

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



REPORT OF INVESTIGATION

#K11-104

Date Opened: 07/27/11

Date Closed: 09/23/11

Investigator: Sylvia Batista

On July 26, 2011, this investigator met with Shirley Gibson (Gibson), Mayor of Miami Gardens, Sonja Knighton Dickens (Dickens), City Attorney, Renee Crichton (Crichton), Deputy City Manager, and Ron McKenzie (McKenzie), IT Director. The meeting was held at Gibson's request. Gibson explained that last December, the City of Miami Gardens ("MG") entered into an interlocal agreement (the "Agreement") to provide information technology services to the Town of Miami Lakes ("ML"). Gibson advised that the Agreement was unexpectedly terminated on the motion of ML Vice Mayor Nick Perdomo (Perdomo) at the ML council meeting held on July 12, 2011.

As background, Gibson advised that Perdomo owns a business in MG called Perdomo Cigars. Perdomo recently filed an application for a variance in MG seeking to permit the existing signage of his business which does not comply with MG's land development code. Perdomo's application was heard and unanimously denied by the MG council at its zoning hearing held on June 1, 2011.

Gibson noted that the item to cancel the Agreement was placed on the ML agenda for the July meeting by Perdomo. The item was placed under “New Business.” In his memorandum to the ML Mayor and Town Council, Perdomo proposed to cancel the Agreement with MG and place the item back out to bid. The Agreement was terminated at the July 12th town council meeting, although it was agreed that MG would continue to perform the same duties for ML as it did under the Agreement until September 30, 2011.

Gibson, Crichton and McKenzie advised that they had received nothing but praise from ML for the IT services provided by MG since the beginning of the year. For this reason, MG officials believed Perdomo’s sudden push to cancel the Agreement was set in motion as a result of MG’s denial of the requested variance the previous month.

The COE’s issue relates to a possible violation of the Conflict of Interest and Code of Ethics Ordinance Section 2-11.1(g) *Exploitation of official position prohibited*.

Investigation:

This investigator listened to the recordings of the aforementioned meetings.

6/1/11 –Miami Gardens Zoning hearing –

Javier Vazquez (Vazquez) appeared on behalf of Perdomo at the MG zoning meeting of June 1st to solicit council’s approval of the variance. Vazquez and Perdomo argued extensively for approval. However, Gibson shared her views on the issue and the motion to approve the item failed by a 0-5 vote.

7/12/11 – Miami Lakes Town Council meeting -

At the July 12th ML council meeting, Perdomo presented his item to terminate the Agreement with MG, but was called upon to explain his reasons by City Manager Alex

Rey (Rey) and others on the council. Perdomo stated that he wished to have ML hire its own IT professional citing security concerns.

At the meeting, Rey said that he did not support cancelling the contract and that he is not concerned with security by having MG conduct the town's IT services.

Perdomo made the motion to cancel the Agreement with MG. The motion passed with "yes" votes from ML Mayor Michael Pizzi (Pizzi), and Councilmembers Mary Collins, Ceasar Mestre, and Perdomo.

8/4/11 – Alex Rey, Miami Lakes City Manager –

Rey rendered a verbal statement on the subject matter. Rey said that he saw the memorandum from Perdomo placing the item involving the Agreement on the agenda. Rey said that he asked Perdomo for the reason why he wanted to cancel the Agreement with MG. Rey advised that Perdomo said that someone whom he knows, or had heard of, had come to see him to discuss being hired to work as the IT person for ML.

Rey explained that when the item came up at the July 12, 2011 council meeting, he reminded council that it would be difficult to find a single IT person with expertise in all IT fields and also of the savings the town had experienced since entering into the Agreement with MG. Rey said that contracting with MG had enabled ML to access an IT department with expertise in all IT fields. Rey added that MG has a strong IT department and that the question of security was never an issue prior to Perdomo placing the item on the agenda.

Rey advised that he was informed by Vazquez that Perdomo had recently requested and been denied a variance by the MG council to allow the existing signage of his cigar business. Rey explained that he is presently putting together the town budget

and would need to know how much an IT person would cost the town. Rey said that hiring an IT person would cost more money than contracting the services with MG.

Rey said that he told MG to continue doing the town's IT work until they have someone in place. Rey informed that the issue of hiring an IT person will be discussed at the budget hearings which will be held on September 13th and 26th.

Rey advised that the Agreement provides for its cancellation by submission of a 30-day notice. No termination notice had been delivered by ML to MG to date.

8/31/11 – Councilmember Tim Daubert, Town of Miami Lakes –

Councilmember Tim Daubert (Daubert) rendered a statement on the subject matter. Daubert said that he has been on the ML council since October of 2010.

Daubert advised that prior to the July 12, 2011 council meeting, he was told about Perdomo's variance denial by David Williams (Williams), a MG councilmember whom he saw at a League of Cities seminar. Daubert said that Williams discussed with him that Perdomo had recently gone before his council on a sign issue and had lost. Daubert said that for this reason, when he saw that Perdomo placed the issue on the agenda, he told the manager that he thought it was wrong.

Daubert explained that the Town Manager meets with each councilmember individually during the week prior to each council meeting to discuss upcoming agenda items. Daubert said that he recalls briefly discussing the item presented by Perdomo with Rey. Daubert explained that he told Rey that he thought Perdomo's action was in retaliation for his variance being denied by MG. Daubert does not recall what the manager said in response to his comment.

Daubert explained that Perdomo is the one councilmember who always preaches the word of cutting costs, thus, he could not understand why Perdomo would want out of the Agreement that was saving ML a significant sum of money. Daubert said that he has no idea whether Perdomo has someone else in mind to perform the IT services. Daubert said that if Perdomo can find IT services for less than what MG is charging, he is up for looking at it. However, Daubert said that he thinks Perdomo's motive was retaliatory for getting his variance denied by the MG council.

Daubert said that he hopes not to lose the Agreement with MG. Daubert explained that MG provides ML with a technician (GP) who is at ML almost on a full-time basis. The Agreement provides for other IT personnel with expertise in all areas of IT to provide services to ML as needed. Daubert said that there have been no issues with the performance of MG's IT services. Daubert advised that there is no validity to Perdomo's claim that security would be an issue in having MG provide ML's IT services.

8/31/11 – Councilmember Richard Pulido, Town of Miami Lakes –

Councilmember Pulido (Pulido) rendered a statement by telephone on the subject matter.

Pulido explained that when Perdomo was arguing for the cancellation of the Agreement, he could not hear a legitimate reason to make such a hasty decision. Pulido explained that the Town Council was being asked by Perdomo to cancel an agreement that had been approved only a few months before, and go against the recommendation of the Manager. Pulido explained that no one made a good argument for cancelling the Agreement, and the argument that was made by Perdomo was unclear. Pulido advised that he typically does not support things that he cannot explain.

Pulido advised that he discussed the item with Rey prior to the meeting and asked him whether the cancellation was something he supported. Pulido said that Rey advised that he did not support Perdomo's motion. Pulido said that it is not the role of the Town council to manage the day to day operations of ML.

Pulido said that he knew about the variance denial by MG, but cannot remember whether he heard it before or after the meeting, but he eventually heard from a third party that Perdomo's business was having issues with MG.

Pulido explained that it would be inappropriate for him to wonder about Perdomo's motives, but on the surface he did not support his motion to terminate the Agreement. Pulido said, "let the record reflect that I don't have a loving relationship with the Mayor, or the Vice-Mayor, so if someone is inclined to make an unloving comment it is me," but doing so would be wrong because he has no personal knowledge of what happened between MG and Perdomo. Pulido continued, "does it have the perception of impropriety? Absolutely. Does MG have a fair concern? Absolutely. Are you within reason to pursue this? Absolutely." Pulido said that Perdomo rarely says hello to him in public, so they never discussed the matter, but, it does look inappropriate to Pulido.

Pulido explained that Rey recommended that ML enter into the Agreement with MG, and a few months later we have Perdomo going against the Manager's recommendation for no apparent reason. Pulido stated that ML is the "poster child for the perception of impropriety."

9/9/11 – Mayor Michael Pizzi, Mayor Town of Miami Lakes –

Pizzi rendered a statement over the telephone on the subject matter. Pizzi explained that he voted for the cancellation of the IT contract for several reasons, but primarily because he was unhappy with the quality of services being provided by MG. Additionally, Pizzi said that he was uncomfortable with the fact that they had awarded the contract to someone who had not participated in the bid process when they put the contract out to bid last year. Pizzi advised that these are plausible reasons for ML to terminate the contract other than Perdomo's variance denial by MG.

Pizzi said that he had expected that one of the bidders who participated in the bid process would be awarded the IT contract. MG cannot be upset that they lost the contract because they did not participate in the bidding process like the other companies did.

Pizzi explained that, in all fairness to Perdomo, many on the council did not want to give MG the contract because of the security question. Many thought it was unfair because we did not follow through with the bidding process and select one of the bidders.

Pizzi advised that he voted to cancel the contract because he thought it was unfair that MG never bid on the RFP but was awarded it anyway. MG never went through the process and got the contract through the recommendation of the Manager. Pizzi advised that the bidders never had the chance to present their bids because the contract was awarded to MG before they had an opportunity to do so. Pizzi added that, even if MG could do it for less, it was not fair that they got the contract without participating in the bid process.

Pizzi enumerated the reasons why he voted to cancel the IT contract with MG:

- the question of security as expressed by Perdomo;

- unsatisfactory services provided thus far; and
- the fact that they were awarded the contract at the recommendation of the Manager and not through the bidding process.

9/16/11 – Audio recording of 1/11/11 Miami Lakes Town Council meeting–

This investigator reviewed the audio recording of the ML meeting where the resolution approving the Agreement passed unanimously.¹

At the meeting council was presented with the item to approve entering into the “Interlocal Agreement” with MG for the provision of IT services. Pizzi questioned whether it was fair to the 5 bidders to award the IT services contract to MG when they had not participated in the RFP process.

In further discussion it was revealed that the IT Director of MG sat on the selection committee formed as part of the RFP process.

Various Council members expressed concern in hiring MG as their IT service provider because they would not have their own IT person and would have to take a back seat to MG in emergencies.

Rey recommended that ML enter into the Agreement with MG. Pizzi agreed to approve the item, but asked that they enter into the Agreement for a probationary period of a few months to determine whether they are better off without their own IT person.

Conclusion:

Although there is much speculation as to Perdomo’s motives in placing the IT contract on ML’s agenda, there is no evidence that he did so in retaliation for MG’s decision relating to his company. Furthermore, there were numerous valid reasons for which the contract was reconsidered and the cancelation of the contract passed by

¹ Vice Mayor Nick Perdomo was absent from the 1/11/11 meeting.

majority vote when brought to the ML council. Therefore, this case is closed without further action.