

MIAMI-DADE COMMISSION ON ETHICS & PUBLIC TRUST



REPORT OF INVESTIGATION

K 11-147

Date Opened: December 1, 2011

Date Closed: March 7, 2012

Name of investigator: Kennedy Rosario

Allegation:

Exploitation of Official Position by Miami-Dade County Water and Sewer Department (WASD) employees.

Background:

This investigative inquiry is predicated on a residential “high water bill” received by Cynthia Potter (Potter), as a WASD customer/consumer for water consumption at her residence, 11270 SW 175th Street , for a three month billing/service cycle ending on July 21, 2010. The high bill, at its origin, totaled in excess of \$6,000.00. Because of the high bill, Potter began a tedious WASD Administrative Hearing and Appeal process disputing the high bill that culminated in a settlement agreement between WASD and Potter.

On September 18, 2011, Potter executed a duly notarized Limited Power of Attorney appointing “in my name, place and stead Diane Lawrence” (Lawrence) as her “true and lawful Attorney-in-Fact” in all matters pertinent to the high bill. (A copy of said

document has been incorporated as part of the COE investigative file.) Lawrence, a citizen advocate, began her quest to help Potter by petitioning Miami-Dade County officials. She ultimately communicated with the COE, via the Executive Director, to open this inquiry.

COE Investigators reviewed Lawrence's October 29, 2011 electronic communication to the COE which included possible violations of the Miami-Dade County Conflict of Interest Code on two cited occurrences. One, that Potter was coerced into signing the settlement agreement and two, that a WASD employee pressured a County/WASD vendor to change and/or amend a written communication on the status/capabilities of water meters under threat of losing County/WASD purchases.

Investigation:

As to the alleged coercion:

On December 20, 2011, Investigators Breno Penichet and Kennedy Rosario met with WASD Director John Renfrow (Renfrow) and members of his staff including, Alicia Riesgo, Chief Public Affairs Officer; Marian Reed (Reed), Customer Service Supervisor; Harold Concepcion, Chief Retail Customer Service Representative and Assistant County Attorney Sara Davis (Davis).

The concerns of the COE were verbally expressed to those in attendance. WASD Staff was cooperative in explaining the Potter case as well as informative as to WASD procedures in regard to high water bill disputes. WASD discussed the "Water Leak Potential" that various size leaks can produce, for example, a pencil eraser size leak can, over a three month cycle, potentially cause the loss/consumption of over 1 million gallons of water. Of material substance, it was learned that the WASD had, as part of their Potter file, a recording of a conversation between a WASD customer service employee and a Potter family member discussing the high water bill on July 27, 2010, numerous documents related to the Administrative Hearings, and DVD

audio/visual recordings of the Administrative Hearings conducted on January 14, 2011 and April 8, 2011 by Hearing Officer Herbert Parlato.

ACA Davis specifically related the actions taken by Potter and the County/WASD over the high water bill through the Administrative Hearings, the court appeal and the settlement agreement meetings. The meeting regarding the settlement agreement with Potter was also attended by Reed.

The COE requested that all the above mentioned items be supplied to the COE. The COE further requested written explanations, of their accounts/actions germane to the Settlement Agreement from both Davis and Reed as witness. All the requested items were promptly received.

As to the alleged pressure exerted by a WASD employee on a County/WASD vendor:

The employee in question is Gregory D. Hicks (Hicks), WASD Acting Chief, Stores and Procurement. The vendor in question is Sensus Metering Systems (SMS), a supplier of residential water meters to the County/WASD.

Hicks was not available at the time of the meeting but assurances were made by Renfrow, that Hicks would be available for an interview.

On January 6th 2012, Investigator Rosario spoke with Lawrence and discussed the Limited Power of Attorney as well as the scope of the investigation. It was explained to her that since she was not a witness to the high water bill incident, this courtesy call was being made to inform her and request her assistance in arranging a meeting with the Potter family. Lawrence agreed, stating she did not need to be present.

On January 9th 2012, Hicks was interviewed by COE Investigators Rosario and Penichet. Through questions/discussion it became apparent that Hicks was not involved in the Potter issue had no "prior knowledge...and therefore had nothing pertinent to" or material to the Settlement Agreement. Hicks, however, was forthcoming

as to his actions with SMS. He expressed his concerns, as a knowledgeable longtime WASD employee, of the possible ramifications inherent in the SMS letter that could have been construed as a mechanical defect in the ability of the SMS water meter to accurately measure the amount of water flowing into Miami-Dade consumer residences. It was requested that Hicks also supply the COE a written response/explanation. Said response was received by the COE.

On January 10th 2012, a meeting was held with Potter, her daughter Charmaine and son-in-law Kelly Marshall (Marshall). The limited jurisdictional scope of the COE investigation was explained, as well as the inability of the COE to authorize any change in the Settlement Agreement.

The Potters collectively felt that the high water bill was exorbitant and “not fair,” stating that such a large consumption of water by them was not possible. Potter did, however, express that she only signed the Settlement Agreement because she could not afford to further engage an attorney in the appeal process and not doing so would eventually cause WASD to turn off her water. Marshall acknowledge that it was he who spoke with the WASD customer service representative on July 27th 2010, where his utterance attributing the possible cause of a high water bill to his wife going to the back of the house and noticing “a pipe or faucet was open for an unknown period of time,” was recorded.

COE investigators conducted an area canvas of Potter’s residence and two neighbors were interviewed: Mauricio Astugillo (Astugillo) of 11260 SW 175 Street (adjacent to Potter’s home) and Dorothy J. Thomas (Thomas) of 11301 SW 175 Street (directly across from Potter’s home). Astugillo stated that he never noticed any accumulation of water and or flooding in the Potter home during the time period in question. Thomas stated that she was aware of her neighbor’s water bill plight and that amount of water would have also impacted her property. She stated it, “would be flooding our place”.

Analysis/Review:

The following documents were reviewed by the COE:

1. Davis' written statement with accompanying documents (Exhibit A) entitled, "Statement of Assistant Sarah E. Davis Concerning Cynthia Potter's Account and Settlement," including documents of the Court Appeal/Settlement Agreement.
2. Reed's written statement as witness to the Settlement Agreement. (Exhibit B)
3. Hicks' declaration, with accompanying documentation, as to the SMS incident. (Exhibit C)
4. Administrative Hearing documents. (Exhibit D)
5. Audio/video DVD recordings of the January 14, 2011 and April 8, 2011 Administrative Hearings.
6. Miami-Dade Police Department Offense/Incident report under C/N PD110124033155 dated January 24th 2011. Said report, filed by Potter, advised of the high water bill. In the report, Potter is quoted as stating that she "believes there is either an error or that her water was utilized by some one else while she was out of town for a month." No further follow up report by MDPD was given to the COE.

CONCLUSION:

The investigation did not uncover any violation of the Miami-Dade Conflict of Interest Code. Davis, by all accounts, acted properly and professionally in her capacity as legal counsel for the County/WASD. While Potter expresses concern that her water would be turned off if the high water bill was not paid, she availed herself of all the appeal processes. The Hearing Officer ruled in favor of WASD. WASD removed that portion of Potter's bill attributed to sewage charges, resulting in a considerable

reduction and the Settlement Agreement granted an extended period of time for payments.

While the amount of water that presumably flowed through the water meter is enormous and although how said amount was expended can not be established, it is reasonable to agree with Hearing Officer Parlato's decision which stated, "[i]t is determination of this Hearing Officer that the subject charges WERE issued in accordance with the RULES and REGULATIONS of the Miami-Dade County Water and Sewer Department".

As to Hicks, the SMS incident did not emanate from the Potter high water bill. Hicks' declaratory explanation is plausible and understandable, given that his intent was solely to resolve a situation that needed to be clarified and rectified. His actions do not rise to the level of an exploitation of his official position.

Therefore, the instant case is closed without further action.