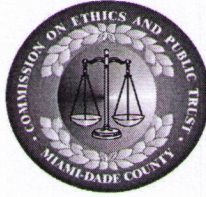


# MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



## REPORT OF INVESTIGATION

K #: 11-129

Date Opened: 10/20/11

Date Closed: 12/8/11

Name of Investigator: Manuel W. Diaz

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### **Allegation:**

Michelle Niemeyer (Niemeyer), a candidate for Miami District 2 City Commission seat, filed a complaint against the incumbent Commissioner Marc Sarnoff. In the complaint, Niemeyer alleged that Sarnoff, the Chair of the Miami Downtown Development Authority (DDA), had misused his authority by not objecting to the DDA conducting a "Get-Out-The-Vote" campaign. The campaign consisted of mailing pre-printed postcards (cards) with return address to the DDA. The cards asked if the voter wanted an absentee ballot mailed to him/her or wanted to effect an address change. The cards requested identifying information including email addresses. The cards were preprinted with a DDA postal permit returning them to a DDA post office box. Niemeyer alleged that the information collected by the DDA could be accessed by Sarnoff, and be useful in his re-election efforts.

### **Applicable Legislation:**

Miami-Dade County Conflict of Interest and Code of Ethics Ordinance  
Sec. 2-11.1

(g) Exploitation of official position prohibited. No person included in the terms defined in Subsections (b) (1) through (6) and (b) (13) shall use or



attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.

### **Interviews:**

**Alyce M. Robertson**, Executive Director, DDA

Robertson was interviewed via telephone on October 21, 2011. Robertson acknowledged that the DDA distributed absentee ballot requests as part of a voter outreach project, Down Town Miami Votes (project) to encourage residents to register for upcoming elections. According to Robertson the cards were first used in June 2010, for the Miami-Dade County Mayoral election.

Robertson stated that the DDA represents voters who live within the boundaries of Miami's District 2 election area. She explained that the area contributes significantly to the Miami's tax base but does not receive the appropriate return in services.

According to Robertson, Sarnoff, other than sitting as the Chair of the DDA, had no input in the decision of whether or not to proceed with the project. Sarnoff, along with the other directors, did receive a briefing as to the progress of the project at monthly board meetings. Sarnoff, according to Robertson, has never asked for or received any information obtained through the project.

Roberson advised that the DDA has been involved in voter registration drives for a number of years. Because previous voter registration efforts had not proven cost effective, the DDA decided to involve itself in direct mailing and encourage voters to participate in elections by facilitating in the absentee ballot process. (See DDA correspondence in file.)



**Javier A. Betancourt**, DDA Deputy Director

Betancourt was interviewed on October 24, 2011. Betancourt, like Robertson, advised that the project focused on encouraging residents to register for Miami elections. The emphasis of the project was to educate residents as to the importance of registering to vote and to encourage them to vote. At no time was Sarnoff mentioned in any project mailings nor were there any statements made in the mailings endorsing his re-election. There were no photos of Sarnoff or any members of the DDA Board used in the material.

Betancourt advised that Nicholas Martinez (Martinez) was the staffer who worked on the project. He and Martinez coordinated with Miami-Dade Elections (Elections) to ensure that the materials distributed were compliant with state law.

Betancourt acknowledged that the DDA mailed absentee ballot request cards to DDA residents. The responses were preprinted for return using a DDA post office box. The cards were used for the Dade County Mayoral election in June of 2011. The responses from this mailing were scanned to create a data base to assist the DDA in contacting residents; once scanned, the cards were delivered to Elections. Betancourt advised that Sarnoff had never asked for or been provided with any information obtained from the cards.

**Nicholas Martinez**, DDA Research and GIS Coordinator

Martinez was hired in April of 2011. One of his responsibilities is to coordinate the project. Prior to his employment by the DDA, he worked for the Leon County Supervisor of Elections, in research and GIS coordination.

The interview of Martinez focused primarily with the "ABSENTEE BALLOT REQUEST/ADDRESS UPDATE FORM" (the card previously mentioned).

According to Martinez, he worked along with Elections to design the card. Because of changes in the state election laws, the DDA decided for the June 2011 election, not to handle absentee ballot requests, instead to receive the cards and pass the cards to



Elections. He advised that the cards were first used in June of 2011, for the Miami-Dade mayoral election. The same cards was used for the November 2011, Miami District 2 election.

Concerning the request for voter emails (located on the bottom left of the card), Martinez advised that this request was placed on the card for two reasons:

1. To provide Elections a way to contact the voter if needed; and
2. To give the DDA a way to contact and provide useful information to district residents.

Martinez advised that the cards that were returned for the Miami-Dade mayoral election were scanned by the DDA. The information on the cards, including the emails, was never entered into any DDA data base, because of a lack of data processing personnel. However, the DDA decided not to scan any of the cards returned for the District election. The cards were collected on a daily basis and taken directly to Elections.

Concerning the decision to place the DDA return address on the card, Martinez advised that this was a financial decision. The mailers are returned under a US Postal Permit paid for by the DDA.

Martinez advised that he has not spoken to Sarnoff concerning the project, nor had anyone from the Sarnoff campaign contacted him to request any information obtained through the project.

Martinez advised that a member of Sarnoff's staff, William Plasencia, was present at DDA meetings that were held to discuss the project.

Martinez explained the process for collecting the cards and the surrendering the cards to Elections. The process was as follows:

1. The cards for the mayoral election were sent out approximately two and one half weeks before the election. The DDA received approximately 400 responses.



2. Martinez received the cards from the DDA postal box, scanned the cards at the DDA offices.
3. Martinez delivered the requests to Elections.
4. The cards for the District 2 election were sent out approximately two and one half weeks before the district election. The DDA received approximately 300 responses.
5. Martinez retrieved the cards.
6. Martinez delivered the cards to Elections on a daily basis.

**Michelle Niemeyer**, Candidate, District 2 Election

Niemeyer was interviewed on November 16, 2011, in the COE offices. Niemeyer advised she based much of the concerns expressed in her complaint on information derived from a local political blogger and statistical information concerning voter demographics developed by political consultant Vanessa Brito (Brito). In particular, Niemeyer questioned the DDA collecting voter demographics which could be used by Sarnoff in his election effort. She also questioned why Sarnoff did not intercede to end the project once informed of the project by the staff at DDA Board meetings. Her complaint also questioned if Sarnoff received demographic information through reports produced as a result of the project. In addition, Niemeyer alleged that the DDA turned in the absentee ballot request cards to Elections in such a manner as to prevent Sarnoff opponents from obtaining the voter information.

**Kate Callahan**, Candidate, District 2 Election.

Callahan was interviewed via telephone. She advised of the same concerns as Niemeyer. Callahan recommended that the COE contact Vanessa Brito for additional information.

**Vanessa Brito**, Political Consultant

Brito was interviewed in the COE offices on November 21, 2011. She presented a statistical analysis that confirmed that the voter rolls in District 2 has increased since



2007, when Sarnoff first ran for office. She also presented information that indicated, but could not definitely confirm that the increase in voter participation helped Sarnoff in his reelection efforts in the most recent District 2 election. Like Niemeyer and Callahan, Brito questioned the absentee ballot collection process used by the DDA. She noted District 2 candidate's campaigns could have suffered if the cards were held by DDA staffers and turned in on the last eligible date.

**William Plasencia**, DDA Staff Liaison, Office of Commissioner Marc Sarnoff

Plasencia was interviewed via telephone. He confirmed that he attended several meetings representing Sarnoff concerning the project. Plasencia advised that he had a marketing background and he was there both to represent Sarnoff's office and to review the DDA's efforts in marketing the project. Present were DDA staffers, Community Redevelopment Agency staffers and at one of the meetings a representative of Elections.

Plasencia advised that he briefed Sarnoff as to the generalities of the project. He was not given access to any voter demographics or other DDA materials produced as a result of the project. He does not know if Sarnoff received any information.

**Marc Sarnoff**, Commissioner, City of Miami District 2

Sarnoff was interviewed on December 2 in COE offices. Also present was John Dellagoria, 201 S. Biscayne Blvd. FL 17, Miami, FL. 33131, representing Sarnoff. Michael P. Murawski, COE Advocate was also present.

Sarnoff was previously advised of the Niemeyer complaint. He advised that as the Chair of the DDA he was made aware of the project. He noted that he was advised as to the progress of the project along with other Board members during the regular monthly meetings. He advised that neither he nor his re-election campaign received any resident information or demographic information which resulted from information gathered by the project. He was not aware of the allegation that the DDA had held card



returns. He advised that all information gathered from the cards turned into elections was public records and available to all candidates.

### **Public Records DDA:**

A public records request was made requesting any minutes of DDA Board meeting where the project was discussed. Also requested, were recordings of those meetings, and other historical documentation concerning the project.

The minutes of the May, June and July 2011, meetings were reviewed. The progress of the project was listed under the Executive Director's report. The recordings of the meetings were reviewed. All of the Executive Director's presentations concerning the project were between one and two minutes and covered program generalities. There were no voter demographics presented. There were no questions from the Board members.

### **Summary of Facts:**

1. Sarnoff ran for re-election in Miami's November 1, 2011 election.
2. Niemeyer ran for election against Sarnoff in Miami's November 1, 2011 election.
3. Sarnoff is the Chair of Miami DDA.
4. Niemeyer alleged that Sarnoff misused his authority, as the Chair of the DDA, by not objecting to the DDA mailing out and processing of cards which could provide District 2 voter demographics.
5. The DDA, ED advised that Sarnoff, other than being the Chair of the DDA, had no involvement in the project. Like other DDA Board members who attended regular Board meetings, he was briefed on the progress of the project.
6. Interviews with the DDA ED and staffers confirmed that cards were sent out by the DDA. The cards were part of a project initiated by the DDA to improve resident participation in Miami elections.

7. Historical documents provided by the DDA, confirm that the DDA has been involved in voter registration drives for several years.
8. The format of the card and the wording was approved by Elections.
9. Information concerning the generalities of the project was provided to DDA Board at regular meeting.

**Conclusion:**

There is no evidence that neither Sarnoff nor his re election campaign received any voter information compiled by the DDA as a result of the project therefore there is no evidence to substantiate a charge of "Exploitation of official position." As such, this investigation is closed without further action.