



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigators: Manuel W. Diaz, Breno Penichet

Case No.: K13-122/ C13-029	Case Name: Crespo v Cabrera	Date Open:	Date Completed:
Complainant(s): Al Crespo	Subject(s): Luis Cabrera Johnny Martinez Danny Alfonso Tomas Regalado Juan Pasqual	Oct 10, 2013	April 29, 2014

Allegation(s):

Complainant, Al Crespo (Crespo), filed a complaint with the Miami-Dade Commission on Ethics and Public Trust.

In the Complaint, Crespo alleged that Luis Cabrera (L Cabrera), City of Miami (the City) Deputy City Manager Johnny Martinez (Martinez), City Manager, Danny Alfonso (Alfonso), Director the Office of Management and Budget, Mayor Tomas Regalado (Regalado) and Juan Pasqual (Pasqual), Director of Parks and Recreation (P&R), exploited their official positions by circumventing City hiring procedures to a create job within the P&R Department for the step-brother of L. Cabrera, Juan Carlos Cabrera (JC Cabrera).

The complaint also alleges that Cabrera, Martinez, Alfonso, Regalado and Pasqual exploited their position by circumventing City hiring procedures and hiring Dayami Davila (Davila), JC. Cabrera's wife and L Cabrera's step-sister, for a job in the P&R.

Relevant Ordinances:

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 her 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.

FSS. 112.3135 Restriction on employment of relatives

(2)(a) A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official.

City of Miami Code of Ordinances

Sec. 15. City manager—Qualifications; appointment; term; salary; sickness or absence; removal.

Sec. 16. Same—Powers and duties.

The powers and duties of the city manager shall be to:

(b) Appoint and remove, except as otherwise provided in this Charter, all directors of the departments and all subordinate officers and employees in the departments in both the classified and unclassified service; all appointments to be upon merit and fitness alone, and in the classified service all appointments and removals to be subject to the civil service provisions of this Charter.

Investigation:

Interviews

Daniel Alfonso (Alfonso), Current City Manager and former Director of Management and Budget

Alfonso was interviewed in his office. Alfonso explained that as the Director of the Office of Management and Budget, he was not directly involved in hiring of employees outside of his office.

Alfonso was shown a City inter-office memorandum dated February 21, 2013, "Justification to Fill-Staff Assistant, T." from Pasqual to Martinez. The inter-office memorandum was submitted by Crespo as an exhibit along with the complaint.

Alfonso described the memorandum as standard form used by City Department Directors to request permission from the City Manager to fill existing open and previously approved positions in the Department's annual budget. The memorandum is not used to "create" a new position. Alfonso acknowledged his signature, but did not specifically recall signing the form.

He advised that an analyst on his staff did the research to determine if the position did exist in P&R for the budget year and if the P&R had sufficient funds remaining in its annual budget to pay for the position. Alfonso advised that once both position and funding were verified by the analyst he or she initials the form and gives it to Alfonso to approve. The form is then referred to the City Manager's Office for signature.

When signing, Alfonso said did not realize that JC Cabrera was the step-brother of L. Cabrera.

Juan Pasqual (Pasqual), Director Parks and Recreation

Interview (1)

Pasqual advised the following concerning the hiring of JC Cabrera and his wife:

In mid-late January or early February 2013, he was contacted by L. Cabrera. L. Cabrera asked if there were any positions open with P&R. Pasqual responded that there were some temporary and part time positions. L. Cabrera never told Pasqual why he was inquiring.

Weeks later, (Pasqual was unsure of the date), JC Cabrera came to his office and requested a meeting to sit and speak about potential employment. Pasqual advised that he sat with JC Cabrera and discussed various open positions within his Department. At the time, Pasqual was not aware that L. Cabrera and JC Cabrera were related.

Pasqual stated that meeting with prospective job applicants is not unusual. If he is not available a member of his staff will meet with the prospective job applicant.

He does not know how JC Cabrera learned of the job openings in P&R. He had not met JC Cabrera prior. After the meeting, Pasqual contacted L. Cabrera who acknowledged that JC Cabrera was his step-brother.

Pasqual was clear that L. Cabrera never asked him to give his step-brother any preference in the hiring process.

Pasqual advised that he followed City procedure and forwarded JC Cabrera's application to the City Human Resources Department (HR) where the applicant's qualifications were reviewed.

Pasqual prepared the standard Request to Fill form for the position and forwarded the form to Alonso and to Martinez for approval. When he received Martinez' approval the approval was entered in the NEOGOV, the system used for processing job applications.

Concerning the Request to Fill form, Pasqual advised that he made an attempt to have L. Cabrera to sign the form but he was not available. Pasqual discussed the form with L. Cabrera's assistant prior to signing the form for L. Cabrera.

Pasqual advised that he went on vacation for three weeks within days of submitting the Request to Fill form. When he returned, JC Cabrera had been hired and assigned to work by the P&R Director of Operations.

Concerning the hiring of Davila, Pasqual advised that she applied to the City HR department. Her application was referred to him by HR. He reviewed her qualifications and she was assigned. He noted that she was qualified to work in her assignment.

Pasqual explained that P&R has approximately 600 budgeted positions; about 350 are part-time with up to 29 hours a week with no benefits. The department also has 150 temporary positions, up to 40 hours a week with no benefits. The rest of the budgeted positions are full-time with benefits.

Pasqual advised that part- time and temporary positions are not advertised on the City's web site. He qualified that the City does however advertise for summer parks position, but these are short-term positions and are cut back when school starts.

Pasqual responded to COE Subpoena on December 30, 2013. Present during the interview, Vivian M. Reyes, Esq. 2000 South Biscayne Boulevard Suite 2770 Miami, Florida 33131, represented Pasqual.

Interview (2) Sworn Statement

Present representing the COE were Michael P. Murawski, Advocate, Investigator Breno Penichet and this writer.

The statement was sworn and recorded.

Murawski reviewed the written report of previous Pasqual interview prepared by investigators with Pasqual and Reyes.

According to Pasqual, when he interviewed JC Cabrera, Cabrera brought with him a completed City of Miami Employment Application. JC Cabrera told him that he was told to go and meet Pasqual by L. Cabrera. After the meeting Pasqual called L. Cabrera and asked if JC Cabrera was related to him. L. Cabrera acknowledged that they were step-brothers. L. Cabrera added that they were not close, and had only met recently after JC Cabrera arrived in the US.

Pasqual reiterated that L. Cabrera never applied any pressure to hire his step-brother.

Tomas Regalado (Regalado), City of Miami Mayor

Regalado was interviewed via telephone. He advised that he has nothing to do with the hiring of JC Cabrera. He advised that he did not speak to L. Cabrera or Pasqual concerning the hiring of JC Cabrera.

Regalado advised that he met with Yamilie Marrero (Marrero), a P&R employee, concerning the promotional practices in P&R. L. Cabrera attended the meeting. L. Cabrera told Marrero that he would discuss Marrero's concerns with Pasqual.

Amy Klose (Klose), Department of Human Resources Director. Also present was Beverly Pruitt (Pruitt)

Klose was interviewed in her office.

Klose confirmed that P&R part-time and temporary positions are not advertised, and there are no active recruitment efforts to fill the positions.

Pruitt advised that her staff verified the qualifications of job applicants.

When JC Cabrera was hired, there were four (4) Staff Services Assistant (T) positions available in P&R. JC Cabrera was given one of the positions. The SSA (T) position is a budgeted position and has been in the P&R budget for a number of years. It is not a newly "created" position.

According to Klose and Pruitt, neither was contacted by either L. Cabrera or Pasqual to have the hiring process expedited.

The SSA (T) position is not a civil service position. Department directors who have the

money in their budgets can fill openings as needed. The department director or his designee need only conduct an interview before hiring. There is no open competition for the position. Pasqual, as a department director, can fill the position with anyone whom he feels is qualified.

Klose advised it is not unusual for a department director to maintain a file of applications of individuals who apply for open part-time and temporary jobs. As openings occur, the director can search the file for what he considers qualified applicants. When an applicant is selected, the director forwards the application to HR to verify the information on the application. Once the information is verified the director can hire the applicant, if he receives authorization to hire from his Assistant City Manager, the Department of Management and Budget (M&B) and the City Manager.

Klose provided a copy of the Hiring Flow Chart, used by HR. The chart identifies which steps are taken in hiring employees. (Copy in investigative file)

Klose advised HR does not fund positions, the department only qualifies applicants.

Klose acknowledged that the department missed JC Cabrera's failure to complete box 13-15 on page 4 of the application.

Klose noted that all employees are required to complete the City Nepotism Clearance Form. In the form, the applicant attests that his employment does not violate FSS 112.3135, which outlines restriction on the employment of relatives. (See Document Section following)

At the request of investigators, Klose provided a list of SSA (T) positions within the P&R Department. The list indicates that on February 21, 2013, (the date that Pasqual requested the filling of the Staff Services Assistant position). P&R had a total 9 Staff Services Analyst Positions. Four (4) of which were vacant.

Document Review:**Exhibit 1 - Attachment to the COE Complaint**

City of Miami Inter-Office Memorandum. The document was sent by Pasqual Martinez. The subject of the inter-Office memorandum is Justification to Fill – Staff Services Assistant, T.

The inter-office memorandum requests permission to fill one Staff Services Assistant T (Job Code 9241); position number 12160. The position is funded through a Consolidated Special Revenue Account, non-General Fund dollars.

The inter-office memorandum request is approved by Pasqual for L. Cabrera, Alonso and Martinez.

Exhibit 2 - CM Personnel File of JC Cabrera

The file contains the City of Miami Job description for Staff Services Assistant, T,

A Department of Human Resources Qualifications Procedure Evaluation Form. The form is signed by an evaluator and is approved by the Human Resources Director.

A new hire for JC Cabrera containing an Action History.

City of Miami Nepotism Clearance Form

The form states the following, “ A public official may not appoint, employ, promote, or advance, or advocate to appointment, employment promotion or advancement, in or to a position in the agency in which he is serving or he exercises jurisdiction or control any individual who is relative of the Public official. “

“I understand that “Relative” with respect to a public official mean as individual who is related to the public official as father, mother, son daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband ,wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepfather, step-mother, stepson, stepdaughter, stepbrother ,stepsister, half-brother, or half-sister.” (copy in File)

Juan Carlos Cabrera (JC Cabrera) *Sworn Statement*

Cabrera was interviewed at the COE. The interview was recorded and has been made part of the investigative file.

He has been employed by the City since March 2013 as a SSA (T). His duties require him to check the parks that do not have permanent staff assigned to insure that the parks are safe, the grass has been maintained, the sand is level and any playground equipment is safe.

He never did this type of work before. He received on the job training. Prior to arriving in the US from Cuba he worked in computer graphics and communication. He also owned a business. Since arriving from Cuba he applied for a number of jobs in government and in the private sector.

He learned about the openings in the P&R Department from the internet. He went to the City's HR web site and learned of the openings. He downloaded the application for the position and filled it out. He noted that it took two days to fill out the application, because of his limited English. He did not know what position he was applying for, he just applied for work.

After completing the application, he took the application to the P&R Department and dropped off the application with the clerk at the front desk. He knew to drop the application off because the job opening he was applying for was in the P&R Department. He did not speak to anyone at P&R; he just dropped off the application.

He never spoke to Pasqual prior to being hired. He never spoke to L. Cabrera about the opening.

After several weeks he was contacted by a person in P&R to report to the Department to start work. He does not remember who contacted him. He advised that Pasqual was on vacation, so he could not meet with Pasqual. He met Pasqual during new employee orientation, sometime in April.

Concerning section 13-15 of the City of Miami Application, He advised the following: He did not complete 13-15, because: 1) he did not understand the question; 2) he did not feel that L. Cabrera helped him get the job; and 3) L. Cabrera worked for the Police Department and he was not applying to work with the Police Department.

Dayami Davila (Davila), Wife of JC Cabrera

She came with her husband and child from Cuba in December 2012.

In Cuba she was a physical instructor, she also worked as municipal administrator. She has both an undergraduate and graduate degree.

She learned of openings with the City P&R Department via an internet search. She downloaded the job application, completed the application and submitted the application to the HR Department. She did not deliver her application to P&R. She was contacted by HR and provided additional information. She submitted the information and was contacted by the P&R and advised that she was hired. Davila did not complete the position information on the front of the application. She does not know who filled in the position information.

She was hired at the end of May 2013 and worked only for several months. She resigned due to the media attention directed toward her hiring. She said that she felt uncomfortable going to work.

Davila stated that she had only met L. Cabrera once and has never spoken to him about getting work with the City.

Davila entered “No” on her job application for item 13-15. She conceded that she misread and misunderstood the meaning of the question. According to Davila, in Cuba, “Nepotism” applies only if an individual directly supervises another, and is applied in the higher levels of government administration, Department and Assistant Department Director. Her husband, while working for P&R, did not supervise her.

Document\ Public Record Request

A Public Records request was made to the City of Miami for all e-mails between Pasqual and L. Cabrera for the period of 1/1/2013 to 4/1/2013.

The e-mails were reviewed. There were no e-mails concerning either the JC Cabrera hiring or any e-mails concerning the hiring of Davila.

Yamilet Marrero (Marrero), City of Miami employee

Marrero was interviewed at her residence. She told investigators that when she learned that Davila was hired by the Parks Department for a position that she was interested in she complained to Regalado and Cabrera (See the interview of Regalado above). After getting no apparent results she appeared before the City Commission. As a result of her appearance before Commission she was approached by several media outlets and bloggers for interviews which she provided. She also was interviewed by a representative from the City's Internal Auditor's Office.

Marrero's complaint is that there is relatively little upward mobility and promotions within the P & R Department. She advised that promotional opportunities are not advertised. She noted that since her appearance before the Commission, job announcements are being posted around the various recreational centers throughout the City.

Marrero said that she had no first-hand knowledge as to how JC Cabrera was hired.

Marrero said that she has no first-hand knowledge as to how Davila was hired.

Interview of Lina Blanco:

Blanco is the administrative assistant to Pascual. She was interviewed after information was received from the City of Miami's Independent Auditor General that she may have additional information about the case. A copy of Blanco's statement is in the case file. Blanco stated that Maria De Cardenas called her at home to determine why the paper work for processing JC Cabrera had not been done yet; she also claimed that De Cardenas told her that she should "look at the name on the paper" and that it was a "VIP."

In the subsequent interview of De Cardenas, she denied using such language and admitted that she did call Blanco at home, which was not unusual, and inquired about the status of JC Cabrera's paper work but that was only because De Cardenas was acting Parks Director at the time (Pascual was on vacation) and she wanted to be sure that the paperwork was finished in a timely fashion.

Summary of Facts:

Crespo filed a COE Complaint alleging that L. Cabrera, Martinez, Alonso, Regalado and Pasqual used their official positions to create new positions within with in the CM work force and hire L. Cabrera's step-brother and step-sister in violation of the City of Miami's anti-nepotism policy.

L. Cabrera was interviewed and denied that he influenced the hiring of his step-brother (JC Cabrera) or his step-sister (Davila)

During his interview, Pasqual stated that L. Cabrera never made any attempt to influence the decision to hire JC Cabrera or Davila.

During his interview, Pasqual stated that the positions occupied by L. Cabrera and Davila were existing budget positions within P&R, not new positions as alleged in the COE Complaint.

Klose was interviewed and she advised that CM department directors have discretion in hiring temporary and part time employees.

During her interview, Klose confirmed that the two CM positions filled by JC Cabrera and Davila were existing budgeted positions, and not created as alleged in the complaint.

Both JC Cabrera and Davila were hired as part time employees.

Interviews of L. Cabrera and Pasqual conflict. L. Cabrera stated in a sworn interview that he did not recall contacting Pasqual as to the availability of positions within P&R. Pasqual stated that L. Cabrera contacted him to see if there were any available positions.

Interviews of JC Cabrera and Pasqual conflict. Pasqual stated that JC Cabrera met with him prior to hiring and brought with him a completed employment application. JC Cabrera denies meeting with Pasqual prior to being hired. JC Cabrera stated that he turned in his application to CM HUR and not to Pasqual.

Interviews of JC Cabrera and Davila conflict with interview of Klose and the statement of Pasqual. Both JC Cabrera and Davila stated that they learned of their respective job openings with P&R from the CM internet web site. Both Klose and Pasqual stated that the CM does not advertise openings for temporary positions on its website.

None of the emails between L. Cabrera and Pasqual provided by the CM referred to the hiring of JC Cabrera or Davila.

Conclusion:

Case turned over to Advocate for probable cause determination.

