



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case: PI 18-047	Case Name: Downtown Towing COS Issue	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s): Referral from Coral Gables P.D. Internal Affairs Department	Subject(s): Coral Gables Police Sgt. Alejandro Escobar, et al.	Sept 17, 2018	CASE CLOSED

Date: 10/22/18

Allegation(s):

It was alleged by a former employee of Downtown Towing, the city of Coral Gables' towing contractor, that Gables police Sgt. Alejandro Escobar violated the Cone of Silence while serving as a technical advisor to the City's selection panel for a towing contract. Sgt. Escobar was also said to be involved in drafting the RFQ for towing services. The procurement in question is Coral Gables RFQ 2018-008 for Towing Services.

Specifically, it was alleged that Sgt. Escobar made inappropriate remarks to a former employee of Downtown Towing, a tow truck driver named Earles Gonzalez (Gonzalez), while the COS was in effect. It was further alleged that Escobar along with other officers of the Gables PD had exploited their official position(s) by pressuring Downtown Towing to re-instate Gonzales.

The allegations were initially investigated by the Coral Gables police Internal Affairs unit, but were subsequently referred to the Commission on Ethics for review and assistance.

Relevant Ordinances:

The Miami-Dade County ethics code, Sec. 2-11.1, subsection (t), titled *Cone of Silence*, prohibits, in applicable part, "any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist or consultant and the County's professional staff including, but not limited to, the County Manager and his or her staff ..."

The County ethics code, as it relates to the above Cone of Silence provision, has been adopted

by the City of Coral Gables and is enforceable by this agency. The applicable section of the Coral Gables City Code is identified as Section 2-1027 in the RFQ.

Furthermore, the Miami-Dade ethics code states, in Subsection (g) titled *Exploitation of official position prohibited*, that: "No person ... 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 or resolutions ..."

Investigation:

Interviews

On Sept. 13, COE Investigator Ross met with Cmdr. Bobby Navarro and Sgt. Nestor Joseph Carbonell of the Coral Gables Police Internal Affairs Section at 2800 SW 72nd Street.

They advised that they had consulted Coral Gables City Attorney Miriam Ramos and that, acting on her advice, they wanted to refer the matter pertaining to Sgt. Escobar and the potential COS violation to COE for investigation.

They provided COE with a copy of their investigative file and audio of a statement taken by IA detectives of the City's procurement director, Celeste Walker, regarding her meeting with the informant, Giovanna Petraglia (Petraglia). They were advised that COE would look into the matter, and get back to them with an opinion as to whether an ethics violation may have occurred. They asked to be kept apprised of the findings.

The following day, Investigator Ross spoke with Sgt. John Carrasco, the original point of contact for Coral Gables IA, and asked whether Gables IA would like to investigate the matter jointly with COE. He advised that due to the possibility that an allegation of potential wrongdoing had been made against the department's chief, Ed Hudak that they would have to decline further involvement unless Chief Hudak was cleared of any wrongdoing.

The basis of this concern was the complainant's e-mail dated Aug. 22, 2018, to Ms. Walker alleging that Sgt. Escobar, officer Robert Thomson (not Thompson), and officer "Hurak" had pressured or were expected to pressure Downtown Towing to keep the fired driver (Gonzales). Sgt. Carrasco advised that there is no officer "Hurak" on the police force, suggesting that the reference to an officer "Hurak" may have been a reference to Chief Hudak.

Ted Guba, auditor general
Office of the Independent Auditor General
City of Miami, FL
Phone: (305) 416-2040
Sept. 25, 2018

A message was left for Mr. Guba requesting information about any inquiry or audit into the performance of Downtown Towing with the City of Miami. Based on information obtained from Coral Gables officials, it appears that the City of Miami had an issue with the possible

under-reporting of revenues by Downtown Towing that were brought to light. Petraglia had maintained that she was blamed for the alleged under-reporting and fired.

Giovanna Petraglia, complainant

Sept. 25, 2018

Petraglia was contacted by COE investigator Ross and she agreed to an interview the following day, September 26, at 2:30 at COE's offices at 19 W. Flagler Street. She appeared in the company of her son, Martin, who helped with translation since Petraglia's first language is not English, but Spanish. The interview was tape-recorded. Also present were COE Investigator Karl Ross and Ethics Advocate Michael P. Murawski.

Petraglia was asked to examine an e-mail dated August 22, 2018, and she confirmed that she wrote the e-mail in question to Coral Gables purchasing director Celeste Walker. She said she also met with Ms. Walker to further discuss concerns raised in the e-mail about a possible violation of the Cone of Silence as it related to the City's RFQ for towing services.

Asked to identify the driver referenced in the e-mail who had worked for Downtown Towing (DTT), she stated his name was Earles Gonzalez, that he was in his 60s, and lived somewhere in the vicinity of Coral Gables. She said she knew Gonzalez because they were co-workers at DTT and were terminated from the company at about the same time.

Petraglia said she worked for DTT from 2004 until July 26, 2017, and that she was forced to resign as a result of a criminal investigation by the State Attorney's Office into the conduct of DTT as a contractor for the City of Miami. She showed COE a copy of a letter from SAO indicating no charges would be filed in connection with that investigation.

She said Gonzalez, meanwhile, had been terminated from DTT over questions about his age and job performance. She said DTT had been founded by Timothy Del Rosal, but that since about 2015, it was run by a son, Ryan Del Rosal, and that she last reported to him.

Petraglia stated that the basis of her complaint was a conversation she had with Gonzalez sometime in early to mid-August 2018. She said that Gonzalez called her on her cell phone at the above-referenced number, as he did from time to time to see how she was doing and to discuss their respective grievances against DTT. On that occasion, he informed her that he had been re-hired by DTT after being unemployed for about a year.

Petraglia said Gonzalez had told her he was trying to find work with Sunshine Towing but was unsuccessful, but that he was recently re-hired by DTT as a result of his friendly relations with members of the Coral Gables Police Department. She said Gonzalez told her he had a chance encounter with an "Officer Thomson" whom, he observed while driving past DTT's main office at 2811 SW 70th Avenue earlier that summer.

She said Gonzalez told her he greeted Ofer. Thomson, who advised him that he was carrying out a site inspection of the facility as part of the pending RFQ process. She said Gonzalez told her that Ofer. Thomson told him that he had put in a good word for him with Ryan Del Rosal,

telling Del Rosal that Gonzalez was “a good driver and a good friend” and that he had encouraged Del Rosal to give him his job back.

Petraglia said that Gonzalez went on to say that, after the encounter with Ofcr. Thomson, he then contacted Sgt. Escobar and that Sgt. Escobar informed him that DTT was likely to win renewal of its contract because the City had selected DTT as a result of the RFQ. She said Gonzalez told her that, two days after the conversation with Sgt. Escobar, a DTT tow truck was delivered to his home and that he was given his job back as a driver with DTT. She said that Gonzalez told her on several occasions not to tell anyone about the conversation with Sgt. Escobar because he was concerned that Escobar could get in trouble as a result.

Petraglia said she was aware that Gonzalez felt he had good relations with a number of Coral Gables police officers, including Ofcr. Thomson, Sgt. Escobar and Chief Ed Hudak (even though she misspelled his name as “Hurak”). She stated, however, that she was not aware of any involvement by Chief Hudak in restoring Gonzalez’s employment with DTT or any other possible violation of the ethics code as it relates to RFQ for towing services.

Petraglia said she was also aware of a potential Cone of Silence involving DTT and the City of North Miami, where DTT was also contracted to provide services. She said that in the days prior to her dismissal, Ryan Del Rosal advised her that DTT missed the June 30, 2017, deadline for submitting a bid package for renewing the contract with North Miami, but that Pat McNally, a North Miami police officer involved in managing the towing contract, contacted him by text message on or about July 15 to 16 and asked him to submit a package. She said DTT’s bid was accepted even though it was late and that DTT was selected. She said she did not actually see the text from McNally to Del Rosal only that Del Rosal told her about it.

Ryan Del Rosal, vice president
Downtown Towing
1451 NW 20th Street, Miami
Sept. 28, 2018

Del Rosal consented to a voluntary interview with Miami-Dade ethics investigators at his main place of business at the above-referenced address and responded to questions about the Coral Gables towing RFQ. Investigator Ross and COE Advocate Murawski were present.

Del Rosal stated that, as vice president of the company, he was responsible for preparing RFQs and other solicitations. He said Downtown Towing (DTT) had contracts with more than a dozen municipalities at present, including the City of Coral Gables, where DTT is the incumbent firm. He advised that he was familiar with the Cone of Silence and its limitations on communication during the evaluation phase of any public solicitation.

Del Rosal was asked about any interaction with members of the Coral Gables Police Department during that phase, in particular during the site visit. He said the site visit was conducted by several individuals from the City, including an Ofcr. Thomson. He said he did not know the officer’s first name, but said he worked in the Vehicular Homicide section of the police department. He said there was also another individual who was not a police officer who

was involved in managing the City's fleet of vehicles, along with a female procurement officer and possibly one other individual whose name he could not recall.

Del Rosal said that during the inspection, he could not recall any conversation with Ofcr. Thomson relating to the employment status of a driver employed by his company, Earles Gonzalez. He advised he had recently re-hired Gonzalez after "he came back begging for his job" on more than one occasion. He said he decided to re-hire Gonzalez because there had been increased activity in the Coral Gables area near where Gonzalez resides. He said neither Ofcr. Thomson nor any other City official urged him to do put Gonzalez on the payroll.

Del Rosal said he knows Sgt. Alejandro Escobar by name, but does not think he knows him personally or has had much, if any, contact with him. He said that he doesn't spend a lot of time at the DTT office on SW 70th Avenue that serves the Coral Gables area. He said he did not have any improper conversation with Ofcr. Thomson or Sgt. Escobar about the Gables towing RFQ, nor any assurances that DTT would be the recipient of that contract.

He further advised that Earles Gonzalez had never discussed the pending Gables RFQ with him, nor suggested that he had been advised that DTT would have its contract renewed.

Del Rosal did say that Petraglia used to work for his company, but advised that the company was required to terminate her as a result of a state investigation into its billing practices in the City of Miami. He said that Petraglia is "disgruntled" as a result. He agreed to arrange for an interview of Gonzalez at the company's Coral Gables area offices.

Ofcr. Robert Thomson, traffic homicide investigator
Coral Gables Police Department
Sept. 28, 2018

Ofcr. Thomson was unavailable Friday afternoon during a visit to the Coral Gables police headquarters on Salcedo Street. However, reached on his cell phone, he agreed to an interview on Monday October 1st with respect to the towing RFQ. He advised that he did not serve on the technical or selection committees, but was present at the time of the facility inspection at Downtown Towing because he had been asked to provide access to a room the Gables PD rented from DTT to store vehicles involved in vehicular homicides.

Earles Gonzalez, driver
2763 SW 31st Ave., Miami, FL
Downtown Towing
Oct. 1, 2018

Gonzalez was interviewed at the office of Downtown Towing, located at 2811 SW 70th Avenue. It was a voluntary interview and was not tape-recorded. During the interview, Mr. Gonzalez, 65, discussed his reasons for leaving Downtown and returning this past summer.

He said he stopped working for DTT in about June 2017 after his vehicle was damaged by a

co-worker. He said he was ordered to lend the vehicle to the co-worker, and that the co-worker caused extensive damage to the engine and that this left him without a vehicle. He said that after several months of waiting for it to be repaired, he decided to retire and began to start the process with the Social Security office; however, he soon realized that the \$1,000 monthly SS payment would not be sufficient and decided he should continue to work as a driver.

Gonzalez said he went to Ryan Del Rosal on several occasions to ask for his job back and inquire as to the availability of a tow truck. He said he was finally told that as soon as a new vehicle arrived he could have his job back. He said he had previously been offered a job at another towing company (1A Towing) but that the site location was too far away.

He said he had also been seeking employment with Sunshine Towing, but that DTT notified him that he would be re-hired before he heard back from Sunshine about his application. He said that he had been in touch with Petraglia during this time, and that she had encouraged him to seek employment with Sunshine, stating that they would be awarded the Coral Gables contract and that DTT had no chance of retaining the contract following the RFQ.

Gonzalez said that, earlier this summer: "I talked to Ryan (Del Rosal) before I applied to Sunshine ... Ryan told me when a brand new truck arrived, 'you're going to get your job back.'" He said he was notified about his re-hiring at DTT by another driver, Alex.

Gonzalez said he regularly stopped by DTT's SW 70th Avenue office to talk to friends, and that he did recall seeing Ofcr. Thomson at the location and that Ofcr. Thomson told him that he was there as part of a site inspection for the City of Coral Gables. He said he does not have any recollection of Ofcr. Thomson saying he would help him get his job back or put in a good word with the management, as alleged. He said he did not ask Ofcr. Thomson or anybody else on the Gables police force to intervene on his behalf with DTT.

Gonzalez similarly stated that, while he frequently spoke to Sgt. Escobar, that he did not recall any conversation during which Escobar provided information about the status of the pending RFQ. "No, Sgt. Escobar did not say anything about the Coral Gables contract," Gonzalez said. He said they mainly talked about family and other personal matters.

He said he may have told Sgt. Escobar he couldn't live off \$1,000 a month and wanted to return to work, but emphasized he was sure he didn't ask Sgt. Escobar for help getting his job back with DTT: "That's 100 percent sure that he didn't."

Gonzalez questioned Petraglia's motives for making allegations with respect to his re-employment: "She is mad at this company. She wants to hurt this company. She wants me to join her and sue the company ... She's supposed to be my friend."

Gonzalez said he did speak to Petraglia on a regular basis – at least once or twice a month – and noted that she wanted him to join her in a lawsuit against DTT for unpaid back wages. "She wants me to be on her side and sue this company, and I have no reason to sue this company. She said that when I left they were supposed to pay me some overtime ..." He said Petraglia provided him with contact information for her attorney, but that he never called.

Ofcr. Robert Thomson, Crash Investigation/ Traffic Homicide Unit
Specialized Enforcement Division
Coral Gables Police Department
Oct. 2, 2018

Ofcr. Thomson consented to a voluntary statement with COE in the presence of union representation provided by the Fraternal Order of Police. He was accompanied by John Baublitz, president of the Coral Gables chapter of the FOB and attorney Christina Gornail. He stated that he has worked for the Coral Gables PD for the past 23 years.

With respect to the City's pending RFQ for towing services, Ofcr. Thomson advised that he did not serve on any of the evaluation panels, but that he did get a call from Sgt. Escobar to provide access to the City's storage room at the DTT location on SW 70th Avenue, and that he did observe several Coral Gables employees on that occasion. He said he also had an encounter with tow truck driver Earles Gonzalez and that they spoke briefly.

Ofcr. Thomson said he and Gonzalez exchanged greetings, but did not discuss either his employment status or the pending RFQ for towing services. He said he was aware that Gonzalez had retired and then returned to work but could not recall his employment status at that time. He said he was not asked to make any recommendation to DTT management on behalf of Gonzalez. He said he has never met DTT VP Ryan Del Rosal, and furthermore did not know who he was. He said he was aware that the owner was named "Tim."

He said he has not spoken to Timothy Del Rosal in years. He was shown a copy of the e-mail dated August 22 alleging COS violation and stated they were inaccurate.

Sgt. Alejandro Escobar, Crash Investigation/ Traffic Homicide Unit
Specialized Enforcement Division
Coral Gables Police Department
Oct. 2, 2018

Sgt. Escobar consented to a voluntary statement with COE in the presence of union representation provided by the Fraternal Order of Police. He was accompanied by John Baublitz, president of the Coral Gables chapter of the FOP and attorney Christina Gornail. He stated that he has worked for the Coral Gables PD for the past 23 years.

With respect to the City's RFQ for towing services, Sgt. Escobar stated that he assisted Maj. Lawrence with preparing limited portions of the RFQ relating to the applicability of storage charges for vehicles confiscated for investigative purposes and relating also to the specs for what kind of vehicles would be made available to the City under the contract.

Sgt. Escobar further advised that he was assigned to the Technical Committee and, as a result, was expected to conduct a facility inspection of the selected respondent prior to the awarding of the contract. He noted that he failed to respond to 70th Avenue site of DTT on or about July 9 because he got the dates confused. He said that, as a result, he was advised that his

participation would not be required in any further regard to the RFQ.

Sgt. Escobar stated that he did know DTT driver Earles Gonzalez and that they had become acquainted through Gonzalez's employment as a tow truck operator in Coral Gables. He said that sometime over the summer he received a call from Gonzalez, and that Gonzalez asked him about the pending RFQ and whether he expected DTT to retain the contract. "He was trying to figure out which company he would like to go back to work for," Sgt. Escobar said. "He mentioned one other company, but I can't recall which one ..."

Sgt. Escobar said he told Gonzalez only that he was aware that DTT was one of the respondents to the RFQ and that he did not know anything beyond that. He said he did not advise Gonzalez – as alleged – that the City had decided to award the contract to DTT. He further stated that he was not aware of any provision in the RFQ stating that only the favored or top-ranked firm would be inspected as part of the RFQ process.

Sgt. Escobar stated he never discussed Gonzalez's employment status with Ryan Del Rosal or any other employee or officer of DTT. He was asked to review the August 22 e-mail alleging violations of the COS and described them as "completely false."

Document/Audio/Video Review:

A file provided by Coral Gables police Internal Affairs was reviewed by investigator Ross, and its contents reflected that the City's RFQ for towing services was advertised on or about April 19 and that, as of the present date, no recommendation had been made by the City Manager. As a result, it appears that the Cone of Silence was in effect as of the date the matter had been referred to CEO on or about September 13, 2018. The deadline for responding to the RFQ was May 21, and the City's evaluation committee met on June 28.

The file further reflected that Sgt. Escobar was asked on or about May 17 to serve as a technical advisor/ inspector for the selection panel. He was recommended to serve in this capacity by Maj. Brian Lawrence, the Coral Gables police official overseeing the towing contract and in drafting the specs for the RFQ (with the assistance of Sgt. Escobar).

E-mails and other records in the file showed that Sgt. Escobar was asked to attend a July 9 site inspection at DTT, but that Sgt. Escobar failed to attend the inspection due to a mix-up; he claimed he forgot the date or got it confused. The inspection was handled by another technical advisor, and Sgt. Escobar was advised that his services were no longer required and that he should not attend a briefing with the selection panel since he did not participate in the inspection on July 9.

It should be noted that only the top-ranked respondent to the RFQ was to be subject to a site visit/ inspection, meaning that the visit at DTT meant it was the top-ranked firm.

Upon review of the audio recording of Celeste Walker's interview/ statement with Gables police IA on Aug. 30, 2018, the following should be noted:

- Ms. Walker advised that as of the date of the statement, the RFQ for towing was under the Cone of Silence and had not been awarded.
- That the complainant, Petraglia, first brought her concerns to her attention in May and provided documents relating to possible under-reporting of revenues by Downtown Towing as relevant to its contract with Coral Gables.
- Ms. Walker allowed that a photo taken of the towing company's "pricing board" showed fees that were incompatible with the City's contacted rates.
- That Petraglia told her she was made a scapegoat after DTT had a similar problem in the City of Miami and was subsequently audited.
- That Sgt. Escobar was a member of the technical committee and also helped to draft the RFQ along with Maj. Lawrence.
- That after he got "confused" about the date of the site inspection, Sgt. Escobar was told not to appear at the subsequent briefing of the selection panel.
- That Sgt. Escobar had no further involvement with the procurement and, to her knowledge, has not attempted to influence the awarding of the contract.
- That she does not believe the RFQ was tailored to suite DTT, (which was one of four respondents to the solicitation).
- That she had no idea as to the identity of the tow truck driver referenced in Petraglia's e-mail dated August 22.
- That she believed that the account provided in said e-mail, if true, could be construed as a violation of the COS as it relates to Sgt. Escobar's remarks to the driver.
- That only the highest ranked firm was subject to a site visit, which could lead Sgt. Escobar to assume that DTT was the likely recipient of the contract.
- That the contract typically generates \$36,000 a year in revenues, or about \$180,000 over five years.

Conclusion(s):

After discussion with the Ethics Advocate, it was noted that none of the subjects corroborated the allegations made by Petraglia.

Petraglia's allegations also missed the mark in one important respect. It does not appear that the tow truck driver, Earles Gonzalez, was employed by DTT at the time he spoke to Sgt. Escobar.

Sgt. Escobar acknowledged Gonzalez called him to inquire about the status of the RFQ and whether DTT was expected to retain the contract with Coral Gables. This was because Gonzalez was trying to decide whether to re-apply at DTT or to seek work with a competitor, Sunshine Towing.

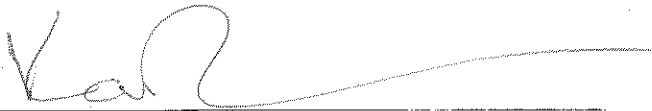
So even if Petraglia's main allegation was true – that Sgt. Escobar told Gonzalez in confidence that the City intended to award the contract to DTT so he should stay with or return to DTT – it still wouldn't violate COS because Gonzalez was not employed by the firm at that time.

Had Gonzalez been working for DTT at the time of any such remark, the likely analysis would not change because Gonzalez, as a driver, would have had no involvement in the RFQ process.

The investigation showed, moreover, that Petraglia was engaged in litigation against DTT and blamed them for terminating her at the request of the State Attorney's Office following an inquiry into an unrelated matter pertaining to DTT's service agreement with the City of Miami.

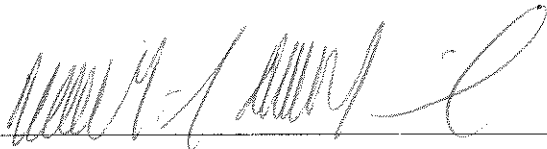
Gonzalez stated that Petraglia repeatedly asked him to join her in legal action against DTT, but Gonzalez stated he felt he had no basis for doing so and did not feel he had been treated unfairly by DTT.

Given the suspicion raised about Petraglia's motivation and given the lack of any corroborating witness statements or other information, this matter should be closed and referred back to Gables IA.

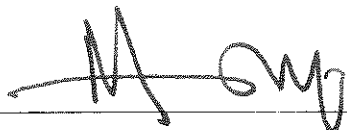


Karl Ross, COE Investigator

Approved by:



Michael Murawski, Advocate



Jose Arrojo, Executive Director