

MIAMI-DADE COMMISSION ON ETHICS & PUBLIC TRUST



CLOSE-OUT MEMORANDUM REPORT OF INVESTIGATION

Date Opened: December 9, 2011

Date Closed: June 5, 2012

Michael Murawski, Advocate

Re: K #: 11-152b

ALLEGATION:

On or about December 7, 2011, the Commission on Ethics and Public Trust (COE) received information that Miami Beach City Commissioner Weithorn solicited three or four “day passes” from Boucher Brothers¹ (Boucher) to give to employees of her private accounting firm. Weithorn felt that her associates had worked hard during tax season and should be rewarded. Weithorn allegedly asked her city employee, Ann Swanson, to make the arrangements and that, in exchange for the free passes; Weithorn had agreed to make a donation to the charity of Boucher’s choice.

Ms. Swanson provided the COE with an e-mail referencing a conversation with “Zed” of Boucher. (Zed was later identified as Zed Condorousis, Boucher’s VP of operations.)

Information also was received regarding possible gifts or favors involving Boucher. Specifically, that Weithorn’s eldest son participated in some sort of “secret shopper” arrangement with Boucher in which he and his friends were allowed to use the vendor’s amenities on Miami Beach in exchange for participating in the aforementioned program. This allegedly occurred during Spring Break or some other holiday in 2009 or 2010.

Regarding the day passes, Swanson said Weithorn called her and asked her to contact Boucher some time after tax season to solicit the passes for employees of her firm who she wanted to reward for their hard work. She said the commissioner indicated that she had done this on previous occasions and that Zed understood their arrangement, which called for her to make a donation to the charity of Boucher’s choosing. Swanson said she did not know whether any such

¹ Boucher Brothers is a city vendor that operates numerous beach concessions.

donation was made or the amount of said donation. She said that when she spoke to Zed, he advised her that he would follow up with Weithorn. Swanson said Boucher delivered the passes to the office shortly after the conversation took place - perhaps the following day. She said they arrived in an envelope that contained a return address for Boucher and that she gave the envelope to the commissioner.

Interview:

Zed Condorousis, VP of Operations Boucher Brothers Management, Inc.
March 2, 2012

Condorousis was interviewed at COE offices along with his attorney, Chris Lyons. Condorousis advised that Weithorn provided accounting services to Boucher prior to running for the Miami Beach City Commission, and that these services included overseeing compliance with the city's beachfront concessions program. Condorousis recalled speaking to someone from Weithorn's office regarding several day passes that the commissioner was requesting on behalf of employees at her accounting practice. He said that he did not recall the name of the person he spoke to regarding the passes, but that the passes were delivered to the commissioner, possibly through the mail. He said the passes are for two beach chairs and an umbrella and are worth \$32 per day. He said the passes would have been good for the remainder of the year, and can be used repeatedly without limit. He reviewed the names on the email exchange between Weithorn and her aide, Anne Swanson, and confirmed the passes were provided to those individuals. COE asked Condorousis to examine the firm's internal files to see if any corresponding records could be found and provided to COE.

Condorousis said he did not remember making arrangements for Weithorn to make a donation to charity in lieu of receiving the passes for her employees. He said he did not recall providing any passes to the commissioner prior to the occasion in April 2011. He said that no other city officials had requested passes, though on one occasion a pass was going to be provided to a male city commissioner but that the commissioner eventually declined the pass in order to avoid problems. He said he couldn't recall the name of the commissioner.

Condorousis said Boucher does have a secret shopper program that employs six people, who monitor services for their operations, including the handling of money and customer service. He said that the program mainly focuses on beach chairs, but may also include other items such as the rental of wave runners. He said the wave runners are rented for \$80 to \$85 per half hour (depending on whether there is a passenger). He said that it "sounds familiar" that Weithorn's son acted as a secret shopper on behalf of Boucher, but he stated he couldn't say for sure. He said it was possible that the commissioner's son may have been employed for this purpose through her accounting firm. He said he would talk to the owners – brothers Steve, Perry, Mike and Jim – and get back to CEO with additional information. He said Boucher pays \$8 an hour for secret shoppers, in addition to the money provided for rentals. He said that, sometimes, the secret shopper program is used for friends as a way for them to enjoy program amenities, saying: "If someone comes to the beach and wants some chairs, we might tell them, 'Hey you can be a secret shopper.'" He said management wants to ensure employees follow "steps of service," such as saying the customer's name at least three times.

Miami Beach Commissioner Deede Weithorn
April 12, 2012

Weithorn said she handled compliance audits for Boucher starting several years prior to becoming a Miami Beach city commissioner in 2007. She said worked on a number of Boucher accounts, including the one for the city's beachfront concession program. She said that after leaving her old firm about a year later, she transferred that responsibility to an associate and Lisa Interian presently works the account, along with George Lopez, another staffer. She said she has only minimal involvement. She added that she does not vote on any of Boucher's items in order to avoid the appearance of a conflict.

Regarding the day passes, Weithorn confirmed that she received several passes from Boucher last April that she distributed to members of her staff. She said she contacted Boucher and offered to pay for the passes, but that the person she spoke to refused to accept the payment.

She said she then told the person that she would write a check to the charity of their choosing for a comparable amount. "I actually wrote a check to a charity," she said, adding it could have been Best Buddies, but that she forgot which one it was. She agreed to attempt to locate the check, written from either her account or that of her husband.

Weithorn said that her staffers had just finished a difficult audit, and that they mentioned they wanted to spend some time at the beach. She said she had received a bonus from her firm and wanted to do something nice for her staff so she contacted Boucher and offered to pay for the passes. She said that Boucher refused, but that she knew what they cost (\$25, she said) and that she had purchased them before at silent auctions. She said the passes are "common currency" on Miami Beach. She said Boucher refused to let her pay because they were such a "de minimus, stupid thing." Weithorn said she could not recall who she spoke to, whether it was Zed or Perry. She did say her son once worked as a secret shopper for Boucher while he was in high school. She said that occurred six or seven years ago and predated her time in office. She said that she asked him to do this because of a problem that was occurring with beach chair rentals, noting that it is a cash business.

On May 17, 2012, Weithorn responded to the COE's request by providing a copy of a check from her and her husband's joint checking account for \$537 and dated May 15, 2011, to Temple Beth Sholom, which is the commissioner's personal temple. She wrote a note on the bottom of the check copy stating that their normal contribution is \$400 per month, and that the balance -- \$137 -- was earmarked for "the feeding program." The commissioner later advised that there was no record that the excess funds went to the program, but said that such instructions are typically imparted "verbally or via email."

On May 31, 2012, at the request of COE, Weithorn provided a copy of a second check to her temple indicating a monthly payment of \$400 in December 2011.

CONCLUSION:

Although the investigation confirmed that Weithorn requested four “day passes” from Boucher and that she requested them on behalf of the members of her private accounting firm, there is insufficient evidence to conclude that Weithorn exploited her official position or solicited a gift. There was no evidence that Weithorn demanded the beach passes. Moreover, under the County Code, while “the transfer of anything of economic value” is a gift, if there is “adequate and lawful consideration” paid for the beach passes, then it is not considered to be a gift.

Taking into consideration that there is some evidence that Weithorn made a charitable contribution in lieu of the direct payment that could be considered adequate consideration. The amount of the extra donation to her temple (Temple Beth Shalom) was \$137, which would have been enough to cover the amount of the four gift passes ($\$32 \times 4 = \128). It should be made clear however, that although this “contribution in lieu of payment” arrangement may have been sufficient in Commissioner Weithorn’s mind to exempt this transaction from being a “gift”; it really is insufficient consideration and this practice should not be encouraged; in fact, it should not be repeated.

An e-mail exchange dated April 19, 2011, does lend credence to the Commissioner’s claim that she intended to make a charitable donation in exchange for the free passes. There appears to have been some discussion between Weithorn and Boucher’s Vice President, Zed Condorosis, about making a charitable donation as consideration for the four beach passes. Although Condorosis said he did not recall making any such arrangements with Weithorn after the fact, nor did Condorosis mention she initially offered to pay for the passes during his interview at COE. Weithorn was, at least arguably able to produce, some evidence that she wrote a check to a charity to offset the value of the beach passes. Although the check was not to a recognized charity, it would be difficult to sustain an ethics violation based on this evidence.

It bears reiterating that this contribution arrangement is certainly not the best practice and should not be engaged in again. If the Commissioner wishes to reward her private employees for their hard work she should purchase the reward with her own personal funds and not attempt to capitalize on her public relationship with Boucher.

One issue that could be considered exploitive in nature, which Weithorn dismisses as “*de minimus*,” is the fact that Weithorn used her [now former] member of her city staff, Anne Swanson, to handle a matter that related solely to Weithorn’s private business. Rewarding employees at her private accounting firm had absolutely no connection or nexus to any City related matter. Despite this, Weithorn had her commission aide contact Boucher and had the passes mailed to her city hall office, not her private office. While, to some extent the transgression of using city resources for a purely private matter in this circumstance may seem minor, Commissioner Weithorn is reminded nevertheless, that use of a public employee to request a gift for her private business associates is more than an appearance of impropriety; it is a violation of the ordinance prohibiting exploitation of official position, albeit, in this circumstance, a *de minimus* violation. It may not rise to a level justifying the filing of an ethics complaint, however, Weithorn should be mindful of mixing her personal business with city business and should not engage in this type of behavior again.

Hopefully, this incident impresses upon the Commissioner that it is often the mere appearance of impropriety that shakes the public's trust in its elected officials and every effort should be made to avoid creating those appearances.

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