

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



REPORT OF INVESTIGATION

Case No.: K 10-156

Date Opened: October 28, 2010

Date Closed: June 29, 2011

Investigators: Breno Penichet and Kennedy Rosario

Allegation:

This investigation was predicated on information received in the form of an e-mail from the legal department, City of Miami Beach alleging that Carl Zabloutny (Zabloutny) may be in violation of INQ 10-66, by acting as an unregistered lobbyist while meeting with City of Miami Beach staff.

Investigation:

OIA Investigator Breno Penichet was requested to conduct an investigation to determine if Zabloutny was acting as an agent for his employer, Leroy Griffith (Griffith) d/b/a Club Madonna, a strip club located on Washington Avenue that is attempting to obtain a liquor license.¹ Zabloutny, it was reported, met with staff members of the City of Miami Beach (the City).

On October 25, 2010, Richard Lorber (Lorber), Acting Planning Director, notified Gary Held (Held), First Assistant City Attorney, via e-mail, of meetings and discussions Zabloutny had with City staff members. According to Lorber, "it seemed to him, he (Zabloutny) was acting as an employee or at least an agent of Club Madonna." Lorber

¹ Club Madonna/Griffith has a long history of attempting to change the City's zoning code to allow for the sale of alcohol in establishments providing nude entertainment.

went on to state that, "he feels that Zabloutny was not acting as a private citizen". (See attached e-mail dated October 25, 2010 - Exhibit 1.)

OIA Investigator Penichet reviewed the information provided by the City and found that Zabloutny attended meetings with Assistant City Attorneys, City planners, and other unspecified personnel, in order to secure a change in the city code.

OIA Investigator Penichet reviewed INQ 10-66 issued by Commission on Ethics Staff Attorney Victoria Frigo (Frigo) on April 12, 2010. In the opinion, Frigo specifically stated: *"You asked if you are considered a lobbyist when you speak to the City of Miami Beach Mayor, Commissioners, and their staffs as a concerned citizen in favor of selling alcohol at Club Madonna. You stated that you have been employed by Club Madonna as the marketing manager for approximately one month. Based on your managerial position with Club Madonna, you are advised to proceed cautiously in advocating on this issue. Depending on the facts as they develop, your advocacy as an agent of your employer and /or your encouragement of other employees to advocate could trigger, at a minimum, lobbyist registration requirements, or possible charges of ethics violations"*. Frigo's opinion goes on to define the Code and what constitutes a lobbyist. (See attached INQ 10-66- Exhibit 2.)

OIA Investigator Penichet conducted a records check of the lobbyist registration log for the City and found the only registered lobbyist for Club Madonna is attorney Danny Aaronson (Aaronson). (See attached logs - Exhibit 3.)

OIA Investigators Kennedy Rosario and Penichet contacted Lorber. He advised that Zabloutny has always come to his department as Griffith/Club Madonna's representative. Zabloutny is helping with the paper work to amend the zoning code to allow alcoholic beverages to be sold in Club Madonna.

He also advised that Zabloutny has a Florida corporation called All Wired-up Media, Inc. through which he works on behalf of Griffith/Club Madonna. According to Lorber, in all his dealings with Zabloutny, he has always represented the interest of Griffin/Club Madonna.

Lorber further advised that he has assisted Griffith and Zabloutny by explaining the procedure to follow in order to present the paperwork and applications to amend the zoning Code to allow the sale of alcoholic beverages and the consumption on the premises. Lorber also stated that Zabloutny made a public records request regarding liquor licenses in other locations and attended at least one meeting with Assistant City Manager Jorge Gomez (Gomez). Zabloutny also monitored the progress of the zoning application by calling the department on a routine basis. (See attached e-mails and other documentation – Exhibit 4).

Investigation revealed that on November 17, 2010, agenda Item R5I titled, *“Alcoholic Beverages and Nudity Regulations- Applicant Leroy Griffith”* was on the City Commission’s meeting agenda. The item failed, due to the fact that no motion was offered.

OIA Investigators interviewed Aaronson, the registered lobbyist for Griffith/Club Madonna. Aaronson advised that he was aware that Zabloutny was helping the club with marketing and other public relations projects, but that he was not authorized to lobby on behalf of the organization. Aaronson further stated, that on occasion, he has had Zabloutny deliver paperwork to the City.

OIA Investigators contacted Griffith regarding Zabloutny’s employment status. Griffith advised that he hired Zabloutny to do marketing and write articles to promote Club Madonna. Griffith advised that he knew Zabloutny used to own a small, local paper and would be able to get the Club some positive exposure. Griffith could not provide specific dates as to when Zabloutny was working for him as an independent contractor but advised that it was between April 2010 to January 2011. Griffith also stated that he never asked Zabloutny to make any presentations or speak on behalf of Club Madonna and that if he did so, it was on his own.

OIA Investigators contacted Zabloutny and requested to meet with him regarding the allegations raised by the City. Zabloutny voluntarily appeared and was advised of the focus of the inquiry. Zabloutny went over his background and his relationship with Griffith and Club Madonna. He also provided a copy of his resume and a copy of a news article from a weekly publication called "WIRE". (See resume and article date 10/16/2008 - Exhibit 5.)

Zabloutny stated that he started to work for Griffith in April 2010 after he returned from living abroad. He was hired by Griffith to promote the Club, deal with the media and attract business; particularly when certain festivals were in town.

When Zabloutny started to be questioned regarding his contacts with City officials, he became evasive and his answers contradictory. He admitted meeting with the City's Zoning Director and the Assistant City Manager but minimized his role at these meetings. Zabloutny also admitted that he spoke in front of the City Commission in support of allowing alcohol to be sold at Club Madonna. Zabloutny was evasive when questioned regarding whether he had been compensated by Griffith for his appearance before the Commission.

Zabloutny was also asked about the opinion he received from the COE and the warning that it contained regarding his contact with City staff. Zabloutny appeared to know what his limitations were and, in his own defense, he produced a memo written by him to Robert Parcher (Parcher), City Clerk, defending his actions. (See memo to City Clerk Robert Parcher dated 4/13/2010 - Exhibit 6.)

Zabloutny was asked if he had approached the Mayor or any City Commissioner or their staff in order to discuss the Club Madonna issue. He advised that he had not but offered that he is friends with Commissioner Michael Gongora (Gongora) and they talk about personal matters.

OIA Investigators contacted Commissioner Gongora in order to verify the information provided by Zabloutny. Gongora advised that knows Zabloutny as a social

acquaintance and did not recall if he had spoken to Zabloutny about the Club Madonna matter. Note: An e-mail dated April 1, 2010, from Zabloutny to Gongora advises Gongora that Griffith wanted the Club Madonna issue brought up for discussion. (See e-mail dated April 1, 2010 – Exhibit 7.) It is important to note that this e-mail was sent *prior to* Mr. Zabloutny requesting an opinion from the COE.

OIA Investigators also contacted Commissioner Deede Weithorn (Weithorn) and asked if she knew Zabloutny and if he had discussed the Club Madonna matter with her. Weithorn advised that Zabloutny and Griffith had a meeting that included Maria Zabala (Zabala), Principal for Feinberg Fisher Jr. High School. According to Weithorn, Zabloutny was “acting like a lobbyist”; attempting to gain support from Zabala for Club Madonna. (See e-mail dated March 21, 2011 – Exhibit 8.)

EXHIBITS:

- E1. E-Mail from Acting Zoning Director to City Attorney, dated October 25, 2010 RE: alleged violations of Code of Ethics.
- E2. INQ 10-66 issued by COE Staff Attorney Victoria Frigo
- E3. City of Miami Beach lobbyist logs showing the registered lobbyist for Club Madonna.
- E4. Public records and E-mails, along with copy of resolution page showing the request to change the City zoning code, dated November 17, 2010.
- E5. Zabloutny’s resume and copy of article published in The Wire weekly dated October 16, 2008 and titled, “Club Madonna; sex, nudity, alcohol, politics, extortion & the Commissioner’s wife.”
- E6. Memo to City Clerk Robert Parcher, dated April, 13, 2010.
- E7. E-mail to Commissioner Michael Gongora, dated April 1, 2010.
- E8. E-mail from Commissioner Deede Weithorn, dated March 21, 2011.

Conclusion:

This case is eerily reminiscent of ethics complaint C10-05, OIA v. J.P. Morgan. In that case, J.P. Morgan (Morgan), a self-proclaimed “blogger” with an online newspaper, met with a City Commissioner and prepared a packet of documents that provided the Commissioner with a prepared speech for the Commissioner to make. The speech advocated for a specific position to re-bid the City’s parking contract. Frank Pintado (Pintado), the former holder of the City’s parking contract, who was anxious to get the contract back, authored and reviewed the package of documents that Morgan provided to the Commissioner.

It was clear, that Pintado used Morgan as a go-between to get his message to the City Commissioner. Morgan claimed that he was merely acting in a “journalistic capacity” by posting his report on his blog, Citydebate.com. Morgan also claimed, as Zoblotny does, that he was only acting in his capacity as an individual because he felt that Pintado got a raw deal when he lost the parking contract.

The Ethics Commission dismissed complaint C10-05 after a determination of no probable cause.

Although Zablotny received an opinion from the COE concerning what activity he could or could not engage in, the COE opinion specifically noted that Zoblotny’s situation presented a “close call.” It further warned Zoblotny to “proceed cautiously in advocating,” and stated that, “[d]epending on the facts as they develop, your advocacy as an agent of your employer and/or your encouragement of other employees to advocate could trigger, at a minimum, lobbyist registration requirements.”

It appears that Zoblotny came close to engaging in “lobbying” activity that would have required him to register as a lobbyist. This is true especially in light of the City of Miami Beach Code.

Sec. 2-481 of the City of Miami Beach Code (Division 3) defines "Lobbyists", in pertinent part as follows:

"Lobbyist means all persons employed or retained, whether paid or not, by a principal who seeks to encourage the passage, defeat or modification of any ordinance, resolution, action or decision of any commissioner; any action, decision, recommendation of the city manager or any city board or committee; or any action, decision or recommendation of any city personnel defined in any manner in this section, during the time period of the entire decision-making process on such action, decision or recommendation that foreseeably will be heard or reviewed by the city commission, or a city board or committee. The term specifically includes the principal as well as any employee engaged in lobbying activities. The term "lobbyist" specifically excludes the following persons..."

The City's lobbyist definition is much more restrictive than the County's.

The County's lobbyist definition includes an exclusion from registration requirements for "employees of a principal whose normal scope of employment does not include lobbying activities."

It was, apparently, the County Code that was relayed to Mr. Zablotsky in his Request for Opinion, thus, since he relied on the opinion given to him by the COE it would seem inherently unfair to file a complaint against him based on his violation of the City's code since Mr. Zablotsky relied, in good faith on the opinion he received from the COE.

Accordingly, this case is closed.