the prosecutor assigned to the case. Mr. Caso advised that Bivin-Grande was charged with grand theft third degree. Bivin-Grande entered a plea of nolo contendere to one count of grand theft third degree. Bivin-Grande has been placed on one year probation and was ordered to pay restitution in the sum of \$1,398 and cost of prosecution of \$468.

3/9/11 – Allison Bivin-Grande –

Bivin-Grande rendered a verbal statement at the offices of the OIA. She was represented by counsel, Rich Yabor, Esq. Bivin-Grande was asked about two grant applications which she submitted in 2009 on behalf of Menlo Park. Menlo Park was a client of her outside business, BMS. Bivin-Grande advised that as a consultant for BMS, she submitted grant applications on behalf of Menlo Park for the FP&S and SAFER fire grants. Bivin-Grande explained that she did not apply for the SAFER grant on behalf of MDFR in 2009. Bivin-Grande advised that she applied for the SAFER grant

on behalf of MDFR in 2008 and it was granted, but MDFR refused it. MDFR could not apply for the same grant in 2009 because they had refused the grant the year before. Bivin-Grande advised that Menlo Park was the only fire department client that BMS had.

Bivin-Grande stated that there was no competition between MDFR and Menlo Park for the SAFER and the Fire Prevention and Safety grant money because the awarding of the grant depends on the number of people being served in the community. Bivin-Grande explained that fire departments compete with other fire departments of the same size. MDFR serves a large metropolitan area while Menlo Park serves a much smaller community.

Bivin-Grande explained that while working at MDFR she did not write the grants herself, but she supervised the people who were writing them. Bivin-Grande advised that her former co-worker, Tarlesha Smith, worked in the Human Resources Division of MDFR. Bivin-Grande stated that Smith's position with MDFR does not require her to write grants.

7/05/11 – Tarlesha Smith, Manager, HR, Miami-Dade Fire Rescue Department –

Tarlesha Smith rendered a verbal statement at the office of the OIA. Smith explained that Bivin-Grande was a co-worker and friend at MDFR. Bivin-Grande approached her and asked if she would go into business with her. Smith explained that Bivin-Grande had gone through a difficult divorce and was trying to find an additional source of income when she formed BMS. Smith advised that her role with BMS was as legal counsel responsible for preparing contracts and any other legal document needed in the course of business. Smith stressed that she did not become involved in marketing the business or in doing the actual grant writing for BMS's clients. Smith said that grant

writing is an industry that you have to know in order to do effectively. Smith stated that she does not have any experience in the field of grant writing. Smith stated that her duties at MDFR have never included grant writing.

Smith recalls having a telephone conference with Menlo Park Fire Chief Schapelhouman. Smith explained that Chief Schapelhouman expressed concern over the possible existence of a conflict of interest in having Bivin-Grande write grants for Menlo Park. Smith explained that Bivin-Grande assured Chief Schapelhouman that there would be no conflict in contracting BMS to write the grants, and the Chief agreed to enter into the contracts.

Smith said that she is certain that there was no conflict between the grant applications written by Bivin-Grande for Menlo Park and the grant applications filed by MDFR. Smith explained that grants are divided by geographical area and by the size of the community being served which places MDFR and Menlo Park in separate categories for receiving grant money.

Research:

FP&S and SAFER fire grants are under the purview of the Federal Emergency Management Agency (FEMA). FP&S grants are part of the Assistance to Firefighters Grants (“AFG”) and are intended to support projects that enhance the safety of the public and firefighters from fire and related hazards. SAFER grants fall under the SAFER Program and are intended to improve or restore local fire departments’ staffing and deployment ability so that they may more effectively respond to emergencies.

FP&S and SAFER grant awards come from two (2) separate sums appropriated by Congress to carry out the activities of the AFG Program and SAFER Program. FP&A

grant awards are made from its respective funding source, and are required to adhere to specific funding restrictions with consideration to the size of the population being served. SAFER grant awards are made from its own funding source with specific consideration to the type of community being served (urban, suburban, or rural) and other characteristics such as size of population, number of stations, call volume, number of casualties, and number of firefighter positions required. The designation of community type is important because the programs have established different funding priorities depending on the type of community served.

The fact that MDFR and Menlo Park serve different types of communities makes it plausible that the two (2) fire departments were not competing for the same grants as was stated by Bivin-Grande and Smith.

Conclusion:

It appears that MDFR and Menlo Park were not competing for the same, limited quantity of grant funds thus, the interests of MDFR and Menlo Park were not at odds with each other. Thus, we cannot conclude that Tarlesha Smith violated the conflicting employment provision of the Conflict of Interest and Code of Ethics Ordinance. For this reason, no further action will be taken by the OIA on this matter.