



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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**CASE
CLOSED**

Date: 3-14-19

AGENDA ITEM COVER MEMORANDUM

TO: Miami-Dade Board of County Commissioners

FROM: Jose J. Arrojo
Executive Director *[Signature]*

SUBJECT: County Contract Lobbyist Waiver Request of Nelson D. Diaz

DATE: March 14, 2019

h 19-16

Pursuant to Resolution R-1017-10, the attached County contract Lobbyist Conflict Waiver Request received from Nelson D. Diaz, together with the Commission on Ethics recommendation, investigative report and attachments, are forwarded to the Board for its consideration.

It is the recommendation of the Commission on Ethics that the waiver be denied.

The basis of the recommendation is that the proposed representation of Fairness in Taxation, a Florida Political Committee, may require Mr. Diaz to take a position that is opposite to a position of the Property Appraiser.



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MEMORANDUM

TO: Miami-Dade Board of County Commissioners

FROM: Jose J. Arrojo
Executive Director 

SUBJECT: County Contract Lobbyist Waiver Request of Nelson D. Diaz
COE No. K19-16

DATE: March 15, 2019

Nelson D. Diaz is a County contract lobbyist for the 2019 Florida legislative session. Mr. Diaz is also registered as a Florida legislative lobbyist for Fairness in Taxation.

Fairness in Taxation is an active Florida Political Committee (PAC). It is associated with the law firm of Rennert Vogel Mandler & Rodriguez (RVMR).¹ The law firm advertises that it has one of the largest and most successful ad valorem taxation departments in Florida and it highlights its expertise in administrative appeals before the Value Adjustment Board (VAB) and subsequent litigation in circuit court.

RVMR is actively engaged in representing condominium association members in petitions challenging the Property Appraiser's (PA)² proposed assessments. Florida law authorizes condominium associations (Associations) to file with the VAB a single joint petition on behalf of any association members who own parcels or units. Approval of each individual

¹ The registered agent for Fairness in Taxation is Registered Agents of Florida, LLC. In turn, the LLC Manager for Registered Agents of Florida is the law firm of Rennert Vogel Mandler & Rodriguez.

² All references to the Property Appraiser refer to the Honorable Pedro J. Garcia, Property Appraiser for Miami-Dade County, Florida.

unit owner is not required.³ Accordingly, RVMR has been retained and authorized by Associations to file petitions contesting proposed assessments before the VAB.

When the PA appeals decisions of the VAB to the circuit court, then each individual property or unit owner is the named party defendant and the Association may not stand in the shoes of each owner.⁴ Each owner or "taxpayer" is sued in his or her individual capacity.

This has caused Associations to seek joint representation or class certification in VAB circuit court appeals so that one Association may represent the class of unit owners in circuit court appeals *without* the specific approval of each individual unit owner. The PA and the County have taken a legal position opposite to the joint representation theory advanced by Associations, as precluded by statute, and have prevailed in litigation at the appellate court level.⁵

As such, the PAC has lobbied for a revision to Section 194.011, Florida Statutes, so that an Association can represent a class of unit owners in circuit court appeals of decisions of the VAB, if they filed a joint petition at the VAB level. This statutory amendment was the subject of a committee substitute for a bill filed in last year's Florida legislative session.⁶ Mr. Diaz was retained as a lobbyist by the PAC to support the bill. The PA and the County were opposed to this position.⁷

It is anticipated that a statutory revision of this type will again be a PAC lobbying goal in this legislative session. While none has been filed as of this date, the nature of the legislative process is such that a proposed revision may become the subject of substitute bills much later in session, as occurred last year.

Mr. Diaz points out in his request for a lobbying conflict waiver that one of the County's lobbying goals for the current session is to "Support changes to the current Value Adjustment Board process that promote efficiency and create a more transparent process."

³ Section 194.011(3)(e), Florida Statutes.

⁴ Section 194.181(2), Florida Statutes.

⁵ See Central Carillon Beach Condo. Assoc., et al., v. Pedro J. Garcia, et al., 245 So. 3d 869, (Fla. 3d DCA 2018) (attached). In this litigation, the Associations were represented by RVMR and the PA by the County Attorney's Office.

⁶ Bill No. CS/CS/HB 841 (2018) (attached)

⁷ To be clear, the Commission on Ethics has no position regarding the proposed amendments to Florida Statutes, or the opposing positions advanced by the PAC on the one side and the PA and County on the other.

As such, he suggests that there should not be a conflict between his joint representation of the County and the PAC.

However, in consultations with PA and County subject matter experts, we have learned that the County lobbying goal is geared to refining and making the VAB *administrative hearing process* more efficient not to change the *circuit court VAB appeal process*. Moreover, the PA and the County remain specifically opposed to statutory revisions that would allow Associations to jointly represent individual unit owners in circuit court VAB appeals.



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case: K19-16	Case Name: Lobbyist Nelson D. Diaz conflict waiver request	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s):	Subject(s): Nelson D. Diaz, Kevin Marino – Cabrera	March 8, 2019	March 14, 2019

Allegation(s):

On or about March 6, 2019, Miami-Dade County contract lobbyist Nelson D. Diaz submitted an email to a representative of the County Attorney's Office seeking a conflict waiver from the Board of County Commissioners (BCC). The request for a waiver involved Mr. Diaz and an associate's representation of a client supporting or proposing legislation that would potentially conflict with positions held by the Office of the Property Appraiser (PA) and that could reduce the County's primary source of revenue – namely, ad valorem property taxes.

In his waiver request, Mr. Diaz did not identify his client by name, but described the client as a party "interested in legislation that would allow condo associations to defend unit owners in circuit court when the property appraiser sues the association's members to appeal" a decision by the Value Adjustment Board (VAB). He went on to describe the existing appeals process as being unfair to property owners and "highly inefficient" in its method of resolving lawsuits filed by the Property Appraiser's office against individual property owners. He described the process as onerous to individual property owners seeking reduced assessments.

Mr. Diaz goes on to suggest that his unnamed client's interests are, nonetheless, compatible with the stated legislative priorities of the Property Appraiser's Office as it relates to the VAB in that both seek to "promote efficiency and create a more transparent process." He includes a list of the Property Appraiser's 2019 legislative priorities list to bolster this claim.

Mr. Diaz stated he was seeking a BCC waiver "in an abundance of caution."

Relevant Ordinances:

As required by Miami-Dade County Ordinance No. 00-64, "... no person or entity that received compensation from the County for lobbying on behalf of the County or any of its agencies or instrumentalities at either the state, national or municipal level shall represent any entity in any forum to support a position in opposition to a position of the County unless the Board (of County Commissioners) grants a specific waiver for specific lobbying activity."

Resolution No. R-632-10, adopted by the Board of County Commissioners in June 2010, further authorizes COE to "conduct conflict of interest checks related to County contract lobbyists and provide to the board a report and recommendation on any ... conflict of interest."

Investigation:

Interviews

On March 8, 2019, COE sent an email to the office of Miami-Dade County Property Appraiser Pedro J. Garcia regarding the conflict waiver requested by lobbyist Nelson Diaz. A copy of Mr. Diaz's request letter and supporting items were provided, and Mr. Garcia was asked to opine as to whether his office was in agreement with Diaz's assessment.

Telephone conversation with Deputy Property Appraiser Lazaro Solis

On March 11, 2019, COE was contacted by Deputy Property Appraiser Lazaro Solis, who advised that the Property Appraiser's Office had assumed a position that it believed conflicted with that held by Mr. Diaz's client or clients as it relates to VAB appeals. He agreed to schedule a meeting with Property Appraiser Garcia and COE the following day.

Conversation with Assistant County Attorney Jess McCarty on March 12, 2019

Mr. McCarty replied to a message from COE requesting input as to the existence of any pending legislation relating to the VAB and related litigation. He advised that, at the moment, he was not aware of any such legislation. He said it was too late to file new bills at this point in the legislative session, but noted that it was still possible to file amendments containing language that would relate to the subject at hand. He said it was the County's position, based on discussions with the PA, to oppose any legislation that would give an attorney the authority to represent a condominium association in court as it relates to individual unit owner's property assessment without each individual unit owner's permission as sought by Diaz's client. He said that the issue had been assigned to one of the County's lobbyist firms – Gray Robinson – in particular, Joseph Salzverg and Kim McDougal. McCarty said it was their assignment to flag any such legislation and "kill it" or prevent it from becoming law.

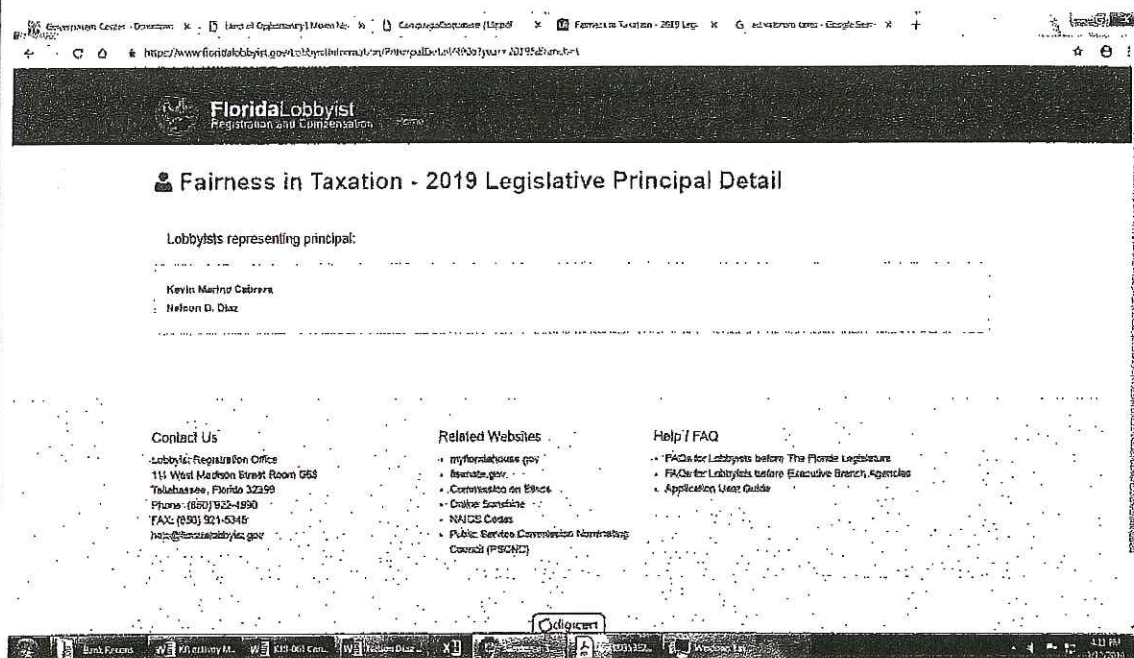
He provided a copy of a Feb. 19, 2018, legislative update to the County's lobbyist team, which stated in item No. 7 under the heading 2019 Bill and Issues Assignments indicating that Gray Robinson was assigned: "Property Appraiser, Value Adjustment Board, Condo representation in Circuit Court." A copy of this update was added to the case file.

Meeting at the office of Property Appraiser Pedro J. Garcia on March 12, 2019

In attendance were Mr. Garcia, Deputy Appraiser Solis, COE Executive Director Jose Arrojo and COE Investigator Karl Ross. It was explained to Mr. Garcia and Mr. Solis that COE was seeking to understand the Property Appraiser's position with respect to Mr. Diaz's client and the prospective legislation that might arise during the present legislative session.

They maintained they believed the potential of a conflict existed with respect to Mr. Diaz's representation of Fairness in Taxation, a state-registered PAC. They noted the PAC has supported legislation in the past that conflicted with the PA's office, and expressed concern about possible future legislation that could promote similar conflicting legislation.

The following screenshot was taken from the Website <https://www.floridalobbyist.gov/> on March 12, 2019, and indicates that Miami-Dade County contract lobbyists Kevin Marino Cabrera and Nelson D. Diaz are registered on behalf of Fairness in Taxation.



Mr. Diaz and his associate, Mr. Cabrera, are similarly registered to represent Miami-Dade County. As such they are required to submit a client list to the Office of Intergovernmental Affairs (OIA) and along with it to describe the "nature of the representation" provided to non-County clients in order to provide transparency and identify potential conflicts of interest. At the time said list was submitted to the OIA, no detailed description was provided except to note that Fairness in Taxation was classified as a PAC by its "industry code."

A copy of their submittal to OIA on or about February 26 was added to the file.

Document/Audio/Video Review:

Corporate records were retrieved from Sunbiz.org and added to the file as relating to the law firm of Rennert Vogel Mandler and Rodriguez PA, and also The Florida Association of Property Tax Professionals, Inc. Mr. Mandler is listed as an officer in both entities.

Mr. Mandler's "representative bio" was also retrieved from an online posting and it noted that Mandler "has also earned a reputation for success in challenging the valuation of real estate and personal property tax assessments on commercial properties throughout Florida."

Similarly, the Website for Rennert Vogel Mandler and Rodriguez notes that the firm "has one of the largest and most successful ad valorem departments in Florida."

A copy of an amendment to HB 841 (2018) was added to the file. The amendment states in applicable part – paragraph two of Page 3 of 6 – that: "Where an association has filed a single joint petition, the association may continue to represent the unit or parcel owners through any related subsequent proceeding, including judicial review ..."

Conclusion(s):

Based on the above-stated findings, it appears that the County has assumed a position contrary to that promoted by Mr. Diaz and Mr. Cabrera's presumed client(s) and that there is a history of adversarial litigation between the presumed clients and the Property Appraiser's office.

The findings were submitted to COE Executive Director Arrojo for review.



Karl Ross, COE Investigator

Approved by:



Michael Murawski, Advocate



Jose Arrojo, Executive Director

