



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case: PI 17-042	Case Name: Lime Bike	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s): Al Crespo	Subject(s): Lime Bike and any unregistered lobbyists	Nov. 21, 2017	CASE CLOSED

Allegation(s):

Date: 3/12/18

Complainant Mr. Crespo alleges the principals and/or representatives of Lime Bike failed to register prior to lobbying officials in the villages of Key Biscayne and Miami Shores.

This inquiry is a spin-off of an ongoing inquiry into any unregistered lobbying activity by Lime Bike in Miami Shores, but was expanded to include Key Biscayne.

Lime Bike operates a bike rental business in both municipalities, and its bright-green bicycles are conspicuously racked in front of the Miami Shores Village Hall.

Relevant Ordinances:

Section 2-100, Miami Shores Village code, titled *Lobbyist registration*, states in applicable part that: "All lobbyists shall, before engaging in any lobbying activities, register with the clerk." The code further requires that each lobbyists shall "disclose under oath" the name and address of each lobbyist, principal, the names of the officials or personnel to be lobbied and "the specific issue on which the lobbyist has been employed to lobby."

Miami-Dade ethics code, Section 2-11, subsection (s), titled *Lobbying*, states in applicable part that: "All lobbyists shall register with the Clerk of the [Village] within (3) three business days of being retained as a lobbyist or before engaging in any lobbying activities ..." The ethics code further requires that principals must file a form with the clerk identifying any lobbyists and "stating that the lobbyist is authorized to represent the principal ..." The principal and lobbyist,

furthermore, must file “a joint affidavit stating that the principal has not offered and the lobbyist has not agreed to accept any contingency fee or success fee ...”

The code further requires that: “The Clerk shall publish logs on a quarterly basis reflecting the lobbyist registrations which have been filed in accordance with subsection (s).”

Lastly, Section 2-11, subsection (s) (10), requires that: “All members of the [Village Council] and all [Village] personnel, shall be diligent to ascertain whether persons required to register pursuant to this Subsection have complied. [Councilmembers] or [Village] personnel may not knowingly permit a person who is not registered ... to lobby” Village officials or staff.

Investigation:

Interviews

Richard Sarafan, Village Attorney
Village of Miami Shores, FL
Nov. 9, 2017

During an interview at the offices of COE, Mr. Sarafan voiced criticism of the Complainant, alleging a profit motive for his publication of blogs critical of Village administrators. He contended that the allegations of unregistered lobbying lacked merit, and that Mr. Crespo was seeking to increase his advertising revenues by generating “clicks and eyeballs.”

Also present at the interview were COE Ethics Advocate Michael Murawski and Investigator Nilda Olmo, along with this writer Investigator/ Forensic Accountant Karl Ross.

Mr. Sarafan contended that lobbyist registration requirements were largely unnecessary in Miami Shores, stating that it was “very small” – only 2 square miles in size – and “very built-out,” meaning that re-zoning and other development applications were a rarity. He went on to describe the Village’s administrative approach as “very informal.” He stated that “99 percent” of all staff interactions consisted of “one-on-one” meetings with residents.

Mr. Sarafan stated speakers were required to identify themselves at all public hearings, that the Village clerk kept minutes of the meetings and that there was no lack of transparency. “It’s all out in the open ... Nobody’s being fooled.” He went on to say that owners or their agents – if different from the owners – were required to fill out an “Owner’s Affidavit.”

Concerning Lime Bike, Mr. Sarafan argued that the Complaint was incorrect in stating that Lime Bike made an “unsolicited proposal” to institute a bike-sharing program. He said that this was “completely false” and accused Crespo of “playing fast and loose with the facts.” He said that Village officials learned about Lime Bike while in Key Biscayne and that the Village reached out to Lime Bike, not the other way around, and requested a proposal. He said that, in response, Lime Bike drafted an agreement or MOU and presented that to the Council.

Mr. Sarafan stated said that the Village, in approving the MOU, did not grant Lime Bike “an

exclusive franchise” and added that: “We pay them not a dime ... They have no exclusive rights.” He further stated he was not aware of any meeting between representatives of Lime Bike and Village administrators, saying only that at some point he received the MOU.

He said he didn’t like the MOU, as presented, and “I edited the crap out of it.” He said he then brought the agreement before the Village Council and the Council approved it.

Mr. Sarafan further stated that he considered Crespo’s complaint to be inaccurate with respect to his alleged failure to enforce the Village’s lobbyist requirements. He said it’s “false,” and added that: “I have asked people at the Council meetings if they were registered to lobby.” He went on to state that he could not recall any specific examples of having done this.

Mr. Sarafan told COE Advocate Murawski and others he would speak to Councilmembers and staff about the Complaint and possible legal solutions to any incompatibility between the Village’s lobbyist regulations and those required under the County’s ethics ordinance.

Ysabely Rodriguez, Village Clerk
Village of Miami Shores, FL
Dec. 11, 2017

Ms. Rodriguez provided COE a copy of requested records. She said, in response to an inquiry, that there were no lobbyist registration forms available in the lobby of Village Hall where forms for other matters were readily available – including the aforementioned Owner’s Affidavit. Ms. Rodriguez advised the forms are kept in her office and are also available online. She stated that, to her knowledge, in the six months that she has served as Village Clerk in Miami Shores, only one individual has registered to lobby Village officials. (During the visit, COE did not observe any signs advising lobbyists to register at the main entrance.)

Sean Brady, vice mayor
Village of Miami Shores, FL
Phone: (786) 408-3912
Jan. 29, 2018

Interviewed by phone, Miami Shores Vice Mayor Brady advised that he was contacted by a representative of LimeBike last year, prior to the council vote on the pilot program. He said the call was from an out-of-town representative, perhaps from California. He could not recall the representative's name, but said he would forward any related emails.

Vice Mayor Brady stated the LimeBike rep told him that the company had already made a demonstration to the Village Manager and to individuals at Barry University, and asked permission to send Brady a brochure or other information.

Vice Mayor Brady said he did not feel like he was pressured and there was no request for his vote or support. He said there was nothing on the agenda at that time, as best he could recall. He added: "I didn't feel like I was being sold anything."

Todd Hofferberth
Director, Parks & Recreation
Village of Key Biscayne

In a telephone interview, Mr. Hofferberth advised that the Village of Key Biscayne was prepared to enter into a contract with LimeBike after a successful pilot program. "We're very happy with the program," Hofferberth said. He stated that LimeBike responded to a request for a proposal that he initially made in connection with a citizen's panel. "I reached out to the company myself," he said. He said that he was not aware of any unregistered lobbying.

Todd O'Boyle, strategic development
Neutron Holdings Inc., d.b.a. LimeBike
Feb. 8, 2018

Mr. O'Boyle met with COE investigators along with attorney/ lobbyist Michael Llorente. Mr. Llorente advised that he was retained by LimeBike and registered on their behalf this past January in Miami Shores and Miami Beach. He requested a copy of any complaint.

Mr. Llorente advised that Mr. O'Boyle did not become involved with Key Biscayne until after the Village commenced its pilot program with LimeBike. Mr. O'Boyle stated that he did become involved with setting up the pilot program in Miami Shores at the invitation of Councilwoman Alice Burch. "I got an email from Councilwoman Burch, and she said she'd heard of us and wanted to hear more," said O'Boyle, who acknowledged that he'd had subsequent conversations with Burch and other Miami Shores officials.

Mr. Llorente stated that, this notwithstanding, he considered that O'Boyle "was there as a resource" for Village officials. "This was entirely a Village-driven initiative."

Mr. O'Boyle was advised by Ethics Advocate Mike Murawski that, in general, once a formal agreement or proposal has been submitted to town officials and could foreseeably come before its elected body for approval, that any subsequent communication could be considered lobbying as defined by the County ethics code. He was further advised that should LimeBike pursue other opportunities with local governments in Miami-Dade County that it would be in the company's best interest to register its representative prior to engaging officials.

Mr. O'Boyle stated that LimeBike has been in existence for about a year and is based in San Mateo, Calif., operating in about 40 cities and college campuses nationwide.

Document/Audio/Video Review:

Added to the file was a Nov. 10, 2017 Miami Herald article, retrieved from the following address <http://www.miamiherald.com/news/business/article183868451.html> and appearing under the headline "You'll find more shared bikes around town — and pay less to use them, too" by staff writer Nancy Dahlberg. The article highlighted growing competition between Lime Bike and other ride-sharing services that the writer describes as a "bike war."

On Nov. 13, 2017, at 2:12 PM, a public records request was sent to Village Clerk Ysabely Rodriguez, a copy of which was added to the investigative file. The records were retrieved from Village Hall on December 11, and the following items were reviewed:

- Copies of all lobbyist registration forms on file over the previous three years, consisting a total of eight such registrations. Of those, half were filed in early 2015 by lobbyists representing Sears Holding Corp., which was lobbying with respect to a proposed annexation of land where a K-Mart was located. There were two filed in 2016 – one related to a land use and zoning matter, the other related to a proposed vacation rental ordinance. There was one registration on file for 2017 concerning a request for a land use variance. There was also a registration on behalf of the firm Eco-Site for permitting and land-use issues, with no date on document. (It should be noted that there were no registrations filed on behalf of Lime Bike.)
- Copies of emails between City Attorney Sarafan, LimeBike company reps, and Village officials regarding Lime Bike's MOU for a 90-day pilot program. The emails are consistent with Sarafan's interview account in that LimeBike presented a draft MOU, and accepted Sarafan's proposed edits, striking any exclusivity clause. The

emails show LimeBike executives accepted the revisions, and that the subsequent agreement was approved at the October 3 council meeting.

- Other emails, including those to and from Village Manager Tom Benton, show that on October 2 – the day before the council meeting – Todd O’Boyle, an executive for LimeBike, stated that another company rep, Harvey Younes, “will again be in attendance” – at the meeting – “and has offered to address any last minute questions that may arise. I will also be standing by to assist by phone if that would be helpful.”
- An email dated Sept. 28, 2017, from LimeBike executive O’Boyle to Village Attorney Sarafan states that: “I understand from Ms. Burch that there were some issues with a previous version of our LimeBike MOU. It sounds like you may not have liked the latest draft, which contains explicit language we are not seeking an exclusive partnership. Please let me know what you think of the attached draft, and we will, of course, entertain any edits you would like to see.”
- Copies of meeting agendas and minutes from Sept. 26, 2017, and Oct. 3, 2017, containing items pertaining to a bike share program with LimeBike. The item was sponsored by Councilwoman Burch, who introduced the item as well. Appearing on behalf of LimeBike was Harvey Younes, who answered questions regarding a proposed 90-day pilot program calling for the provision of 100 bicycles. The program was approved on Oct. 3, 2017, by a 3-1 vote, Mayor MacAdam Glinn opposed.

Documents provided by the Key Biscayne Village Clerk’s office pursuant to a records request included the following and were reviewed on Jan. 10, 2018:

- A 53-page package including a 7-page Agreement between the Village and Neutron Holdings LLC, dba LimeBike and dated May 26, 2017. The agreement granted LimeBike an exclusive franchise to rent bicycles in Key Biscayne.
- A 2-page excerpt from the minutes kept for the June 13, 2017, Village Council meeting during which Yuki Lin addressed the Council on behalf of LimeBike. The minutes further reflect that the Council voted 7-0 to approve a pilot bike-sharing program, authorizing the Village Manager to enter into negotiations with LimeBike.
- An attempt was made to view the requested emails but files could not be opened through Outlook due to a file permission error.

On Jan. 29, COE received copies of two emails Miami Shores Council Vice Mayor Sean Brady received from representatives of LimeBike, including an introductory email on Aug. 7, 2017, from Todd O’Boyle of LimeBike, who advised as follows:

“We understand that Miami Shores has considered bringing bike share to its businesses and

residents. We've had several conversations with Council Member Burch, Tom Benton, and Barry University staff. We see a huge opportunity to help the Village meet its mobility goals. Do you have a few minutes to speak on the phone this week or next?"

After O'Boyle received Brady's contact information by email, he arranged to call him the following day. (Brady's account of that conversation is noted above.)

Conclusion(s):

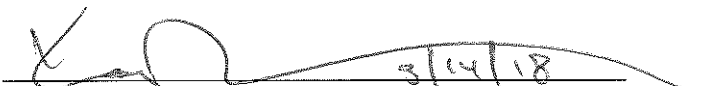
The investigation found that LimeBike was invited to submit a proposal or MOE for its "dockless, subsidy-free bike share" services in the villages of Key Biscayne and Miami Shores. The company was authorized to commence pilot programs last year.

Key Biscayne's parks director, Todd Hofferberth, advised that he reached out to LimeBike as a result of a "citizen's panel" that was formed to look into such a service, while in Miami Shores, the company was first approached by Councilwoman Alice Burch.


The preliminary inquiry found that LimeBike representatives did interact with staff and elected officials in both municipalities and that formal agreements were negotiated. A company representative was interviewed by COE enforcement staff and advised as to the requirements of the Miami-Dade County ethics code and its lobbyist registration requirements.

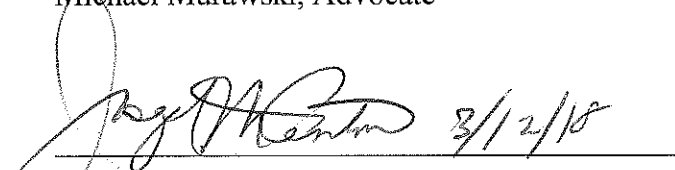
The Village of Miami Shores attorney advised that he would address with Village Council the incompatibility between the Village's lobbyist regulations and those required under the County's ethics ordinance.

After consultation with the Ethics Advocate it was determined that this matter would be closed with no further action.


3/14/18
Karl Ross, COE Investigator

Approved by:


Michael Murawski, Advocate


3/12/18
Joseph Centorino, Executive Director