



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Sylvia Batista

Case No.: C13-034, C13-043, C13-044, C13-045, C13-046/ K13-143	Case Name: Azze v. Carlos Hernandez et al.	Date Open:	Date Completed:
Complainant(s): Jose Azze	Respondent(s): Mayor of City of Hialeah, Carlos Hernandez; and Pablo Bermudez, Director of Parks and Recreation.	11/01/13	2/11/14

Allegation(s):

Jose Azze (Azze), a former employee of the City of Hialeah Department of Parks & Recreation, filed several ethics complaints with the COE alleging that the City of Hialeah entered into a two-year agreement giving El Duke Sports Association LLC (El Duke) exclusive use of seven baseball fields at Babcock Park for free. In his ethics complaints, Azze alleges that El Duke has failed to comply with the terms and conditions of the agreement and that the City has taken no action to enforce compliance by El Duke.

Relevant Law:

Sec. 2-11.1, Conflict of Interest and Code of Ethics Ordinance, *(g) Prohibition on exploitation of official position.*

“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...”

Investigation:

Interviews/Contacts

11/25/13 – William Grodnick, Hialeah City Attorney -

William Grodnick (Grodnick) explained that the City wanted to improve Babcock Park, so they entered into a lease with El Duke. Essentially, the City and El Duke entered into a use permit which spelled out the terms of El Duke’s use of Babcock Park. It is use Permit No. 902 (the Permit).

Grodnick said that El Duke made only a few of the monthly rental payments to the City, but it must be noted that El Duke paid approximately \$50,000 for a fence that was installed at Babcock Park in order to improve the facility. The fence became a City asset upon its installation. The rental payments due from El Duke were originally \$1,500 and were reduced to \$1,000 during the last few months of the permit. The permit is now expired and they are allowing another several months to finish a study to determine how much other cities are charging athletic leagues for the use of their parks before renewing it. El Duke will complete this fall season at Babcock Park. The City has no commitment with El Duke beyond this calendar year.

Grodnick said that he does not disagree that maybe the City leased too much space to El Duke. The locks used to keep residents out of the fields while El Duke is not using them have been removed. The fields are now locked only when the park is not open.

Grodnick said that, pursuant to the permit, another requirement was that El Duke apply for tournament permits sixty (60) days prior to the commencement of the tournament, and give the City a 30 day notice in advance of each scheduled tournament. Grodnick said that he does not think the City got the notices on a timely basis and the Department of Parks and Recreation was not on top of it. They are a large city with 30 parks and lots of activity, and are short-staffed due to financial constraints. Such notification from El Duke should have been made to Pablo Bermudez (Bermudez), the Parks Director. Grodnick said that when he spoke with Bermudez, he said that they were not happy about the late notice. However, they did not understand the business model of a baseball organization when they set the advance notification time at thirty (30) days. A thirty-day notice may have been an unrealistic advance notice due to the type of business that this is.

Grodnick said that the City has issued permits to other athletic leagues. There was no unnatural favoritism in issuing the Permit to El Duke. Parks has been having issues from

time to time with El Duke. Parks was excusing things that El Duke did or failed to do because of a lack of oversight.

Grodnick explained that the City council approved granting the permit in return for fences around the baseball fields, which El Duke paid for.

Grodnick said that the City has many parks and has issued permits to other athletic leagues without receiving any compensation. Grodnick said that the City has also issued permits to Hialeah Athletic League, and the Optimist Club (football). They have permits. The Optimist Club has a different kind of league, it is like a baseball league, but they do not stage tournaments. Permits are given for one, two or three years.

Grodnick said that the fence at Babcock was paid for by El Duke. The total cost of the improvement was \$41,800. Grodnick provided the COE with a copy of the City permit issued for the fence.

12/10/13 – Pablo Bermudez, Hialeah Director of Parks & Recreation –

Pablo Bermudez (Bermudez) has been Director of Parks and Recreation since January 2013. Prior to that, he was a supervisor in Parks for 7-1/2 years. Bermudez said that in all he has worked for the City for 33 years. Bermudez said that he used to work with Azze, who was a Center Director 1 at the time of his retirement. Throughout his career, Azze worked at various City parks. Azze was in a higher position, but requested to be demoted because he was working in a large facility and preferred a smaller one. Bermudez has known Azze for years. In fact, Azze worked at Babcock Park, but he does not recall whether El Duke was there at the time. Bermudez said that he had a couple of run-ins with Azze throughout the years.

Bermudez said that he took a great deal of time to locate the records requested by Azze, who is convinced that the City is holding something back. This type of permit has been issued to athletic organizations on many occasions. Bermudez was asked about Field Reservation Permit No. 902 (the "Permit") which the City issued to El Duke. Bermudez said that he was not the Parks director when the City negotiated the Permit, but is familiar with what has been alleged by Azze.

Bermudez said that, as agreed with the City, El Duke is supposed to make monthly payments only during the season. Bermudez acknowledged that El Duke has made only four monthly payments throughout the term of the Permit. This is because El Duke has to make the payments only when his organization uses the fields, and they do not use the fields every month. Bermudez said that they use the fields during the season, and they are in season now. Their season does not run concurrently with the professional baseball season. El Duke did not give the City a schedule of their use of the fields at Babcock Park. Bermudez said that El Duke contacts him when they are in season and he requests payment at that time. Bermudez said that they check to see whether El Duke has used the fields on a monthly basis.

Bermudez acknowledged that El Duke has not made many payments, but the actual consideration that he paid to the City are the beautiful fences that he installed around each of the seven baseball fields. The cost of the fences was approximately \$50,000.

Bermudez acknowledged that El Duke did not comply with the liability insurance requirement, something which was a serious concern, but El Duke has recently complied with the requirement. Bermudez stated El Duke provides all of the products sold at the Babcock concession stand and retains all of the profits from the concession stand when El Duke's organization is using the fields.

Bermudez said that when El Duke is using Babcock Park, Park staff opens the fields in the morning. El Duke arrives at 5:30 p.m. or 6:00 p.m. The Babcock Park fields are locked only when the Park is not open. Bermudez explained that Orlando Hernandez, a/k/a El Duke, has brought professional ball players to work with the kids who are signed up for the program. It is not the same as previous programs offered by the Department of Parks & Recreation because El Duke is a very well-known and successful baseball player. When the season ends, the Mayor and El Duke will decide whether there will be a renewal of the Permit.

01/22/14 – Hiram Perez of Hialeah Athletic Association -

Hiram Perez (Perez) is the Director of Hialeah Athletic Association (HAA). HAA is a non-profit Florida corporation. HAA uses the Filer Jr. fields for youth baseball all year round and have been doing so for 54 years. HAA's permits are automatically renewed and are continuous. HAA pays the City \$1,500 monthly rent during the official season. HAA has two seasons per year. The season starts in February or March and ends at the end of June. HAA keeps practicing the teams for the remainder of the time until the next season starts. The second season of the year starts when they have enough kids signed up, so it depends on the parents. The second season ends in December.

Perez said that HAA buys liability insurance as is required by the City. HAA pays for the insurance and it automatically renews each year. HAA has been doing this for 54 years.

Hiram Perez said that HAA pulls permits for the tournament companies when they are participating in a tournament at Filer Jr. fields. The City enforces the permits for the tournament companies. The City has ultimate say in anything that is done at City parks. HAA is in charge of organizing the tournaments, and the City issues the permits for the tournament company. HAA only organizes baseball games.

Perez said that the difference between El Duke's organization and HAA is that HAA is a non-profit organization and El Duke is for profit. Perez explained that the problem is that the politicians speak to the Mayor and try to get the use the baseball fields. City politicians and family and friends are constantly asking for the fields. Then El Duke came along. Perez said that before El Duke came along, the Khory League was at Babcock Park. Khory League is a Florida non-profit corporation. When Khory League left, the fields became neglected. The

City tries for there to be an organization at the fields so that they will take care of them. The organization will take a great burden off the City's shoulders. Perez said that when Khory league was at Babcock Park, it was in great shape. In Hialeah you cannot do business in baseball. Hialeah is a working class community so investing in baseball is not favorable.

Perez explained that the City employee in charge of enforcing the permit is retired. The new person who has oversight of the permits is Willie Sanchez. His number is (786) 473-6489. Joe Dziedzic was his main contact person from before. His number is (305) 687-2662. The City is not constantly on top of them to comply with this or that in an obnoxious manner. HAA knows what is required of them and they do it. They have always had an annual permit. Perez said that he has been with HAA for over thirty years.

02/04/14 – Hialeah Mayor Carlos Hernandez –

Mayor Hernandez (Hernandez) explained that negotiations with El Duke were conducted before he became the Mayor. He does not disapprove of the agreement reached with El Duke and thinks it is welcomed by the parents of the kids who want to play baseball. Hernandez said that baseball has change in that parents are more involved in their child's participation and development. He has frequently heard parents complain that there wasn't a professional league offered for kids to learn from. With El Duke in the City, they are able to provide the additional services that parents have wanted. Few parents have complained about the money they must pay to have their child trained by El Duke and other players and trainers that he makes available in his baseball clinics. Hernandez added that El Duke waives the \$300 fee for some kids who want to play, but cannot afford it. The kids in the program are not only from Hialeah.

Hernandez said that he supports having El Duke there also because he invested in the fences at Babcock which costs close to \$45,000. In addition to the fences, El Duke has made several payments which are only due if they use the park. When El Duke came to Babcock the park had been in need of repairs and maintenance. Hernandez said that when they became aware that the fields were being locked while the park was open, they took care of it and now if the park is open the fields are to stay open as well.

Hernandez said that the last league that operated out of Babcock was Khory League. Khory League was run by Angel Hernandez who is now deceased. Khory League did not pay for the use of Babcock Park and they did not have a permit. HAA is another league that has operated in the City for 30 years or more. HAA also did not pay a monthly sum to the City, but have been required to pay during his administration in order to match the City's arrangement with El Duke. The Optimist Club, which is a football league, also operates in the City. The Optimist Club's lease with the City expired and they have moved to Milander Park which is also in the City. All of the leagues operating in City parks keep the money from the concession stands.

Hernandez explained that *Presidente* Supermarket has become the official sponsor of baseball for the City, and plans on starting a new league. This is a service that the City gives to its residents. Kids can find the training they need at whatever level their parents can afford. The permit for El Duke has not yet been renewed.

02/10/14 – Orlando Hernandez a/k/a El Duke –

El Duke said that he was aware of the complaints made by Azze, but does not know the details. El Duke said that the terms of the Permit were negotiated with former Mayor Julio Robaina (Robaina). El Duke said that he thinks he proposed the idea of forming a baseball league and operating it out of Babcock Park to Robaina. The City thought of most of the terms of the Permit, although he had some input as well. The monthly payment that he is required to make to the City (\$1,000) during the season was not stipulated until later because of the many expenses that he initially incurred to get the fields ready. El Duke explained that he installed new fences around each field. He added screens and other necessary equipment to the fences and repaired the mounds, which was very expensive.

El Duke charges each player in his league \$300 for the season. Seasons are approximately 4 months long. If he uses the 5th month due to rainouts or other cancellations, he pays for that month as well. The \$300 fee includes the uniform (pants, jersey, cap and socks). El Duke said that he grants 10 to 15 scholarships for needy kids. El Duke said that he confirms that the child is needy and does not simply take their parents' word for it. El Duke said that he charges \$400 if two brothers sign up together and an additional \$200 for each additional brother that signs up.

El Duke retains all concession profits, and buys all the food and beverages sold at Babcock Park. They can only sell heated food like pizza or hotdogs.

El Duke said that he was told that he could not lock the fields in his absence. This is a problem because vandalism is a concern.

El Duke explained that the companies that administer the tournaments are independent companies. Many teams participate in the tournaments. These are not companies that he sublets the field to. Tournaments are what the season is really about.

El Duke said that he hires coaches who have played professionally. There are no fathers coaching. The coaches are paid \$10 to \$15 per hour. He pays the coaches with the money he collects from the kids.

El Duke said that he tried to comply with the Permit requirement that he notify the City 30 days before a tournament is due to start, but 30 days is too long. He often does not know that far in advance whether a tournament is taking place. Nevertheless, the City gave him the permits for the tournaments. Perhaps the new notification period will be 15 days.

Document/Audio/Video Review:

The following is a review of various documents attached to the ethics complaint and produced by the City in response to records requests.

- **Field Reservation Permit No. 902 issued to El Duke** – Department of Parks and Recreation, City of Hialeah, issued the permit to El Duke Sports Association, LLC (El Duke) for the use of Babcock Park's seven fields for youth baseball leagues and instructional clinics. The term of Permit No. 902 was from 09/01/11 to 08/31/13. Permit No. 902 allows El Duke to use Babcock on Monday through Friday from 5:00 p.m. to 10:00 p.m., Saturday from 9:00 a.m. to 9:00 p.m. and Sunday from 10:00 a.m. to 6:00 p.m.

Pursuant to Permit No. 902, El Duke is authorized to use a concession cart containing pre-packaged foods and bottled or canned beverages only. El Duke is solely responsible for the storage and maintenance of the concession cart. The City is to operate all concessions located at Babcock with the exception of the concession cart.

El Duke is required to maintain liability insurance that covers all participants of the league's programs and covers the operation of the concession cart with a minimum \$1,000,000.00 insuring El Duke and the City.

El Duke is required to pay the City rent for the use of Babcock Park. The sum to be paid is \$1,500 per month for the first several months of the permit. The monthly rent was reduced to \$1,000 per month from 04/01/13 through 08/31/13. Payments are due only for those months that El Duke uses Babcock Park, which is only during the season.

El Duke has made the following payments to the City for the use of Babcock Park:

DATE	DESCRIPTION	AMOUNT
05/24/12	Receipt No. 374838 to El Duke Sports Assoc. LLC	\$1,500.00
04/02/13	Check No. 1219 from El Duke to the City.	\$1,000.00
04/25/13	Deposit Receipt of payment for facility rentals (check #1219) in the sum of \$1,000.	
05/31/13	Check No. 1234 from El Duke to the City.	\$1,000.00
06/12/13	Deposit Receipt of payment of facility rentals (check #1234) in the sum of \$1,000.	
10/24/13	Check No. 1252 from El Duke to the City.	\$1,000.00
10/30/13	Receipt No. 183549 to El Duke Sports Assoc. LLC	

	and Deposit Receipt of payment of facility rentals (check #1252)		
<ul style="list-style-type: none"> Field Reservation Permit No. 1044 dated 11/06/13 – Department of Parks and Recreation, City of Hialeah, issued the permit to El Duke Sports (El Duke) for the use of Babcock Park’s seven fields for a 14 and under baseball tournament to be held from November 13 through November 17, 2013. Certificate of Liability Insurance insuring El Duke and the City for \$1,000,000 per occurrence for the period of 10/14/13 through 10/14/14. <p>05/31/11 – City Council Agenda –</p> <p>The item requesting permission to the permit to El Duke Sports Association, LLC, for the use of Babcock Park Fields for youth baseball leagues and instructional clinics, for a two year basis commencing 9/1/11 through 8/31/13, authorizing Department of Parks & Recreation Field Reservation Permit #902 was approved as part of the consent agenda. No discussion was had.</p> <p>06/28/11 – City Council Agenda –</p> <p>The item regarding an amendment to the permit issued to El Duke Sports Association at the previous council meeting was approved as part of the consent agenda. During the meeting it was recognized that the present item was a license modification giving El Duke permission to sell warm foods like pizza or hot dogs, and bottled water and drinks in the concession stand at Babcock Park. Furthermore, the modification being proposed included a requirement that El Duke buy \$1,000,000 liability insurance for the league that they are going to run in at Babcock Park.</p>			

Conclusion(s):

Report turned over to Advocate for probable cause recommendation.