

MIAMI-DADE COMMISSION ON ETHICS & PUBLIC TRUST



REPORT OF INVESTIGATION

#K12-011

Date Opened: 05/23/12

Date Closed: 08/30/12

Investigators: Sylvia Batista

The COE was notified of a possible ethics violation allegedly committed by a City of Miami Beach Police Officer Alfredo Cata (Cata). The matter originated from an anonymous tip informing that Cata was observed emptying monetary proceeds from vending machines in the City while wearing his police uniform, an activity that he would repeat while on duty throughout the week by going to different locations in his marked patrol unit.

The matter was investigated by City of Miami Beach Internal Affairs ("IA") Detective Marlen Rivero who concluded in her report that two of the three violations allegedly committed by Cata were unsubstantiated. The only substantiated allegation of Miami Beach Police Department policy against Cata, was that he failed to request approval to engage in secondary employment. Cata subsequently requested a grievance on the administrative action issued by IA which resulted in a reduction from administrative action to an informal counseling memo. The matter was closed by IA and referred to the COE to investigate for a possible ethics violations.

The COE's issues relate to possible violations of:

Conflict of Interest and Code of Ethics Ordinance Sections 2-11.1(d), *Prohibition on transacting business with the County/City*; 2-11.1(k), *Prohibition on outside employment by County [City] personnel and disclosure requirements*.

Miami Beach Code Sections 2-446, *Declaration of policy*; 2-450, *Disclosure of interest in/relationship with business entity*; and 2-454, *Transacting business with business entities in which employee or officer has interest...*

Investigation:

The COE received a copy of the IA report with attachments that included two letters to Brothers Vending, Inc. (Brothers) from the City. The first letter dated 07/22/11 is from Anna Parekh (Parekh), Director of the City's Office of Real Estate, Housing & Community Development. The second letter is dated 07/26/11, from Raul J. Agulla (Agulla), Chief Deputy City Attorney. Parekh's letter notifies Brothers of a monetary default in the sum of \$39,569.17, and a non-monetary default for assigning the concession agreement without obtaining prior written consent from the City. Agulla's letter also notifies Brothers of its monetary default and gives them fifteen (15) days to cure it. Agulla's letter also advises Brothers that, in light of the fact that the concession agreement expires on 07/29/11, it shall surrender all concession locations by that date and remove all of its vending machines and any other equipment by 08/29/11.

Pursuant to Parekh's letter to Brothers, the City was notified on 07/21/11 that Brothers had transferred its Coca-Cola beverage account to Specialized Vending¹, which had acquired Brother's vending machines and equipment. The letter further advises that on

¹ Cata was the Registered Agent, President and Director of Specialized Vending, Inc., an inactive Florida for-profit corporation voluntarily dissolved on 06/23/08.

the same day Parekh received a telephone call from Cata, who identified himself as the principal of Miami Food & Beverage Distributors, Inc. (f/k/a Specialized Vending), and advised that he had acquired the City vending rights from Brothers and had been operating vending machine concessions in the City. Parekh provided the same information to the IA detective as reflected in the IA Report.

Furthermore, Parekh's letter states that Miami Food & Beverage Distributors, Inc. (Miami Food) issued a check in the amount of \$2,400 in payment of "vending machine commission." Both Parekh's and Agulla's letters to Brothers were copied to Cata which put him on notice that his purchase of the vending route from Brothers was not legally binding.

Lastly, a letter dated 08/09/11 from Parekh to Cata, of Miami Food, notifies Cata that he must remove a recently placed coffee vending machine from City police headquarters. The IA report states that the coffee machine was removed two days later by unknown workers.

07/03/12 - Anna Parekh, Director, Office of Real Estate, Housing & Community Development –

Parekh was interviewed on the subject matter and stated as follows:

She explained that she spoke with Manny Diaz (Diaz), the owner of Brothers, on 07/21/11. Diaz told her that he had transferred Brothers' Coca-Cola beverage account to Specialized Vending, and that Specialized Vending had taken over the vending machines and acquired Brothers' equipment. Parekh said that later on that same day she received a call from someone who identified himself as "Alfredo Cata" of Miami Vending. Parekh said that Cata told her that he had recently bought the vending route from Brothers and had been operating vending machine concessions in the City. Cata also told her that Miami Food had issued a check to the

City in the amount of \$2,400 as vending machine commission. Parekh said she told Cata that he should have checked with her first and she would have told him not to do it since Brothers does not have the authority to assign the route to anyone without the City's approval. Cata did not tell her that he was a City police officer.

Parekh advised that the City had sent demand letters to Brothers after they failed to make their commission payments from January to July of 2011. Brothers vending contract with the City was in effect from November of 2005 to October of 2007 and renewable for three consecutive years to October 2010. The City continued contracting with Brothers on a month-to-month basis until 07/29/11. She explained that the way vending contracts are set up is that the minimum guaranteed payments are paid by the vending company to the City based on forecasted sales for the vending machines. Parekh advised that Cata had brought the check from Miami Food to the finance department and to the best of her knowledge they took it and deposited it. She said that she has no idea whose signature appears on the check. Parekh said that she heard that Cata claimed that he called the City on behalf of his wife, who does not speak English fluently but is the actual owner of Miami Food.

Parekh said that all of Brothers vending machines have been picked up. She advised that a new vending contract has been established by the City and it is not with Brothers or Miami Food or Specialized Vending. The new vending machine vendor is Bettoli Vending.

8/10/12 – she was contacted and asked about hand-written notes on an e-mail dated June 2, 2011 from Suzanne Hollander to her. Parekh said that she took the notes while speaking on the telephone with Diaz and Cata on 7/21/11. She explained that her notes say that at 11:10 a.m. Diaz returned her call and advised that he no longer owned Brothers and that he had transferred the Coca-Cola beverage account to Specialized Vending. Parekh explained

that her notes further say that Specialized Vending changed its name to Miami Food, and that Cata called her at 11:55 a.m. and identified himself as the principal of Miami Food. She explained that her notes also say that Cata wants to work this out, and that he purchased the vending truck from Diaz.

8/2/12 – Manny Diaz, Jr., Brothers Vending, Inc. –

Diaz was asked to provide information in connection with Brother's transfer of its vending rights to Miami Food and/or Specialized Vending. He said that there is no contract between Brothers and Miami Food or Specialized Vending transferring City vending rights, and no monies were paid by Miami Food or Specialized Vending to Brothers for the transfer.

Diaz explained that the transfer took place last year when Brothers was losing money and he got into a dispute with his partner. He said that he went to see the City Manager, Jorge Gonzalez, and informed him that he could not continue performing under the vending contract with the City. Diaz explained that Brothers' vending contract had been on a month-to-month basis for almost a year. He said that two separate vending machine operators contacted him expressing interest in the contract. Diaz said that he felt he was done with the City. He advised that a short time later he ran into Adriana Cata and asked if she wanted to take over the contract. Diaz said that he had known Adriana Cata for years from the vending industry. He advised that he told Mrs. Cata that all she had to do was service the vending route and pay the City the vending commission at the end of the month. Diaz said that Mrs. Cata's company (Miami Food) serviced the vending route and paid the vending commission for one month only. He stressed that all of his dealings were with Adriana Cata, who is the owner of Miami Vending. The phone call that Cata

made to the City was for the purpose of translating because Adriana Cata does not speak English fluently—she was born and raised in Colombia.

8/30/12 – Adriana Cata, (Alfredo Cata’s wife)

Mrs. Cata appeared at the COE in response to a subpoena requesting her statement.

Mrs. Cata said that Diaz of Brothers vending has been a family friend for about 13 years. Mrs. Cata stated that she was approached by Diaz sometime last summer and was asked if she could service the Brothers vending machines located in the City. Mrs. Cata explained that Diaz told her that all she had to do was receive the money that his driver collected from the machines, count it, buy merchandise and re-stock the machines. Mrs. Cata said that no transfer of the Brothers’ vending route was made.

Mrs. Cata said that, for several weeks, the Brothers’ driver would collect the money from the machines and deposit it in a location near her home. Mrs. Cata said that Diaz also told her that due to his many problems, he needed someone who could briefly service the machines until he decided what to do. He told her to pay the City its commission in the sum of \$2,400, which she paid with a check from Miami Food. Mrs. Cata said that she signed the check from Miami Food, and her husband delivered it to the City.

Mrs. Cata said that she is not sure exactly how many weeks she did it for, but it was like a favor that she was doing for him because she never had a contract with the City nor can she compete for the City contract. Mrs. Cata said that it was a temporary arrangement while Diaz decided whether to sell or close Brothers. Mrs. Cata said that she was asked to this by Diaz, but would be using Brother’s driver and truck and at the end of the day, Brothers’ driver would deliver the money that he collected to her home, she would count it and give him a report of the money the next day. The Brothers’ driver would also

re-stock the vending machines. Mrs. Cata advised that this was to be a temporary arrangement and not intended as a transfer of the vending route from Brothers to Miami Food.

Mrs. Cata said that she has been married to Alfredo Cata for 13 years, and has known Diaz for about that long as well. Diaz was also a friend of her husband. Mrs. Cata said that she and her husband had a company called Specialized Vending which they later changed to Miami Food & Beverage Vending. Mrs. Cata said that Specialized Vending was her husband's company in name only, because she has always managed the vending business. Mrs. Cata explained that in managing the vending business she would receive the money from the driver daily, she would count it and distribute the money to pay for product, the driver's salary, and anything else that needed to be paid. Mrs. Cata added that her driver would also re-stock the vending machines. Her driver's name is "Raul" and still works for her. Mrs. Cata said that she pays the driver a daily sum in cash. She said that if a machine is out of order, she calls the repairman.

Mrs. Cata said that Specialized Vending owns from 25 to 30 machines, none of which are placed in the City. Mrs. Cata explained that in 2008 she formed Miami Food and closed Specialized Vending. She is listed as the president of Miami Food. Mrs. Cata said that the reason for this change was because she and her husband were separated and divorced for a time and re-married a year and a half ago. When they were going through marital problems, she wanted the company to be in her name only because she wanted to be in charge of it. Mrs. Cata said that Diaz told her that while he was making a decision on what to do about his business, he wanted for her to service his machines for a few weeks,

but the person who continued picking up the money and re-stocking the machines was the Brothers' driver. Mrs. Cata does not remember the name of the Brothers' driver.

Mrs. Cata explained that Miami Food is a small business that works on volume. It does not have many machines, and makes enough money to pay expenses such as Raul's daily salary, products, and pay commissions if required. Mrs. Cata said that some money is left, but it is a small business although Miami Food was not losing money. Mrs. Cata added that the vending business fluctuates a great deal—you gain some customers and lose others.

Mrs. Cata explained that Miami Food has a separate business bank account. Mrs. Cata said that she pays herself a salary at the end of the week with what is left in cash before depositing any money in the company's account. She said that she does not use the money that she makes from Miami Food to pay for her household expenses—her husband takes care of that. Mrs. Cata said that she uses the money to pay for her personal expenses and sometimes pays for outings with the children, but she does not make very much money.

Mrs. Cata advised that her signature appears on the Miami Food check that was given to the City. She said that she paid this money to the City because Diaz told her to take the sum out of the money that she collected because he was shutting down his business. Mrs. Cata said that the commission paid by Miami Food on behalf of Brothers came from the Brothers' vending machines. Mrs. Cata said that she made the commission payment after she had finished collecting for Diaz for the designated period of time. Diaz told her what sum needed to be paid and said that he needed for her to use one of her checks because he was closing the Brothers bank account. She said that she cannot say

how many vending machines she was helping Diaz with because she never saw the machines.

Mrs. Cata said that she contacts potential customers, whom she usually finds through word of mouth, and they verbally agree to have her vending machine placed at their business. She Cata does not have any other job at this time. Mrs. Cata said that the \$2,400 payment was the only payment that she ever made to the City on behalf of Diaz. She said that she could not continue to service the Brothers machines because Diaz told her that Coca-Cola had taken over the vending contract with the City and that he was closing Brothers.

Mrs. Cata said that one day the driver for Brothers told her that there was a lady at the City who was asking about the soda machines. She said that she asked her husband to call the lady to see what was happening because she did not understand the driver very well. Mrs. Cata said that her husband called and spoke with the lady, but she was not present during the call.

8/30/12 - Manny Diaz, Jr., Brothers Vending, Inc. –

Diaz was contacted regarding the identity of his driver. Diaz stated that he does not know which of his drivers was servicing the machines together with Mrs. Cata. He said that it is possible that the driver was “Calvin,” but he does not know his last name nor does he have his phone number.

9/11/12 - Anna Parekh, - Parekh was asked about the identity of the Brothers’ driver, but said that she did not know his name.

Conclusion:

There is insufficient evidence to charge Cata with an ethics violation. Under the Ethics Code, Mrs. Cata is not prohibited from contracting with the City as long as she is not contracting with the department her husband works for - the police department. In this particular case, the contract was between Brothers (which was assumed by Miami Food) and the City of Miami Beach, not with the police department. It could be argued that the placing of one or more vending machines inside the police department might constitute doing business with the department however, the Ethics Commission has never opined on such a situation previously. It is suggested that if Mrs. Cata ever seeks to do business with the City in the future, she request an opinion from the Ethics Commission and/or the City Attorney prior to doing so.

The investigation also can not conclusively establish that Cata held secondary employment (with Miami Food) as was alleged. Cata is not a listed officer or director of Miami Food. The IA investigation was unable to establish that he was involved in collecting money from machines while on duty or being responsible for removing the machines. The fact that Cata dropped off a check and made one phone call to the City on his wife's behalf, because she is not fluent in the English language, falls short of establishing that he is employed by Miami Food.

It should be noted that in a prior opinion, INQ 10-39, the Ethics Commission permitted a security services company owned by the husband of an assistant city attorney to bid on a City contract. The opinion held that the asst. city attorney could not have any dealings or interactions in her official capacity with her husband's company and that it would not interfere with the discharge of her duties; she would not enforce, oversee or

administer the contract. That opinion did hold, however that the assistant city attorney would have to file a sworn statement disclosing her relationship to the company pursuant to City Code section 2-450. If Miami Food ever seeks to contract with the City in the future, Cata should file the disclosure required by 2-450. Considering the fact that Miami Food “contracted” with the City - after ostensibly agreeing to operate the route for Brothers - for only one month, the failure to file a disclosure pursuant to 2-450 appears to be a de minimus violation not warranting the filing of an Ethics complaint.