



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigators: Manuel W. Diaz, Breno Penichet

Case No: K14-057	Case Name: City of Miami, Mariano Fernandez	Date Open:	CASE CLOSED
Complainant(s): Anonymous	Subject(s): Mariano Fernandez	6/20/14	Date: <u>8/8/14</u>

Allegation(s):

This writer received an anonymous telephone call. The caller advised that Mariano Fernandez (Fernandez), the former Director of the City of Miami Building Department had left the City of Miami (Miami) and been hired as the Director of the City of Miami Beach Building Department.

The caller advised that while with Miami, Fernandez had used "phase permits" to benefit several engineering consulting companies that he may have a financial interest in. The caller advised that he would provide a copy of an e-mail sent by the current Assistant Director of the Miami Building Department, Maurice Pons (Pons), to three engineering consulting companies advising them that Miami was discontinuing the use of phase permits. The caller advised that this e-mail was proof that Fernandez had used his position with Miami to benefit consulting corporations that he had a financial interest in by granting them phase permits. The anonymous caller also sent the COE some documents regarding the allegations.

The COE received a copy of the e-mail and other information concerning Fernandez, including the allegation that Fernandez' wife was related to the owner of JEM. (Copy in file) JEM is one of the three consultants which were sent the e-mail by Pons.

Relevant Ordinances:

Miami Dade County Conflict of Interest and Code of Ethics Ordinance

“(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 herself 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.”

Florida Building Code 2010 Edition

105.13 Phased permit approval.

“After submittal of the appropriate construction documents, the building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder’s own risk with the building operation and without assurance that a permit for the entire structure will be granted. Corrections may be required to meet the requirements of the technical codes.”

Investigation:

Fernandez was the subject of COE case K12-167. The COE investigated the relationship between JEM and Fernandez.

That investigation did not reveal any evidence that any provision of the Miami-Dade Conflict of Interest and Code of Ethics had been violated. Accordingly, the investigation was closed with no further action.

Portions of K12-167 have been incorporated in this report.

Interviews:

Peter Iglesias (Iglesias), City of Miami Building Director and **Maurice Pons**, Assistant Building Director and Building Official were interviewed.

Both were advised of the allegations and shown a copy of the e-mail sent by Pons. Pons identified the e-mail as the one he sent.

Pons and Iglesias explained the following. The Florida Building Code (the Code) permits counties and municipalities to issue “phase permits.” The first major use of the phase permit in South Florida was by Miami-Dade County in the construction of the Marlin’s Stadium. Miami introduced the use of phase permits to encourage development and expedite building construction. Recently, DERM objected to the use of phase permits. Miami’s legal staff has

been in negotiations with Miami-Dade County Attorneys to arrive at a resolution. Iglesias believes that the current process of allowing phase permits is correct. Miami-Dade County and DERM maintain that DERM must issue a permit before any work on any master plan can be approved. As of the date of the interview, no resolution of the matter has been arrived at. Iglesias advised that Miami decided to discontinue the use of phase permits until the conflict between Miami and DERM is resolved. Pons said that he sent an e-mail to that effect.

Both Pons and Iglesias agreed that Fernandez' resignation had nothing to do with Miami's use of phase permits during Fernandez' tenure as Building Director. Pons was emphatic that the e-mail had nothing to do with Fernandez leaving his employment with Miami. Fernandez simply resigned because he was offered more pay and more incentives by the City of Miami Beach.

Pons advised that there are three engineering construction companies working in Miami" MTCI Private Provider Services, LLC; JEM Inspections & Engineering Services, Inc. (JEM); and PB Americas, Inc. All are properly licensed and cooperate with Miami. The e-mail was sent to the principals of those companies. (see "Documents Reviewed" below)

David L. Swimmer (Swimmer), Law Offices of David L. Swimmer, P.A.

In COE Case No. K12-167, the COE contacted Jesus Baez (Baez) owner of JEM to inquire as to the relationship between Fernandez and JEM. Swimmer responded to the inquiry by the COE representing Baez. Swimmer provided a letter to the COE explaining the Fernandez/JEM relationship. In the letter, Swimmer clarified that Fernandez was never an owner of JEM but rather, an employee who consulted on one project representing JEM between 2006 and 2008. (Copy of letter in case file for K12-167).

Mariano Fernandez, Former Director of the Building Department and Building Official for Miami. Currently, Director of the City of Miami Beach Building Department.

Fernandez was advised as to the scope of the complaint. He advised that Miami implemented the phase permit process seven years ago as a way to expedite the building permits and to generate additional revenues for the City. He advised that phase permits are permitted by the State Building Code.

When interviewed in case K12-167, Fernandez mentioned that he had found it necessary to discipline several Building Department employees. He felt one or more of them may have contacted the COE and made the allegations.

He acknowledged that Miami is currently in discussions with DERM. According to Fernandez, the issuing of phase permits does not interfere with the jurisdiction of DERM. DERM can still require approvals prior to the initiation on any construction. DERM, on the contrary, does not want any phase permit issued until it issues its approval.

Fernandez explained the City of Miami Beach issues phase permits.

Fernandez denied that his wife Maria D. Ortiz, a sitting Miami-Dade County judge, is related to any of the owners of JEM.

Documents Reviewed:

Anonymous complaint

Page 1-4 contain information on Mariano. V. Fernandez

Statement alleged:

-Fernandez has allowed MTCI to conduct inspections. It is believed that MTCI is MTC Incorporated, an engineering consulting firm from Homestead.

- Fernandez permitted JEM to do work without an engineer's license.
- The owner of JEM is related to Fernandez' wife.
- Fernandez was the owner of CAP Engineering

-Fernandez, while with Miami, allowed phase permits without permit fees. The permit fees are no longer permitted by the new building director.

E-mail from Pons to Mike Causley (MTCI Private Provider Services, LLC), Jessie J. Baez (JEM), and Roop (Roop L. Khirsukhani, PB Americas Inc.), advising that, "Effective today all Phase Permit plans submitted to the City of Miami Building Department for approval must

have a Final DERM stamp of approval."

Note: The above information was sent via FedEx to the COE by Laura Craft (Craft). A Google search produced no information about Craft. An Accurint search produced no information about Craft locally. The return address used PO BOX 13404 Miami, Florida 33144 does not exist. The return telephone number has been disconnected.

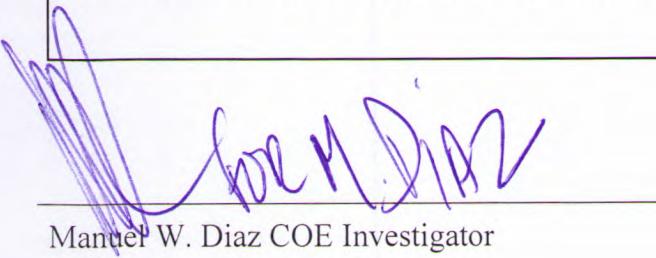
Note: On 7/11/14 the anonymous complainant re-contacted this investigator. He questioned if the COE had developed any information concerning Fernandez. He was advised that none of the information he provided had been verified. He conceded that he could not substantiate any of the details he provided. He stated that the details he provided were second-hand obtained in conversations with his work associates and were based upon rumors that were circulated around Miami.

Additional Research

Miami-Dade Clerk of the Courts record search, Accurint search, Google search

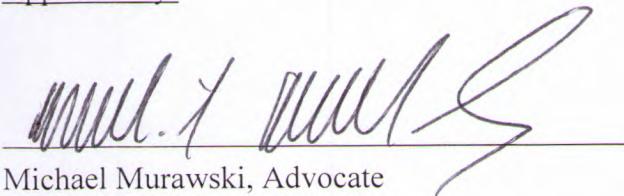
Conclusions:

After consultation with the Commission Advocate, it was decided that no further action would be taken regarding this anonymous complaint.

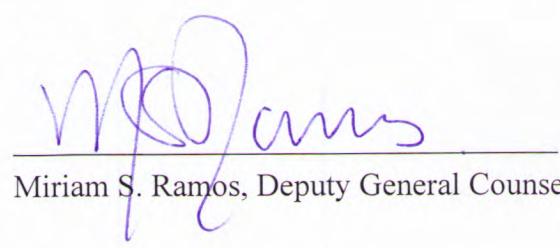


Manuel W. Diaz COE Investigator

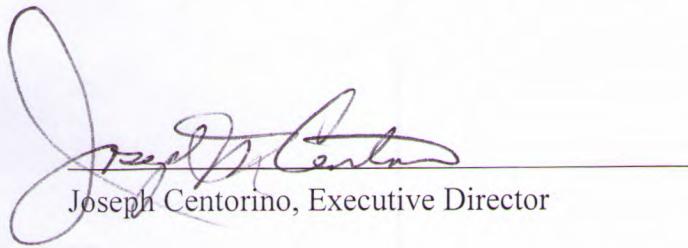
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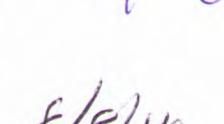
Michael Murawski, Advocate



Miriam S. Ramos, Deputy General Counsel



Joseph Centorino, Executive Director



8/8/14
Closed