



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case: PI 18-03	Case Name: Payroll fraud allegations	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s): Referral from Miami-Dade County OIG	Subject(s): Village of Pinecrest Manager Yocelyn Galiano, Village Clerk Guido Inguanzo	Jan. 22, 2018	CASE CLOSED

Date: 2/8/18

Allegation(s):

In a referral memo dated Jan. 12, 2018, from Miami-Dade County Inspector General Mary T. Cagle, it was alleged in an accompanying anonymous complaint letter that the above-mentioned Village of Pinecrest officials engaged in unethical and other possible misconduct relating to, among other things, their handling of administrative leave procedures.

The anonymous letter to Ms. Cagle was dated Nov. 30, 2017, and alleged that Village Clerk Inguanzo improperly assisted Manager Galiano in getting hired as Village Manager and that Galiano later assisted him with “falsifying personnel time [sic] and attendance records” relating to sick and/ or vacation leave in 2013/ 2014. The letter claims Inguazano similarly helped Galiano to falsify time records when she was absent during two subsequent pregnancies.

What’s more, the anonymous letter states that a former Assistant Village Manager reported the initial alleged payroll fraud by Inguanzo to Village Manager Galiano, and claims that Galiano fired her and that the employee in question, Maria Menendez, was being retaliated against for being a whistleblower and “her reputation was defamed as part of a vicious cover-up.”

Lastly, the anonymous letter contends that the Clerk and Village Manager had an inappropriate personal relationship and that this relationship compromised their official actions.

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 ...”

Investigation:

Interviews

Joseph Corradino, Mayor
Village of Pinecrest, FL
Feb. 1, 2018

Mayor Corradino advised that last year, prior to the holidays, he became aware of an anonymous letter alleging misconduct involving the Village Clerk and Manager as described above. He said that, in response, he confronted them and was assured that the allegations were untrue. He said that the matter was turned over to City Attorney Mitchell Bierman of the law firm Weiss Serrota, who retained a labor attorney, James Crosland, to conduct a review.

Mayor Corradino said the findings of the internal review were distributed to Village council members, and that the findings did not support the allegations made in the anonymous letter.

Asked if he was aware of any issues with former Assistant Village Manager Maria Menendez, he stated that he was aware that she was fired late last year. He said he had discussed this with Village Manager Galiano, and was told that Galiano was unhappy with her performance and that her termination, as far as he knew, was “purely for performance reasons.”

Mitchell Bierman, City Attorney
Village of Pinecrest, FL
Feb. 5, 2018

In response to an email requesting information, Mr. Bierman advised that the Village of Pinecrest does not have a whistleblower ordinance of its own, but instead relies on State protections. He said that he does not know if Ms. Menendez was the author of the anonymous complaint letter received by Miami-Dade OIG, but stated that she made similar allegations against the City Clerk after she learned that she was going to be terminated on performance grounds. He said that her subsequent termination was not related to her whistleblowing. He further advised that similar allegations about payroll abuse were circulated about a year and a half ago by the police labor union during the collective bargaining period.

Mr. Bierman further advised that the Clerk and Village Manager are not subject to the same personal leave rules as other rank-and-file employees, and that as long as they are fulfilling their obligations, then they not in violation of the terms of their employment. He said that,

based on the review by labor attorney James Crosland, “Largely it’s a non-issue ...”

Mr. Bierman said, moreover, that similar anonymous allegations (to those contained in the OIG letter) were shown to the elected officials, and none of them felt further action was warranted. He said Mayor Corradino did ask him what action should be taken, and he said he stressed that because the allegations were made anonymously they didn’t carry the same weight as they would have had they been filed by an individual who could then be consulted.

All the same, Mr. Bierman said the Council opted to have a legal review to see if the Clerk and Manager were subject to possible disciplinary action and none of the council members felt that further action was warranted. He noted that both the Clerk and Manager are regarded as having performed their jobs in a more than satisfactory manner.

Lastly, Mr. Bierman stated former Assistant Village Manager Maria Menendez filed a complaint containing many of the same allegations with the Equal Employment Opportunity Commission (EEOC), and noted that the Village filed a response to the allegations. He said this usual signifies that the former employee intends to file a lawsuit.

Maria Menendez, former Assistant Village Manager
Village of Pinecrest, FL
Feb. 6, 2018

Ms. Menendez was contacted at her home, and advised she filed a lawsuit against her former employer “because they terminated me after I filed a whistleblower complaint.” She said she has worked in government for 35 years, and stated that it is difficult to find another job after being terminated. She also advised that she filed an EEOC complaint against the Village Clerk because, prior to her termination, he “really insulted” her during a staff meeting.

Asked about any knowledge she might have of the Nov. 30, 2017, anonymous complaint letter to Miami-Dade OIG, Ms. Menendez stated she did not write the letter in question, adding that if she were the complainant she would not have made the complaint anonymously.

She requested a copy of the letter, and was told that she could request one after the COE inquiry was closed. She provided her email address: mm8@me.com.

She was further advised that, given the pending litigation and EEOC complaint, it was unlikely that COE would pursue the matter further. She said she understood and noted that she would be reluctant to provide additional information without the advice of her legal counsel.

Document/Audio/Video Review:

A copy of a memo from labor lawyer James C. Crosland from the firm of Bryant Miller Olive was obtained on Feb. 4, 2018, and reviewed by COE. The memo examines whether the Pinecrest Village Clerk and Village Manager are considered “exempt” employees under the Fair Labor Standards Act (FLSA), and determines that both are indeed exempt.

The memo states that: “A review of the Village’s Employee Policies and Procedures Manual does not require an exempt employee – whether Village Manager, Village Clerk or Department Head – to track or otherwise account for the use of annual leave, sick leave or any other type of leave.”

The memo also states that, even absent any requirement with respect to leave, the Village’s payroll system does track the Clerk and Manager’s annual and sick leave balances, noting that “the tracking is done by other employees.” A copy of the memo was added to the file.

Conclusion(s):

After preliminary review, it does not appear that COE should pursue the matter further at this time. The allegations contained in the Nov. 30, 2017, anonymous letter to Miami-Dade Inspector General Mary T. Cagle are the subject of civil litigation, as well as the basis for a complaint filed before the U.S. Equal Employment Opportunity Commission.

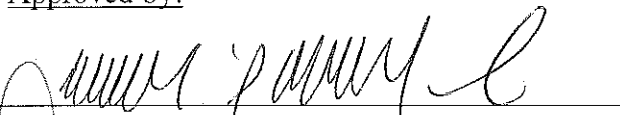
Additionally, a legal analysis conducted by the Village of Pinecrest suggests that the potential subjects of this inquiry are not subject to the Village’s policies for leave time by virtue of their “exempt” status. Other issues raised in the anonymous letter concern personnel issues outside the purview of the COE.

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

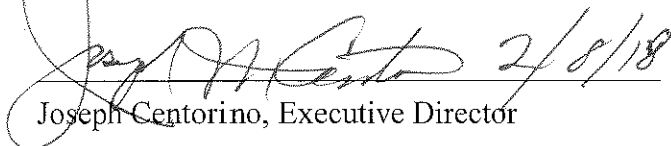
 2/9/18

Karl Ross, COE Investigator

Approved by:



Michael Murawski, Advocate

 2/8/18

Joseph Centorino, Executive Director