



Miami-Dade Commission on Ethics & Public Trust

Report of Investigation

Investigator: Susannah Nesmith

Case: PI18-18	Case Name: Birdcage	Date Open: 4/12/18	Date Closed:
Complainant(s): Victor Maya	Subject(s): Jordan Leonard and Stephanie Bruder	CASE CLOSED	
		Date:	12/15/18

Allegation(s):

It was alleged that certain elected official(s) in Bay Harbor Islands used town staff to “red tag” the building/residence of a political rival on the day after the election as retribution for a resident running against the sitting mayor.

Relevant Law:

Sec. 2-11.1. (g) Exploitation of official position prohibited. No person included in the terms defined in subsection (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.

Investigation:

Interviews:

On April 16, 2018, this investigator took a sworn statement from Victor Maya. Mr. Maya believed that code enforcement targeted his building, condemning the stairway as unsafe the day after the election because he ran for a council seat.

“I believe the action taken by the town was a form of harassment and intimidation for me running for election,” he said. He believes either Mr. Leonard or Ms. Bruder or both may have been involved in targeting his building.

Maya recounted a dispute he had with Jordan Leonard, who was the mayor at the time. The dispute is detailed in COE case K16-28.

He also said that while he was campaigning for a seat on the council, he approached residents of a building that he understood belonged to Ms. Bruder's family. He said a resident there asked him what he thought about Bruder and he said he mentioned to the resident that Bruder had a problem with the water bill being overdue for the building.

Shortly thereafter, Maya said Bruder responded to the building, insisting that he leave the building and yelled at him "There are problems with your building too."

He said the notice of the safety violation didn't mention the staircase, leading some residents to believe that they had to vacate the building. He also questioned why the building official only blocked the first floor access to the stairs, leaving residents on the second and third floor to discover the stairway was condemned only after using it to walk down to the ground level. He also said that Bruder confronted him when he was campaigning in one of the buildings her family owns. The subject of the unpaid water bills in those buildings came up, he said, and she told him "Your building has problems too." He didn't recall exactly what day that was, but said it was shortly before the election.

On May 2, 2018, this investigator spoke with Anthony Lackner at his office at 12955 Biscayne Boulevard. Mr. Lackner is the senior property manager for the Birdcage building (where Maya lives) and has been coordinating the repairs that were made to the railings, the electrical work that needs to be done to pass the 40-year inspection and the work that needs to be done to the stairwell.

Lackner's phone records showed that he sent a text to Evelyn Merizalde, code enforcement officer at Bay Harbor islands, on April 2 regarding dust from the demolition work being done on the building next door without the required hose-down. He said he was concerned that the dust would get into the apartments in the building because they have jalousie windows.

Lackner gave Merizalde the building access code.

Lackner said no one called him about the condition of the Birdcage or let him know that the stairway was being "red tagged."

Lackner said the Birdcage stairway is original and that the damage and deterioration has taken place over the decades.

"This isn't one of those things that happened overnight," he said.

He said the Birdcage looked substantially the same in February as it does today. He also acknowledged that it would be nearly impossible to visit or inspect the building and not notice the Birdcage.

"If you missed the Birdcage, you're blind," he said. (The "Birdcage" refers to the ornate, wrought iron stairway in front of the building)

On May 8, 2018, this investigator and Robert Steinback, also an investigator at the Commission on Ethics, took a sworn statement from Dale Lee, Bay Harbor Islands building official. He said the clerk in his office, Ayanidys Martinez, scheduled an inspection of the building as part of the 40-year inspection requirement.

“She sent me out to see what the status was so they could wrap this thing up,” he said.

Mr. Lee said he went out to inspect the building and met with Dale Northrup, the association president, who happened to be there at the time. He said he found the state of deterioration in the Birdcage stairwell dangerous, but he left the building that day without “red tagging” it.

He went back to the building two days later to red tag the stairwell, but he said he was not able to get into the building because Mr. Northrup was not there. Because of that, he only closed off the first floor entrance to the stairwell because that could be reached from the outside, he said. (This left residents on the second and third floors with no way of knowing the stairwell had been deemed unsafe to use until they had used it.)

He said at that time he didn’t have Northrup’s number to call him to arrange for someone to let him in.

He said he was not sure where or how he got Northrup’s number, but that he later got it and several days later, after first condemning the stairwell, Northrup said he’d get someone to let Mr. Lee in, so he went back out to the building to close off the stairwell on the second and third floors. (This investigator ran into him at the building on that day, which was April 16.)

Mr. Lee said he had, in fact, noticed the rusty railings in the Birdcage when he inspected the building in February. He acknowledged that condition of the Birdcage was unsafe at that time. He said he didn’t “red tag” it at that time because he thought the building owners were working on fixing it.

He said that he had talked to Ms. Merizalde, the code enforcement officer, about the building, but that he didn’t know that she had been given the access code to the building on April 2, 2018.

He denied that Jordan Leonard, Stephanie Bruder or Ronald Wasson, the Town Manager instructed him to “red tag” the building’s stairwell.

On May 8, 2018, this investigator and Investigator Steinback, took a sworn statement from Ayanidys Martinez, building and zoning official for Bay Harbor Islands.

She said she asked Mr. Lee to go back to the building after she noticed that one of the permits for that building was closed but with comments.

She said this was just a routine part of her work managing the progress of the 40-year inspections that buildings have to pass.

She also said that Mr. Lee tells her if he finds something dangerous at a building. She said Mr.

Lee did not tell her in February that the Birdcage stairwell was dangerous.

On May 8, 2018, this investigator and Investigator Steinback, took a sworn statement from Evelyn Merizalde, Bay Harbor Islands code compliance officer. She said the property manager for the Birdcage building called in a code complaint about the demolition next door. Mr. Lackner gave her the access code that opens the gate adjacent to the Birdcage stairwell.

On Sept. 17, 2018, this investigator and Public Advocate Michael Murawski took a sworn statement from Bay Harbor Islands Council member Jordan Leonard. Mr. Leonard denied asking any village staff members to inspect or "red tag" the Birdcage.

On Nov. 20, 2018, this investigator and Public Advocate Michael Murawski took a sworn statement from Bay Harbor Islands Mayor Stephanie Bruder. She denied asking any village staff members to inspect or "red tag" the Birdcage. She acknowledged that she had a confrontation with Mr. Maya inside one of the buildings owned by her mother-in-law during the election campaign.

The following conversation ensued:

SN: I understand you had a discussion with Victor Maya. Do you recall this? It was in one of the buildings.

SB: I asked him to leave my buildings.

SN: OK, which building did you ask him to leave?

SB: The Kingsley. And I specifically said to him, on behalf of my mother-in-law, because I told him I did not own the buildings, because he was going door-to-door, I asked him to get off private property.

SN: You just said you asked him to leave 'my buildings.' Are you sure you didn't put it to him that way?

SB: I'm positive.

SN: Are you sure there are no other witnesses who saw that confrontation?

SB: There was a gentleman there, with him. And there was my tenant who was at the door scared to death who called me. That's who called me to let me know that they were intimidating her. That's how I knew they were in the building.

SN: Did you at that point say anything to him about his building?

SB: No, not that I recall.

SN: After that conversation, did you contact anyone at the city about his building?

SB: No.

SN: Did you talk to Mr. Wasson about his building, that is the Birdcage building?

SB: No

SN: Did you talk to Mr. Lee about his building?

SB: No.

SN: Did you talk to anybody else in building or code enforcement about the building?

SB: No.

Document(s) Reviewed:

All reports generated by Code Compliance and the Building Department on the Birdcage Building between Nov. 22, 2016 (the date of COE's last investigation into the city's treatment of the Birdcage Building) and the date of the initial request, April 24, 2018. Those records show that code enforcement and building and zoning personnel have had regular contact with the building before the events that precipitated this complaint.

- On Nov. 18, 2016, Marc Touze of 40Year.com Engineers provided the town with his report of his Nov. 2, 2018 inspection of the building as part of the 40-year certification process. The report notes "columns exhibit signs of extreme corrosion throughout."
- On April 11, 2017, Ms. Merizalde found a reserved parking sign in front of the building. The picture of the sign also shows the Birdcage stairwell, which is clearly rusty in the photo.
- On April 28, 2017, Ms. Merizalde returned to the building to find a boat improperly parked.
- On May 1, 2017, Ms. Merizalde checked on the building again, taking a picture of the front of the building. The picture in her report is too small to see if it shows rust, though the Birdcage stairwell is in the photo.
- Feb. 1, 2018, Building Official Dale Lee inspected the building as part of the 40-year certification after the building replaced the balcony railings. Mr. Lee signed off on the inspection as "final," while noting "front circular stair not included."
- On April 2, 2018, property manager Anthony Lackner called code enforcement to request an inspection because of dust blowing over from the neighboring construction site. He provided the access code to the building. The building was inspected on this date and twice on April 3, 2018. Code Enforcement officer Evelyn Merizalde took photos from inside the inner court-yard (reachable by using the access code on the metal gate next to the Birdcage stairwell) and from the front of the building. A photo taken of the stair case on April 2, 2018 at 3:35 p.m. clearly shows the rust damage to the structure.
- On April 5, 2018, according to notes prepared later, Building and Zoning Supervisor Ayanidys Martinez "came across" the status of the building permits for the Birdcage building "closed but with comments." She and Building Official Dale Lee agreed that he would reinspect the building on April 9, 2018. She also emailed Mr. Lackner to ask about the status of the work being done at the building. In that email, she noted that Ms. Merizalde gave her Mr. Lackner's contact information. She didn't mention needing an

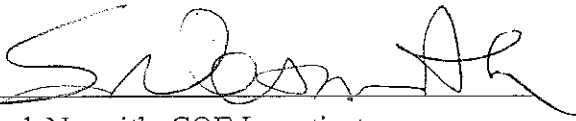
access code to get in or that Ms. Merizalde had been given the access code just a few days earlier.

Emails from City Manager Ron Wasson regarding the decision to “red tag” the building’s staircase.

- An email dated April 11, 2018 and sent at 5:11 p.m. by Mr. Wasson to the town council as well as several town officials says that Mr. Lee inspected the building and deemed the bird cage stairwell unsafe. It also says “This inspection was done at the request of the management and to approve the newly installed railings at the building,” referring to the railings that were inspected and approved on Feb. 1.
- An email dated April 12, 2018 and sent at 9:13 p.m. by Dale Northrup to Mr. Wasson, the town council members and several town officials. Mr. Northrup disputed Wasson’s claim that the building management requested an inspection and pointed out that the inspection had been done two months earlier. He also pointed out that the Birdcage stairwell railings “are exactly in the same condition as when he (Lee) inspected February 1. Safe then but not 10 weeks later? The timing caused us pause as well.”
- An email dated April 13, 2018 and sent at 1:07 p.m. by Wasson to Northrup, copying the council members and several town officials. In it, Wasson says that Building Department Supervisor Ayanidys Martinez was reviewing the 40-year recertification paperwork and “noticed the comment” of ‘Not included the Birdcage.’ In the original railing inspection and questioned if there was any work done of the first floor.” Mr. Wasson said that she asked Mr Lee if there was any work done on the first floor. Mr. Lee then asked that the building be put on his list of inspections for Monday April 9, 2018. After that inspection “Mr. Lee reviewed his records, consulted with another building official the next day and determined that because of the very dangerous condition of the stairs, safety for the residents should be observed and returned to place the stairway out of service.”

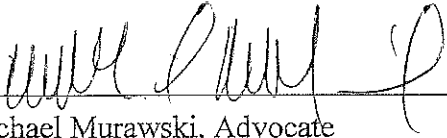
Conclusion:

Although Mr. Maya’s building was “red tagged” the day after he lost the election to the incumbent councilman, the evidence is insufficient to establish that either Mr. Leonard or Ms. Bruder exploited their official positions to order or direct the action against the Birdcage building. Accordingly, this matter is closed with no further action.



Susannah Nesmith, COE Investigator

Approved by:



Michael Murawski, Advocate



Jose Arrojo, Executive Director 12/15/18