

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

#K10-174

Date Opened: 12/07/10

Date Closed: 06/03/11

Investigator: Sylvia Batista

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On November 30, 2010 the COE received information regarding a possible violation surrounding the unpermitted removal of City owned palm trees from public property which were then replanted on private property allegedly under the direction of Commissioner Marc Sarnoff.

This information was delivered in the form of two e-mails to Commissioner Sarnoff. The first e-mail dated 7/25/10 was from Eileen Bottari, President of North Palm Grove Community Organization (NPGCO). The second e-mail dated 7/26/10 was from Robert L. Hernandez, a member of the NPGCO. Both e-mails described an incident in which they and Alisa Cepeda, also a resident board member, observed a backhoe on NE 5<sup>th</sup> Avenue and 75<sup>th</sup> Street removing palm trees from the public swale area. In their e-mails, Ms. Bottari and Mr. Hernandez said that they called the police and questioned the backhoe operator. According to the e-mails, the backhoe operator initially said that he was with the City, but later admitted that he was not, that he was instructed by local resident board member, Robert Powers (Powers), to remove and replant (R&R) the palm trees to a private commercial property called Coverings, Etc. (Coverings). Coverings is located at NE 4<sup>th</sup> Court

and 75<sup>th</sup> Street. According to the e-mails, the backhoe operator said that he was being paid by Coverings.

The e-mails go on to explain that Mr. Hernandez telephoned Powers who told him that the work had been approved through Commissioner Sarnoff's office. The e-mails further describe the ongoing concern the residents have over the state of the palm trees, and the fact that these trees were only three of the estimated 15 to 25 trees slated for R&R within the North Palm Grove community. Mr. Hernandez and Mrs. Bottari expressed outrage over Power's illegal actions (removing the trees without a permit) allegedly approved by Commissioner Sarnoff.

The OIA conducted an investigation to determine if there were any violations of the Conflict of Interest and Code of Ethics Ordinance Section 2-11.1(g) *Prohibition on exploitation of official position.*, specifically.

**Investigation:**

**2/14/11 – Roberto L. Hernandez –**

This investigator interviewed Mr. Hernandez (Hernandez) by telephone. Hernandez is a resident of North Palm Grove and a member of the NPGCO. Hernandez confirmed what he had written in the 7/26/10 e-mail to Commissioner Sarnoff. He explained that on that morning he saw a backhoe operator removing a palm tree from the public swale area near 75<sup>th</sup> Street NE 5<sup>th</sup> Avenue. He confronted the person performing the work and asked him what he was doing. Hernandez stated that the backhoe operator told them that he had been contracted by Powers to R&R the palm trees. Hernandez said that the backhoe operator was an independent contractor and did not work for the City.



The City of Miami police were called Hernandez called Powers and asked who had given him the authorization to R&R the palm trees. Hernandez said that Powers claimed he received the authorization from Commissioner Sarnoff's office.

Hernandez said that the police asked the backhoe operator to produce the permit for the work that he was doing. The backhoe operator said he did not have a permit and the officer asked him to discontinue the job. Hernandez explained that by the time the work was stopped, three palm trees had been replanted at the Coverings which is a private business located inside the Little River Business District.

Hernandez advised that Powers applied for an after-the-fact permit for the relocation of the trees to the Coverings and then back to public property. Hernandez thinks the permit for the R&R of the palms has been issued.

Hernandez does not know the name of the backhoe operator, but there is a police report reflecting what took place on that day which may reveal that information.

Hernandez advised that there are many more palm trees (over thirty) in line to be relocated as part of a roads project in North Palm Grove. Hernandez advised that the palms needed to be moved from where they were because they were growing into the power lines, but this was to be done as part of the larger R&R project.

**Public Record Requests:**

On 2/2/11, the OIA requested copies of e-mails, permit applications, permits, and any citation(s) issued in connection with the R&R of the palm trees. We also requested a copy of the police report prepared on the day of the incident.

After several weeks, the City of Miami provided the copies of the following e-mails which have been placed in the case file:

| DATE     | TO                              | FROM                        | DESCRIPTION  |
|----------|---------------------------------|-----------------------------|--|
| 07/09/10 | Katalin Kiss,<br>PWD            | H. Wheeler,<br>Director NET | Re. Bob Powers' relocation project confirming that it was ok and you would contact him.  |
| 07/09/10 | H. Wheeler                      | K. Kiss                     | Advising that Ely had contacted Powers; project is part of a CIP project; Powers & CIP can request PW inspection of proposed relocation cites.   |
| 07/09/10 | Danette Perez<br>of CIP         | H. Wheeler                  | Re. Bob Powers asking who is working on the project.   |
| 07/09/10 | H. Wheeler; cc:<br>Powers, etc. | D. Perez of CIP             | Reply: It is a CIP project; Jorge Garcia is the project manager; waiting to hear from Powers re. relocation addresses; cc to Powers as reminder to provide Garcia with list of addresses for tree relocations. |
| 07/09/10 | D. Perez,<br>Powers, etc.       | H. Wheeler                  | Advising that Powers has the locations.  |



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| 07/09/10 | D. Perez; cc: H. Wheeler   | Jorge Garcia, CIP Project Mgr.              | Advising that he spoke w/ Powers who said as follows: Some residents can relocate trees for free (Garcia told Powers that they need a PWD permit before doing anything); when asked re. tree relocation places, Powers said he would send relocation places today. |
| 07/12/10 | Commissioner Sarnoff   | H. Wheeler                                  | Forwarding copy of above e-mail from Jorge Garcia.   |
| 7/23/10  | Miriam Flores, Treisha Brown   | H. Wheeler                                  | When Bob brings the list, please send to J. Garcia and D. Perez.   |
| 7/23/10  | Jorge Garcia & D. Perez  | M. Flores                                   | The relocation list; there are 70 coconut palms; only 35 have relocation addresses. Written notes on e-mail adds two relocation addresses.   |
| 7/23/10  | D. Perez   | Jorge Garcia                                | Due to new addresses, we don't have a contractor and are not able to relocate trees as told to Powers, he has to request a PWD permit to R&R any tree.   |
| 07/25/10 | Commissioner Sarnoff; cc: Ron Nelson, etc.                           | Eileen Bottari                              | E-mail to Com. Sarnoff describing 7/25/10 incident.  |
| 07/26/10 | Commissioner Sarnoff; cc:  | R. Hernandez                                | E-mail to Com. Sarnoff describing 7/25/10 incident.  |
| 07/26/10 | Nzeribe Ihekwa, Director PWD and Alice Bravo; cc: Com. Sarnoff, etc. | Ron Nelson, Chief of Staff for Com. Sarnoff | E-mail forwarding E. Bottari's 7/25 e-mail. Asks whether PW has started the R&R of the trees and whether PW has issued permits for R&R the trees.  |

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| 7/26/10 | E. Bottari; cc: PW, R. Nelson, H. Wheeler, etc.                | Commissioner Sarnoff           | Responsive e-mail to Bottari; This is part of larger project; FPL will prune the palms growing into power lines & this is not good; palms need to move or they will die.   |
| 7/26/10 | Ron Nelson; cc: Com. Sarnoff, H. Wheeler, ect.                 | D. Perez (CIP)                 | Attaching 7/23/10 e-mail re. project. Powers was working with CIP and NET to ID the trees for R&R. Have received a partial list from NET; Note that Garcia spoke to Powers and advised that permit is required to R&R trees. |
| 7/26/10 | D. Perez (CIP)   | H. Wheeler                     | Advising that Com. Sarnoff has just called and asks whether Powers has to request the permits. If so, she will prepare forms.  |
| 7/26/10 | H. Wheeler; cc: Jorge Garcia                                   | D. Perez                       | Attaching 7/9/10 e-mail from Jorge Garcia stating that he told Powers to pull PW permit before R&R trees.  |
| 7/26/10 | Regina Hagger, Elyrosa Estevez; cc: H. Wheeler, D. Perez, etc. | Nzeribe Ihekwaba, PWD Director | Requesting that Regina coordinate further with CIP; necessary that code requirements for permits be done. Verify final location of trees relocated from public ROW.  |
| 7/27/10 | Nzeribe Ihekwaba; cc: D. Perez and E. Estevez                  | Regina Hagger                  | Advising that Powers came in and pulled an after the fact tree relocation permit, #10-267.   |
| 7/27/10 | H. Wheeler, R. Nelson, etc.                                    | Nzeribe Ihekwaba               | E-mail re. status of subject permit.   |
| 8/9/10  | Alice Bravo, CIP   | D. Perez cc: H. Wheeler        | How were the R&R trees selected?   |



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| 8/9/10   | A. Bravo, D. Perez, E. Estevez, R. Hagger; cc: etc.     | H. Wheeler               | They don't know how sites were selected by Powers; has received complaints re. the 3 trees he R&R which means he did not tell the others about the project; approval of sites should be on hold until CIP has drawings so we can work on trees that fall within that scope. |
| 8/9/10   | R. Hagger, E. Estevez                                   | Nzeribe Ihekwaba         | Let's discuss w/ CIP and expedite decision; please assist powers and facilitate required permit for the relocated trees.  |
| 8/9/10   | R. Hagger, E. Estevez                                   | Nzeribe Ihekwaba         | Let's facilitate process as I have recommended.   |
| 8/10/10  | Powers; cc; E. Estevez, Nzeribe Ihekwaba and H. Wheeler | R. Hagger                | <b>As per Elyrosa Estevez w/ PWD, pls return the R&amp;R palms from Coverings to prior location at public ROW; not permitted to relocate trees from ROW onto private property. See attached "Tree Permit Application on Public ROW."</b>                                    |
| 9/9/10   | Katalin Kiss; cc: E. Estevez                            | R. Hagger                | Please post the 2 dead trees in the swale for removal at 7601 NW 77 St. Rd.   |
| 10/12/10 | R. Hagger; cc: Powers                                   | Jody Vargas of Coverings | Waiting to hear from you re. date when PW will remove dead oaks so relocation of palms can be done on same day; hoping to do in October so we can cancel November hearing.  |

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| 10/15/10 | Ricky Frager;<br>cc: Tim Smith,<br>H. Wheeler, E.<br>Estevez | R. Hagger,<br>PWD    | Schedule for removal<br>2 dead live oaks from<br>triangle at 7801 NE 4<br>Ct. Applicant will<br>relocate 3 palm trees<br>into same location.   |
| 12/08/10 | Ricky Frager;<br>cc: Tim Smith,<br>H. Wheeler, E.<br>Estevez | R. Hagger            | Inquiry as to whether<br>the two trees have<br>been removed.   |
| 12/08/10 | Ricky Frager;<br>cc: Tim Smith,<br>H. Wheeler, E.<br>Estevez | R. Hagger            | Sorry, correct address<br>where the 2 dead trees<br>are located is 7601 NE<br>4 Ct.  |
| 12/08/10 | Ricky Frager   | R. Hagger            | Sending aerial map<br>showing location of<br>trees in ROW at 7801<br>NE 4 Ct.  |
| 12/08/10 | R. Hagger  | Ricky Frager         | Checked location<br>today; found only one<br>dead tree; the other<br>tree fell and was<br>removed; will have<br>this one removed by<br>Friday. |
| 2/8/11   | R. Hagger  | Katalin Kiss,<br>PWD | Didn't find any newly<br>planted or relocated<br>trees at locations<br>assigned for palm tree<br>relocation.                                   |

The City of Miami also provided copies of the following documents which have been placed in the case file:

- Citation number 280853 issued to Q5 Properties LLC located at 7500 NE 4<sup>th</sup> Court. Q5 Properties LLC (Coverings) in the sum of \$1,000;
- Citation number 280854 issued to Robert J. Powers for R&R without a finalized permit in the sum of \$500;
- Confirmation of Ticket Appeal Hearing of ticket number 280854 set for October 18, 2010;
- Case Information print-out in reference to ticket number 280854 reflecting that matter was dismissed by the City on 11/15/10; and
- After-the-fact tree permit application filed by Bob Powers; Permit number #10-267 issued.



**4/7/11 – Eileen Bottari, President of North Palm Grove Community Organization, Inc.**

This investigator interviewed Bottari (Bottari) in connection with the R&R of the palm trees. Bottari's version of the facts was substantially similar to Hernandez's.

Bottari advised that Power's claim that he was authorized by Commissioner Sarnoff to R&R the palm trees is not true. Bottari added that the Commissioner agreed to the R&R of the trees, but he thought that Powers was working with Public Works to get the permit before starting the work.

Bottari explained that a meeting was called by Commissioner Sarnoff which was held at the end of August 2010. Present were officials from Capital Improvements, Public Works and Code Enforcement. The code enforcement official, Sergio Guadix, told Powers that they had reviewed what transpired and they felt that he acted as a co-conspirator with the Coverings. Mr. Guadix gave Powers and the Coverings additional fines. Bottari advised that Powers ended up with a \$500 and \$1,500 fine and Coverings received an additional fine of \$2,000 over the \$1,000 fine already issued. Bottari said that Powers was furious and said that he would appeal. Commissioner Sarnoff had left the meeting by this time.

Bottari explained that Powers had campaigned vigorously for Commissioner Sarnoff when he ran for office, but Powers should not have lied about having the Commissioner's permission to R&R the trees. The R&R of the palm trees was all going to be done as part of the "roads" project with Capital Improvement and Public Works. The trees were being removed from the public swale areas due to safety concerns and because some of the trees were growing into

power lines. Bottari said that most of the trees will be replanted in a City park, but she doubts that all of the trees (approximately 68) can be planted there. Bottari said that Powers had promised to deliver trees to various private locations in the community.

Bottari informed this investigator that Haydee Wheeler of NET would have a copy of the police report of the 7/25/10 incident. This investigator obtained a copy of the police report from Ms. Wheeler on 4/8/11.

**City of Miami Police Report of 7/25/10 incident –**

Police Report of incident number 221973 was prepared by police officer R. Hicks (#3043). Officer Hicks reported that she was dispatched to 7460 N.W. 5<sup>th</sup> Avenue where she observed a white male using heavy equipment to remove City owned palm trees. The officer reported that the suspect stated he had permission from Commission Sarnoff and the homeowner association president (Robert Powers) to R&R the trees. The officer requested to see any paperwork or permit, which the suspect did not have. The officer ordered the suspect to stop the job immediately and leave the scene. The name of the backhoe operator is listed on the police report as Javier Fernandez of 6431 Harding St., Hollywood. A contact letter was mailed to Mr. Fernandez on 4/8/11.



**4/8/11 – Robert Powers, President, Palm Grove Neighborhood Association -**

Powers telephoned the COE in response to our contact letter. He explained that he was not present on the day of the incident, but he was telephoned by someone who was very upset over the palm trees being R&R. Powers said that he was only trying to solve a problem in moving the palm trees because they were going to die. Powers said that they had been trying to R&R the trees with the City's involvement, but nothing got done. He advised that Commissioner Sarnoff had said that he supports his efforts and the efforts of his neighborhood association in trying to get all of the palm trees removed from the public right-of-way and replanted where they are not at risk. The palm trees on the public right-of-way throughout the neighborhood were growing into the power lines. Because of this, FPL would chop off the top of the palms which would cause them to die. Powers explained that the City did not do what it was supposed to do and because of its inactivity more than 20 palm trees have died so far.

Powers said that he offered to do the project with the help of Javier Fernandez who owns a backhoe. The City was not required to do anything. Coverings, who paid Fernandez, was going to be compensated with 20 palm trees. Powers advised that on the day of the incident, Fernandez had the opportunity to do the R&R and he did it. Powers said that he did not expect for Fernandez to pull the trees on that day. The problem was that he served himself first by taking the first three trees and planting them at Coverings. Had he served himself last and taken the last 20 trees he would have been okay. Powers reasoned that if Coverings was

going to pay Fernandez to move the trees, they were going to take advantage of the situation by keeping the trees and they would stay in the neighborhood. Powers said that he was going to plant other trees that don't grow as tall where the palm trees had been in the right-of-way. Powers advised that he has been in the landscaping business for many years.

Powers stated that Commission Sarnoff did not know that he was going forward with the R&R project on that day. However, he knew he had the Commissioner's support through Haydee Wheeler from NET who told him to try and make this happen, but it had not been permitted by PW. The process of approval was underway with Regina Hagger from Public Works. Powers advised that he and PW had picked the location for the trees which was around the corner from where they were originally. The City was not going to spend the money to R&R the trees because they did not care about the trees. Powers advised that his plan would not cost the City any money. Powers explained that Javier Fernandez started the R&R on that day because he had told him that they had been approved to do it, so he started.

Powers stressed that he did not do this out of malice, or to defraud the City, but rather from a desire to serve the community and save the trees before more were lost. Powers finally got the permit and both citations against him were ultimately dismissed. Powers explained that the two citations given to Coverings were also dismissed, and they ended up with three palm trees.

Powers explained that he has been appointed to different boards by Commissioner Sarnoff. He is a member of the Bond Oversight Board, the City



Transportation Advisory Council, and has the Chairmanship of the Miami Bayside Foundation.

**4/18/11 – Haydee Wheeler, Director, NET –**

This investigator interviewed Haydee Wheeler (Wheeler) in reference to the R&R of the palm trees by Powers. Wheeler explained that there are two neighborhood associations in the Palm Grove neighborhood, and they are often in conflict with each other. Wheeler said that about one year ago Powers brought the condition of the palm trees planted in the swale areas to the attention of the NET office. Powers proposed to R&R the trees, but he was always told to obtain a PWD permit prior to moving forward. Wheeler explained that the R&R of the palm trees done by Powers was part of a larger road CIP project.

Wheeler advised that Commissioner Sarnoff liked the idea of saving the trees, but he was not involved in the R&R performed by Powers.

Wheeler said that Regina Hagger of the PWD has identified the trees replanted by Powers at the Coverings, and has requested that they be R&R to public property, however, Wheeler thinks that this has not been done.

**4/27/11 – 5/16/11 –**

This investigator e-mailed Regina Hagger and Elyrosa Estevez of PWD to inquire about the R&R of the palm trees from the Coverings back to City property. Ms. Estevez advised that Regina Hagger had gone to the Coverings to see whether the palm trees were still there and found that only one of the three palm trees was still on the property.

**Conclusion:**

This investigator did not find evidence that Commissioner Marc Sarnoff violated the Conflict of Interest and Code of Ethics Ordinance. However, the arrangement described by Robert Powers to R&R palm trees from City property to the Coverings private property, without the permission of the City, could be considered a theft. For this reason, this matter was referred to Detective Jose Fernandez of the City of Miami Police Department.