



**CASE
CLOSED**

Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Date: 8/20/2015

Investigator: Karl Ross

Case PI-14-061	Case Name: Miami Worldcenter	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s):	Subject(s): Principals and lobbyists for Miami Worldcenter project, et al.	Dec. 30, 2014	

Allegation(s):

Last-minute revisions to the Economic Incentive Agreement (hereinafter “the agreement”) between the Southeast Overtown Park West Community Reinvestment Agency (SEOPW CRA) and the developers of a proposed \$1 billion mixed-use project in downtown Miami (Miami Worldcenter) led to public outcry at a Dec. 29, 2014, meeting over an alleged lack of transparency in awarding tens of millions of dollars’ worth of subsidies.

During the meeting, SEOPW CRA Chairman Keon Hardemon alluded to negotiations between himself and Worldcenter representatives in which he stated that he “gave the developers hell” in making the aforementioned revisions to the agreement. The remark raises questions as to whether the negotiations might be subject to the Miami-Dade County ethics code, as it relates to lobbying and whether the individuals involved were properly registered to lobby.

During the course of the investigation, COE received additional information that one of the firms that responded to a Request for Qualifications to provide Compliance and Monitoring services to the aforementioned project may have improper or conflicting ties to a City of Miami employee in possible violation of the County’s ethics ordinance.

Questions were raised and examined in connection with an unrelated project within the SEOPW CRA – an electronic billboard structure known as the Miami Innovation Tower – and whether board members abided by the Citizens’ Bill of Rights, insofar as members of the public have the right to speak on all matters brought before a board for consideration.

Relevant Ordinances:

The Miami-Dade County Code of Ethics and Conflict of Interest Ordinance holds, in applicable part [Sec. 2-1 1.1(s)], that: “All lobbyist shall register with the [city clerk] within three (3) business days of being retained as a lobbyist or before engaging in any lobbying activities ...”

It further describes a lobbyist as: “All persons, firms or corporations employed or retained by a principal who seeks to encourage the passage, defeat or modification of (an) ordinance, resolution, action or decision of the [city council]; any action, decision or recommendation of [city] personnel during the time period of the entire decision-making process ...”

The Miami-Dade County Code of Ethics and Conflict of Interest Ordinance holds, in applicable part [Sec. 2-1 1.1(d)], that: “No person ... shall enter into any contract or transact any business through a firm, corporation, partnership or business entity in which [she] or any member of [her] immediate family has a controlling financial interest, direct or indirect, with [the City of Miami] or any person or agency acting for [the City of Miami] ...”

The Miami-Dade County Citizens’ Bill of Rights, which states in subsection (A)(5,) *Right to be heard*, as follows: “So far as the orderly conduct of public business permits, any interested person has the right to appear before the Commission or any municipal council or any County or municipal agency, board or department for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the governmental entity involved; provided, nothing herein shall prohibit the Commission or any municipal council from referring a matter to a committee of each of their respective bodies to conduct a public hearing, unless prohibited by law. Matters shall be scheduled for the convenience of the public, and the agenda shall be divided into approximate time periods so that the public may know approximately when a matter will be heard. Nothing herein shall prohibit any governmental entity or agency from imposing reasonable time limits for the presentation of a matter.”

Investigation:

Interviews

This investigator attended the December 29 meeting of the SEOPW CRA, and based on the concerns raised by some of the speakers requested a preliminary investigation. The item in question (14-01288) passed by a 5-0 vote despite objections from the public.

On Dec. 31, COE contacted City Clerk Todd Hannon about revisions to the agreement, and was referred to Deputy City Attorney Barnaby Min, bmin@miamigov.com or CRA staff attorney Renee Jadusingh. Hannon said either one would likely know who made the final revisions to the agreement. He also advised that any meeting calendars would have to be requested through the offices of the elected official.

On Feb. 25, 2015, COE requested an interview with SEOPW CRA Chairman Keon Hardemon through an e-mail to his chief of staff, James McQueen. COE did not receive a reply.

Al Hardemon

April 20, 2015

Mr. Hardemon (uncle to Commissioner Keon Hardemon) contacted COE and alleged he witnessed “bid-rigging in the City of Miami” as it relates to a Request for Qualifications (RFQ) for a workforce contract to supply labor to the Miami Worldcenter project. He said he was accompanying Julius Riley, president of Gospel Truth Workforce, when he submitted an RFQ to the city clerk’s office at City Hall. He said he and Mr. Riley witnessed an individual leave a city vehicle and submit an RFQ for the contract in question. He said the contract was awarded to a firm led by Harold A. Johnson, and that the firm could be tied to a former Miami-Dade County procurement director, Al Johnson. He described the assistant city clerk receiving the RFQs as a young Hispanic female.

Julius Riley, president

Gospel Truth Workforce

April 20, 2015

Mr. Riley stated that on or about March 30, his company responded to an RFQ for a contract for compliance and monitoring of the workforce requirements for the Miami Worldcenter project. He said he and Al Hardemon arrived at City Hall at about 7 a.m. to 7:30 a.m., and were sitting in the parking lot, waiting for the clerk’s office to open. He said they observed a man in his late 50s or early 60s exiting a city vehicle and said he entered city hall prior to 8 a.m., holding a large envelope. He said the man returned to the city vehicle, then waited until the building opened. He said they followed the man into the building at 8 a.m., and then went to the clerk’s office. He said the clerk asked the respondents to put the names of their firm on the outside of their submittals. He said the suspected employee told them, “You have to put your name on it just like I did.” Riley described the man as tall, slim, white and possibly

Hispanic. The man was wearing blue khaki pants and a blue work T-shirt, he said. Riley advised that he received notice from the clerk's office that his firm was ranked last among the three bidders. He said he made a public records request for copies of the other proposals and rankings.

On April 22, 2015, Mr. Hardemon and Mr. Riley visited the office of COE to provide additional information relating to the RFQ for Compliance and Monitoring.

On May 5, 2015, COE visited the offices of the SEOPW CRA and picked up records prepared in response to a public records request. A request to interview Executive Director Clarence Woods was made at that time. Woods was unavailable; an interview was later scheduled.

Ann Pope, proposer
Ann Pope Consulting
May 7, 2015

Ms. Pope was interviewed by phone regarding the delivery of her firm's proposal in response to the RFQ for Compliance and Monitoring services of the Worldcenter project. She said she did not personally deliver the proposal, but that her husband, a City of Miami employee, did so on her behalf. She said her husband, Richard Pope, works for the city's code enforcement office and drives a city vehicle. She said she hopes this would not be an issue for her, since her husband is not an officer in the corporation. She said she carefully read all of the forms and affidavits in connection with the RFQ and did not see anything stating a family member could not work for the city. She asked to be advised if this was an issue for future proposals. She said it was the first time she had submitted a proposal to the SEOPW CRA.

On May 7, 2015, requests were made to CRA Attorney Barnaby Min to address concerns raised following an April 27 meeting to consider an item to approve a 58-story billboard tower. It was reported that citizens were denied an opportunity to speak on the matter. The matter was subsequently addressed in e-mails from CRA staff, indicating that because the item was deferred until the following month there was no need to hold a hearing on it. Staff indicated that the public was allowed to speak with respect to the deferral.

Clarence Woods, executive director
Southeast Overtown Park West Community Redevelopment Agency
May 12, 2015

On this date, COE interviewed the following SEOPW CRA staff at the Lyric Theater, where the agency's offices are located – CRA Executive Director Clarence Woods, Staff Counsel Renee Jadusingh, and Assistant Director Cornelius Shiver.

With respect to the Miami Worldcenter Economic Incentive Agreement that was approved in December 2014, Mr. Woods advised that it was the first such agreement prepared by the SEOPW CRA and its staff. He said much of the language was "boiler plate" language derived

from other similar agreements elsewhere. He further stated that he had been discussing the possible terms of any such agreement over the past eight years with Nitin Motwani, the managing partner of Worldcenter, and with Javier Fernandez, an attorney with Stearns Weaver, et al. (Note: Both are registered to lobby on behalf of Worldcenter.)

Mr. Woods said Worldcenter sought to increase the amount of potential tax rebates (“tax increment revenues” or TIF) after CRA Chairman Hardemon advocated for a requirement that unskilled laborers employed during the construction phase be paid a “responsible wage,” as defined by Miami-Dade County code (Section 2-11.16). Such a wage for an unskilled laborer or “journeyman” is set at \$14.50 with benefits or \$19.17 without. He noted that a “living wage” is set at just under \$12 (\$11.83), including benefits.

“The commissioner was trying to get responsible wages in the deal, and the developer said that [requiring] responsible wages would make the project unfeasible,” Woods said.

Mr. Woods said that as many as 14,000 construction jobs are anticipated during the first phase of the project costing a projected \$1 billion -- \$1,033,000, more precisely – but he was unable to say how many of those jobs would be suitable for unskilled laborers such as those most likely to be found in Overtown. He said Overtown is comprised largely of women and children, and that many members of the adult male population either lack job skills or have criminal records, making it difficult to find them gainful employment. He noted that Overtown residents would have priority, but that jobs could be given to other county residents.

Mr. Woods stated that previously it was the position of the CRA that no more than 50 percent of the TIF proceeds be refunded to a developer. However, in light of the wage scale agreed to in the Economic Incentive Agreement, an exception was made to raise the rate 58 percent. He said that Worldcenter’s Motwani wanted as much as 75 percent but was rebuffed.

Mr. Woods stated that negotiations did occur until the day of the CRA meeting to approve the deal, adding that at the time the vote took place the agreement was still undergoing revisions but was “substantially” in its final form. He said that Motwani and attorney Javier Fernandez of Stearns Weaver were the primary representatives of Worldcenter during the negotiations with CRA Chairman Hardemon. He said Nathan Forbes, managing partner of the Forbes Company LLC, was also in attendance at one of the final meetings, mainly to verify that a deal was in place for the Economic Incentive Agreement.

Mr. Woods said Chairman/ Comm. Hardemon, Assistant City attorney Barnaby Min, Neil Shiver and Renee Jadusingh attended negotiations on behalf of the CRA.

Mr. Woods said the amount of the potential rebates would not surpass \$6.5 million a year or \$76 million over the course of Phase I of the project. He said \$3.5 million of that amount would be earmarked for infrastructure while the remaining \$3 million would pay for a parking garage. He said that as much as \$108 million could be rebated to developers over the course of the build-out if the developer “hits all of the targets.”

Mr. Woods said he felt that comparisons with projects in other cities such as those found in a recent FIU study were unfair since, unlike those projects, the Worldcenter developer was not

asking for public land and instead had assembled the land privately. He said he felt the deal approved by the CRA in December was fair and consistent with the legislative intent of CRAs, which he said was mainly to promote development and eradicate slums and blight. He said the CRA has a number of affordable housing projects in the pipeline, either to refurbish existing units such as those found in Town Park Plaza or the creation of new housing.

Mr. Woods was asked to estimate the number of jobs that would be created for unskilled laborers, such as those he said would be most likely hired from Overtown. He said he could not provide such an estimate, citing a lack of qualified applicants. He said Overtown similarly lacked a pool of willing and able contracting firms that might also take advantage of provisions in the agreement to provide construction materials and services.

Peter Erlich
May 21, 2015

Mr. Erlich called COE to complain that he felt his right to speak out about the proposed billboard tower at the April 27 SEOPW CRA meeting was violated, and that CRA Chairman Keon Hardemon may have committed infractions under the Miami-Dade County Citizens' Bill of Rights and under Florida Senate Bill 50, approved last year by the state legislature.

Mr. Erlich said approximately 250 people attended last month's CRA meeting, and said he believed that 50-80 were there in opposition to the billboard tower while another 40 or so were employees of the developer and were there to support the resolution. He said the developer was allowed to take more than 40 minutes to speak out in favor of the project, and that the project architect and two attorneys also spoke on behalf of the project.

Mr. Erlich contended CRA Chairman Hardemon was "pushing" for the project, and that the reason for the deferral was to prevent the public from having a voice on the issue. He said the developer has also provided financial support to Comm. Sarnoff's wife's political campaign, and that Sarnoff is also a supporter. "They only deferred it because they didn't want the public to speak against it," Erlich said, adding he felt the process was unfair and CRA board members were following a double standard favoring developers over concerned citizens.

Following the developer's presentation, Erlich said he stood up to speak and asked Chairman Hardemon, "Will you open the public hearing," and that Hardemon replied that he was "out of order." He said Hardemon and the other commissioners "mumbled amongst themselves," and that they then moved to defer the item without allowing the public to speak about the decision to defer the item. He said that 21 or 22 people signed a list to speak on the item. He said that Leslie Schreiber, an attorney, also wanted to speak and approached the podium.

Mr. Erlich said he disputes the position of Assistant City Attorney Barnaby Min that the public was allowed to speak on the matter of deferring the item, as indicated in a May 11 e-mail to COE in response to reports that citizens' rights had been ignored or violated. He said that, contrary to Min's claim, citizens were not allowed to speak on the deferral issue.

"I was happy to speak on the deferral. I would have spoken against it. There were 250 residents in the room. They let the developer's side speak for 40 minutes, the paid sales people

for the project. To be fair, they should have allowed the public to speak ...

“A lot of people took off early from work, and drove to NW 7th Street and found a place to park ... The public expected a vote to take place – even if they (CRA board members) were going to vote in the affirmative – and they never voted.”

Mr. Erlich also referenced a legal opinion by a former Miami city attorney concerning Senate Bill 50 that he said was construed in a “very liberal” fashion and that ensured the public a right to speak on issues coming before elected boards.

Mr. Erlich stated that the Downtown Neighbors Association was hoping to have a letter opposing the billboard tower read into the public record, but he feels the item was deferred specifically to deny residents the opportunity to express their concerns.

He said he feels the proposed structure is illegal under Miami-Dade County Code, Section 33-06.1, which prohibits “automatic, electronic, changing signs” (LEDs), unless they are located on over 10 acres of land and advertise goods or services available on site.

He further stated a concern about the city’s zoning code, Miami 21, specifically Article 6.5.4, which allows signage applications to be approved by the CRA’s executive director, as opposed to by a vote of the CRA’s board. He called this a “huge loophole,” and said that developers of the proposed advertising tower were hoping to exploit this loophole. (He noted a rumor that late City Commissioner Arthur Teele received a bribe to insert this in the code.) He said that Deputy City Attorney’s Min’s position that the CRA board doesn’t really need to vote to approve the structure because of this provision is “preposterous.”

Mr. Erlich said a local blogger videotaped the exchange and posted it on his *website*.

Leslie Schreiber, community activist/ attorney
May 29, 2015

Ms. Schreiber advised that she felt her right to be heard was violated during the April 27 CRA meeting when she attempted to speak on the issue of the billboard tower. “I was one of the people who were effectively hushed,” she said.

She said she was one of 15 or 20 people who signed cards to speak on the matter and that she felt it was inappropriate for the board to decide in the middle of the item – after the proponents had spoken in favor of the resolution – that it should be deferred until a later time.

She said the Notice was for a resolution to discuss the developer’s signage application and covenant with the CRA, not to discuss a deferral of said item. “What did the notice say? I don’t think it said anything about a deferral. ... They were anticipating having members of the public speak on the issue, which is why they had us sign the cards ... If they were going to defer then why did they let the proponents speak and then shut us down?”

Ms. Schreiber said she felt embarrassed by the treatment she received from the CRA board members, and in particular Chairman Keon Hardemon, when she attempted to be heard.

She said that a comment was made on the dais about deferring the item so that the public could be educated about the item, but she added: "I'm raising my hand, saying 'The public is here. The public would like to speak.' ... and Chairman Hardemon basically told us we were out of order and to take a seat. So I went and sat down."

Ms. Schreiber expressed that, in her view, the SEOPW CRA board had little regard for the public. "It's like a little fiefdom. They could care less what we have to say."

Ms. Schreiber was further asked about the e-mail reply of Deputy City Attorney Barnaby Min with respect to whether the public was allowed to address the deferral issue. (Min expressed that the public was allowed to speak on this matter.) "No, they shut us down," Schreiber said, adding: "That's a lie." She said she was not allowed to speak on the deferral.

She said that right to be heard under the Citizens' Bill of Rights is a due process issue, and she feels the public was denied its due process to be heard on the billboard tower. She said she believes the executive director should not have authority to approve the application without board approval, as Miami 21 presently allows. She further stated her belief that the billboard tower is at conflict with the County's ordinance pertaining to electronic billboards.

Nathan Kurland, citizen activist and member of several city advisory boards

Miami Sports and Exhibition Authority

Bayfront Park Management Trust

Scenic Florida, et al.

June 4, 2015

Mr. Kurland appeared for an interview at COE, along with investigators Lebowitz and Ross and staff attorney Martha Perez to discuss the billboard tower project.

Document/Audio/Video Review:

On Dec. 30 and 31, COE reviewed media coverage of the recent CRA meeting. Media reports were monitored for the remainder of the investigation, including those involving related and similar issues surrounding the SEOPW CRA, including the advertising tower item.

On Dec. 30, COE reviewed supporting documents to the CRA item in question, including the latest version of the agreement and three other items. The items were found online at the city's website at <http://egov.ci.miami.fl.us/LegistarWeb/frameset.html>.

On Dec. 31, COE reviewed lobbyist registrations online and found the following individuals were registered on behalf of Miami Worldcenter: Ryan Bailine, Michael Cohen, Iris Escarra,

Vicky Garcia-Toledo, Ben Fernandez, Javier Fernandez, Neisen Kasdin, Carter McDowell, Nitin Motwani, Paul Savage. Mr. Motwani is the principal of Miami World Center Holdings LLC, the master developer of the Miami Worldcenter project.

On May 6 and May 7, COE reviewed several hundred pages of documents provided by the SEOPW CRA relating to an RFQ for Monitoring and Compliance services for the Miami WorldCenter Project. The documents were added to the file. The documents helped to clarify allegations raised by Julius Riley, president of Gospel Truth Workforce, one of the proposers that responded to the RFP for Monitoring and Compliance services.

On June 2, COE reviewed video of the April 27 SEOPW CRA Board meeting. It was observed that the developer of the proposed media tower, Miami Big Block LLC, was given approximately 45 minutes to make a presentation to the board about the purported benefits of the project. The developer, Michael Simkins, spoke to the board, along with two attorneys – Anthony Recio and Iris Vizcarra – and architect Bill Sharpless, who is based in New York City. Simkins stated during his remarks, “My team has done a great job of presenting this tower.” At the conclusion of their presentation, CRA Chairman Hardemon thanked Simkins and his “team” for “taking the time” to make their presentation.

Comm. Hardemon said that he felt the developer needed to provide additional benefits to the community, and suggested the developer do additional community outreach before returning before the board. He said he wanted “stronger language” in the covenant regarding community benefits and said he was sending the developer “back to the drawing board” and, because of this, he wanted to defer the item for a later time. Comm. Suarez said, “I know there are many members of the community who are urging a deferral ... When Peter Erlich interrupted the board members and asked if the item was going to be opened for a public hearing, Comm. Hardemon stated, “We’re not going to take any public comments at this time” ... When Leslie Schreiber later stated that “the public is here now” and urged that the public hearing be opened, Comm. Hardemon responded that “you are out of order” and approved the motion to defer the item, closing the matter by pounding his gavel.

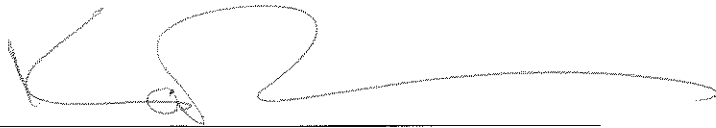
Conclusion(s):

Based on the foregoing, it does not appear there is probable cause to take action against the principals of the Miami Worldcenter project or lobbyists in their employ.

A review of records on file with the Miami City Clerk’s Office show that Nitin Motwani, the main principal, and nine other attorneys and/or lobbyists were registered in connection with the project. The investigation found that while Nathan Forbes, another principal, attended a meeting with CRA staff and Chairman Hardemon, it was reported that Forbes did not actively participate in any negotiations. No recordings of the meeting were available.

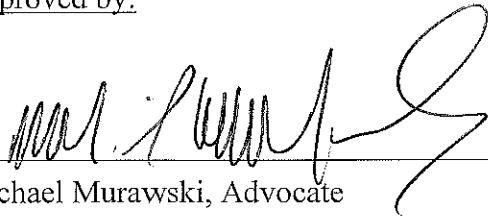
Additional inquiry did not yield evidence of misconduct by Ann Pope of Ann Pope Consulting or her husband – a Miami city employee – in connection with the RFQ to award a contract for Monitoring and Compliance services for the Miami WorldCenter project. Ms. Pope was unsuccessful in her bid to secure the above-referenced contract.

Lastly, it was determined that concerns about a possible violation of the Citizens' Bill of Rights as it related to a separate project brought before the SEOPW CRA were premature, and that the board's refusal to allow the public to participate in an April 2015 public meeting did not justify further action due to the procedural nature of the question at issue. The Citizens' Bill of Rights may be complied with by referring a matter to a committee for a hearing or accommodating a public hearing at some point prior to a final decision. After discussion with the Ethics Commission Advocate it was determined that this matter should be closed.

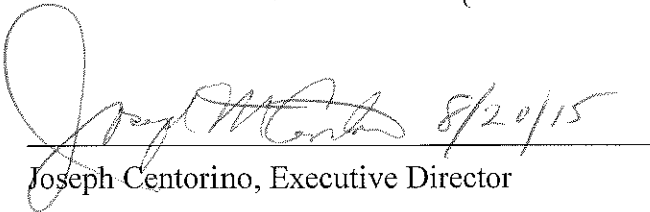


Karl Ross, COE Investigator

Approved by:



Michael Murawski, Advocate



Joseph Centorino, Executive Director