



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case: K17-044	Case Name: City of Miami BTR Office Allegations	Date Open:	Date Closed:
Complainant(s): Business Tax Receipt Office Supervisor Noel Chavez	Subject(s): Former Miami Finance Director Jose Fernandez, et al.	Oct. 27, 2017	CASE CLOSED

Date: 11/30/17

Allegation(s):

The complainant arrived at COE as a walk-in on October 25, 2017, and made allegations about possible exploitation of official position and other misconduct by the former Finance Director at the City of Miami, Jose Fernandez, and other of his colleagues in connection with the issuance of a Business Tax Receipt (“BTR”) for a local convenience store.

The complainant, BTR Supervisor Noel Chavez, alleged he was improperly disciplined for refusing to issue a BTR (formerly known as occupational licenses) to a local grocer – Almonte Supermarket Corp – because of alleged irregularities with its paperwork – namely that the company’s state-registered DBA didn’t match the name on file with the City.

Mr. Chavez alleged that Fernandez and others pressured his staff to issue the BTR after the applicant complained to the office of Mayor Tomas Regalado and Regalado’s chief of staff, Eric Duran, allegedly contacted Fernandez and instructed him to issue the BTR.

Mr. Chavez further stated that he eventually capitulated to this request, but did so under protest by adding a note to the City’s information system stating that a hold on the BTR was removed “per the ‘directive’ of the Finance Director” and in possible violation of Florida Statute 865.09, subsection (3), regarding *Fictitious name registration*.

Relevant Ordinances:

Miami-Dade County Code, Sec. 2-11.1(g), *Exploitation of official position prohibited*, stating in applicable part that no person ... “shall use or attempt to use his official position to secure special privileges or exemptions for himself or others ...”

Florida Statute 865.09, titled *Fictitious name registration*, which states in applicable part that: “A person may not engage in business under a fictitious name unless the person first registers the name with the [Division of Corporations] by filing a sworn statement listing:

- a.) The name to be registered.
- b.) The mailing address of the business.
- c.) The name and address of each owner and, if a corporation, its federal employer’s identification number and Florida incorporation or registration number.

Investigation:

Interviews

Noel Chavez, Supervisor
Business Tax Receipt Office
City of Miami, FL
Nov. 2, 2017

Mr. Chavez visited COE to provide additional documentation to investigators and met with this writer and Ethics Advocate Michael Murawski. He advised as follows:

Chavez said the applicant, Jose Almonte, presented a state Department of Agriculture permit under the name LA FAMA #0001, and said his request for a BTR was refused because it did not match the name in the City’s internal information system of Almonte Supermarket Corp. He said this initial encounter took place on or about Jan. 21, 2016.

Chavez said the name was later changed from Almonte Supermarket Corp. to LA FAMA #0001 in the City’s database on Jan. 25, 2017, and further alleged that this was done so improperly and without charging the business owner the required \$522 fee.

Moreover, Mr. Chavez claimed that Finance Director Fernandez, City Finance Manager Emil Lopez and City Treasurer Armando Blanco attempted to pressure a subordinate of his – Joel Ramirez, a BTR Office customer service rep – to remove an administrative “hold” on the BRT, allegedly cornering him at his cubicle while Chavez was off duty.

Chavez stated that Ramirez refused to remove the hold nonetheless, and provided a copy of a Business Detail record for Almonte Supermarket Corp. showing that the BTR was issued on Jan. 27, 2016, but with remarks to the effect that the BTR Supervisor (Chavez) and BTR staff (Ramirez) “do not agree” with the Finance Director and City Treasurer’s decision to remove

the hold “as both are of the opinion that this is a violation of FS 865.09(3) ...”

Mr. Chavez stated that he has worked for the City of Miami since 2001, and that, as a result of this issue and his subsequent refusal to remove the remarks, he was placed on four weeks’ unpaid leave and later marginalized upon returning. He said he addressed this matter before the City’s Civil Service Review Board and succeeded in overturning the suspension. He said that his working conditions have suffered nonetheless as a result of this matter.

Mr. Chavez stated that former Finance Director Fernandez is now a Miami-Dade County employees, while Blanco, the former City Treasurer, now works at Florida International University. He said that Lopez still serves as the City’s Finance Manager.

Mr. Chavez claims they improperly intervened after receiving a call from the Mayor’s chief of staff, Eric Duran. He alleged that illegal cash campaign contributions to Mayor Regalado’s political campaign(s) may have led the Mayor’s Office to assert its powers.

He provided COE with a copy of a 2012 Campaign Treasurer’s Report for Mayor Tomas P. Regalado showing a \$5 donation by check made by a Jose M. Almonte on Sept. 28, 2012. He said he had no evidence of any cash contributions – which are potentially illegal under state law – but said he believed such contributions had been made by Mr. Almonte.

Chavez also provided a copy of a Florida Sunbiz record showing “LA FAMA SUPERMARKET #1” was Almonte’s DBA with the State of Florida, noting this did not match “LA FAMA #0001” as shown on the Department of Agriculture permit presented to BTR staff.

He was asked whether a legal opinion by Assistant City Attorney Rachel Dooley – provided to Finance Manager Lopez on Jan. 28, 2016 – might suffice to justify the issuance of the BTR, but he responded that he did not feel the discrepancy in question could be regarded as a mere “scrivener’s error.” (A copy of the opinion will be added to the file.)

Lastly, Mr. Chavez stated that Mr. Ramirez had been in the process of researching issues such as the one arising from the present controversy and was advised the day before Almonte’s visit that fictitious names had to match exactly the corresponding records in other systems. He noted Ramirez subsequently re-visited this issue with the Department of State’s Division of Corporations and was advised on July 26, 2016, that LA FAMA #0001 and LA FAMA SUPERMARKET #1 was not an exact match and was therefore not acceptable.

Mr. Chavez said that his suspension went into effect on Feb. 1, 2016.

Jose Fernandez, former Finance Director City of Miami
Assistant Director of Administration for Miami-Dade County Solid Waste
Phone: (305) 375-348
Nov. 6, 2017

Mr. Fernandez advised he is currently employed by the County’s Solid Waste Department,

where he started his current position as Assistant Director in April. He said that prior to his four years as Miami Finance Manager, he worked for the County for another 21 years.

Mr. Fernandez said he spent nine years with the Aviation Department, followed by five years with Finance and six years at the Seaport. He said he is a Certified Public Accountant and prepared the County's CAFR (Comprehensive Annual Financial Reports). He said he was originally designated to help the City with its CAFRs by the County's senior management, and was later offered a job by the City of Miami to continue in this capacity.

Mr. Fernandez stated that it was while he was employed at the City of Miami he first met Noel Chavez, supervisor of the BTR Office. He acknowledged that he had a difficult working relationship with Chavez, and stated that Chavez filed an ethics complaint relating to another matter while he was the City's finance director, having to do with the assessment of development fees. He noted that after a review by COE, no finding of wrongdoing was issued.

With respect to the four-week suspension that was later overturned, Fernandez advised that the first 10 days of the suspension stemmed from an unrelated incident in which Chavez allegedly erupted in anger and behaved unprofessionally. He said Chavez signed a letter not to contest that suspension, but later contested it as it was added to a second 10-day suspension relating to the facts of the present complaint and the Almonte/ La FAMA BTR issue.

Mr. Fernandez stated he never directed Chavez or anybody on his staff – including customer service rep Ramirez – to violate state law. He said that the incident in question involved a business owner who had successfully renewed his BTR for many years, but that, due to a recent change in state law, the owner had to present a copy of his business license at the time of renewal. He said that because the name on the license did not match the name in the City's information system, the BTR was correctly withheld. He said that no decision was made to issue the BTR until an opinion had been obtained from the City Attorney's Office, and it was at that time, based on the legal guidance of that office, that the BTR hold was lifted.

Mr. Fernandez stated he never intended to pressure or intimidate Ramirez, saying that he only wanted Chavez to provide supporting information for his office's refusal to issue the BTR. He said that, whereas Chavez may have received some guidance from an employee in the Division of Corporations (a member of the division's Internet Support Section), he felt it was more appropriate to base his agency's decision on guidance from the City Attorney's Office since it was the City Attorney's Office that would have to defend the City's actions if the business owner decided to challenge the refusal to renew the BTR.

With respect to communication from the Mayor's Office, Fernandez stated he may have received an email from Duran, the mayor's chief of staff, but that he probably forwarded the email to a subordinate – Mr. Lopez or Mr. Blanco – to ask them to respond to the business owner's concerns. He said he was never pressured by the Mayor or Chief of Staff Duran to approve the BTR and that he considered the communication to be "routine."

Mr. Fernandez stated that the reason for the subsequent disciplinary action against Chavez was not for blocking the BTR, but for his insertion of language in the City's information system (Business Detail) alleging he was ordering a removal of the hold in violation of state statute.

He stressed that he only did so *after* obtaining an opinion from the City Attorney, and that he relied on that opinion rather than the opinion of Chavez and his staff. He stated he believes Chavez's continued pursuit of this matter is linked to personnel issues.

Document/Audio/Video Review:

Documents provided by Mr. Chavez were examined, including the following:

- A copy of a Food Permit for 2016 in the name of LA FAMA #0001 issued by the Division of Food Safety, part of the state Department of Agriculture.
- Copies of email exchanges between Mr. Chavez and officials at the state Division of Corporations regarding inconsistencies between LA FAMA #0001 (as shown in the Food Permit referenced above) and LA FAMA SUPERMARKET #1, the fictitious name registered with the Division of Corporations. State officials indicated that the two were not a proper match and that "a separate registration is required" for LA FAMA #0001. The email exchange took place in July/ August 2016.
- A copy of a Jan. 28, 2016, legal opinion issued by Miami Assistant City Attorney Rachel Dooley, stating that with respect to F.S. 865.09 and the use of fictitious names or DBAs, "If an issue arises where another business license is used as part of the BTR application and the document issued by the State of Florida (or even the City) has the fictitious name or d/b/a name misspelled *or missing part of the name*, this should not be a bar to issuance. A mere scrivener's error should not preclude" approval.
- An internal City document known as a Business Detail for Almonte Supermarket Corp., in which Mr. Chavez stated in handwritten notes that the DBA was "changed by the Zoning Department from Almonte Supermarket Corp to LA FAMA #0001." He alleged this took place on or about Jan. 25, 2016 (the same date a similar but not exact DBA was filed with the Division of Corporations) and that no fees were assessed. He further provided a copy of a screen showing that on Jan. 27, 2016, a hold was removed against issuing the BTR to Almonte/ La Fama, but remarks were added to the "Notes" section stating that: "This hold is being removed as per the 'directive' of the Finance Director and the same opinion is shared by the City Treasurer and Finance Manager. For the record: the BTR Supervisor as-well-as BTR Staff do not agree, as both are of the opinion that this is a violation of F.S. 865.09 (3) ... the Fictitious name for this business: La Fama #0001 is in violation of said FS above."

The following note on this Business Detail, entered on Feb. 1, 2016, states that "INTERIM BTR ISSUED, PER LEGAL OPINION OK TO ISSUE."

- An email from Emil Lopez dated Jan. 21, 2016, to Finance Director Fernandez states

that he reviewed the customer in question's account and found a discrepancy between the name on the City's Certificate of Use (Almonte Supermarket Corp.) and the DBA shown on the state Food Permit (LA FAMA #0001). He further advised that "A change in the Florida Statutes now requires that each business provide an active license before an [sic] business tax receipt license is issued." He said that as a result a "hold" was placed on the BTR application for Almonte/ La Fama. Fernandez replied to this email on Jan. 22, 2016, advising that Jose Almonte had been advised as to what was required to fix this discrepancy and that he would be returning on Jan. 25, 2016.

- An email from Joel Ramirez, a BTR Office customer service representative, to Finance Director Fernandez on Jan. 26, 2016, stating that "higher-level personnel" had been asking him to issue the BTR to Almonte/ La Fama and asserting that because of the continued discrepancies referenced elsewhere this was "a decision which I'm not comfortable with." He said that he would be willing to issue the BTR anyway if "someone higher up can sign off on it," noting that a supervisor or other higher-up would have to do so in order for him to issue the BTR against his judgement.
- A copy of a Campaign Treasurer's Report for the Tomas P. Regalado Campaign for the period from July 1, 2012, through Sept. 30, 2012, showing a \$5 contribution from Jose M. Almonte, of 5890 NW 186th Street #102, Hialeah, FL 33015.
- Email exchanges dated Jan. 20, 2016, between Ramirez and a state official with the Division of Corporations indicates that a business with a store number (i.e., VISIONWORKS INC #378) would have to be registered as a DBA while the parent company, VISIONWORKS INC, would have to be registered as its owner. This email was shared with Ramirez's supervisor, Mr. Chavez, who shared this with Fernandez, Blanco, Lopez and other City staff members handling BTRs. (Note: This was done one day before the application from Almonte/ La Fama was submitted.)

These and other documents were added to the file on Nov. 6, 2017.

Conclusion(s):


After discussing the matter with the Ethics Advocate, it was determined that there is no reason to believe former Finance Director Jose Fernandez sought to exploit his official position in ordering the removal of a "hold" placed on the BTR application of a local business owner doing business as La Fama Supermarket #1.

As Mr. Fernandez noted in his interview, the temporary hold was removed only after a legal opinion was obtained from the City Attorney's Office that found the BTR office should not bar the issuance of a BTR for what it considered to be a "scrivener's error." The opinion notes that the shortening or condensing of a name should not impede issuance.

Mr. Fernandez stated he was exercising his professional judgment in relying upon the opinion of the City's legal department rather than on the opinion of staff-level state employees since the City's legal department would have to defend the City's actions, if contested.

Furthermore, it is clear that the allegations against Mr. Fernandez are, at least in part, fueled by grievances involving personnel matters that are not within COE's jurisdiction.

After consultation with the Independent Ethics Advocate, it was determined this case should be closed without further action.



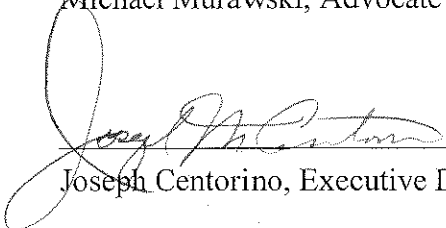
4/30/17

Karl Ross, COE Investigator

Approved by:



Michael Murawski, Advocate



11/30/17

Joseph Centorino, Executive Director