



**CASE
CLOSED**

Miami-Dade Commission on Ethics & Public Trust

Date: 11-25-19

Investigative Report

Investigator: Karl Ross

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|------------------------|--|--------------------------|----------------------------|
| Case: K19-35 | Case Name: Stephen Hunter Johnson | <u>Date Open:</u> | <u>Date Closed:</u> |
| Complainant(s): | Subject(s): Steven Hunter Johnson | Sept. 6, 2019 | |

Allegation(s):

It was alleged that attorney Stephen Hunter Johnson may have improperly lobbied officials of the City of North Miami Beach in connection with a proposal to provide legal services.

Relevant Ordinances:

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 ..."

Investigation:

Interviews

Esmond K. Scott, City Manager
City of North Miami Beach, FL

Mr. Scott advised in a telephone conversation that he had had no interaction with Mr. Johnson in connection with the matter of hiring a city attorney. "I have never spoken with that individual," he said. He added that he had not been advised by any elected or other city officials that they had been approached by Johnson.

Mr. Scott said that the City has received two proposals from law firms seeking to provide legal services. He identified them as "one from a group that may involve him (Johnson/ Lydecker Diaz) and Weiss Serota Helfman Cole & Bierman. He said the City issued no formal bids or other solicitation (RFP or RFQ). He said the proposals were unsolicited.

Mr. Scott further advised that a discussion item pertaining to proposals for legal services was included on the August 30 special meeting agenda, but he noted that the meeting was canceled due to Hurricane Dorian and that the matter was included on the subsequent meeting agenda, Sept. 17, 2019. "It's not on the agenda for tonight," he said.

Mr. Scott reiterated that nobody from either firm had contacted him. He said he did not know the underlying basis of the allegation regarding the city's legal services.

Anthony DeFillipo, Mayor
City of North Miami Beach, FL

Mayor DeFillipo advised that an item had been approved at the September 17 meeting to hold a Special Meeting on October 7 to discuss issuing an RFQ for legal services.

DeFillipo said that at present there are two unsolicited proposals, and that they would also be considered as part of the process. He said Greenspoon Marder had submitted a proposal jointly with Lydecker Diaz, along with a competing submittal by Weiss Serota Helfman.

DeFillipo said he had not been contacted by Stephen Johnson but said that Joe Geller of Greenspoon Marder had reached out to him. He said Geller told him he heard the City was looking for legal representation and requested a meeting with him to discuss. "He just said, 'We know that there's an opportunity for the legal position' and requested a meeting."

DeFillipo said that Geller subsequently provided materials and that he would make copies for COE. He provided those materials the following day. He also advised that Geller contacted him in August 2019 – following his lobbyist registration on July 11, 2019.

DeFillipo stated he had not been approached by Johnson but said he was aware that Johnson had reached out to some of his colleagues and "was trying to influence them."

Sarah Johnston, City Attorney
City of North Miami Beach, FL

Asked about the allegations of unregistered lobbying and Stephen Johnson, City Attorney Johnston advised: "I was made aware that Stephen Johnson reached out to a Commissioner during a meeting." She said Comm. Fortuna Smukler told her that Johnson had attempted to call her during a meeting and that she missed the call.

City Attorney Johnston said that she announced at the August 20, 2019, City Commission meeting that Johnson should register as a lobbyist prior to discussing a pending proposal for legal services with elected officials. She said that he did register after the meeting.

Ms. Johnston also said she had reason to believe that Johnson may have similarly contacted or attempted to contact Commissioners Michael Joseph and McKenzie Fleurimond. She said she would provide information about the meeting in question.

Fortuna Smukler, Commissioner
North Miami Beach, FL

Comm. Smukler, in a telephone interview, advised that she did receive a phone call from Stephen Hunter Johnson during the August 20 City Commission meeting. She said she texted him back that she was in a meeting and unavailable but did speak to him the following day. She said that Johnson advised her that his firm had teamed up with that of Joe Geller and requested a meeting to discuss their joint proposal. She said there was no substantive discussion with Johnson as it related to the proposal for legal services, and that Johnson told her that he intended to register to lobby prior to their upcoming meeting.

Comm. Smukler said the meeting was scheduled for August 30, but that it was subsequently canceled due to a hurricane watch (Dorian). She said Geller dropped off a copy of the proposal at her home the following day, but that she was busy and didn't have time to meet with him. She said she picked it up from Geller who was waiting in his car outside her home.

Comm. Smukler said she knew from a previous phone conversation with Geller in July that Geller was registered to lobby, saying he advised her at that time that he had registered prior to requesting a meeting with her to discuss an item she placed on the July 16 agenda.

She did confirm she had a "discussion item" on the agenda that evening to discuss legal services and that Brett Schneider of Weis Serota was expected to speak on the item. She said she wanted to cancel the item because the meeting was running late. She said that, nonetheless, the Commission voted to extend the meeting past 12 midnight and the item was heard.

Michael Joseph, commissioner
North Miami Beach, FL

Comm. Joseph responded to COE's offices for a voluntary interview regarding the issues raised about possible unregistered lobbying. He said that he had been contacted variously by attorneys Joe Geller and Stephen Johnson about providing legal services, but advised that, as far as he was aware, they had been registered on the issue as the times they spoke. He said he was initially contacted by Joe Geller, who mentioned that his firm would be submitting a proposal and that Mr. Geller mentioned Johnson would be part of the legal team. He said they had a number of brief conversations, but nothing of any real substance.

Comm. Joseph said his calls with Mr. Johnson touched upon the legal services issue, but that they had also discussed other matters such as whether Joseph would join the 100 Black Men service organization and his inclusion as a panelist at an event organized by Congresswoman Frederica Wilson and including U.S. House Speaker Nancy Pelosi. He said neither had discussed the legal services matter with him prior to August.

He advised that the City, at a special meeting last week, issued an RFQ for legal services, and that the City would be considering an in-house attorney or private counsel.

Stephen Hunter Johnson, attorney
Lydecker Diaz

In a telephone interview, Mr. Johnson addressed allegations raised anonymously about possible unregistered lobbying. He stated that at no time, prior to his registration to lobby on August 26, did he attempt to persuade any elected officials to support his firm's joint proposal with Greenspoon Marder to provide legal services. "Did I ask anybody to vote for me and Joe Geller's law firm? Categorically the answer is, 'No.' Period, without a doubt."

Mr. Johnson said that after he registered to lobby on the issue, he did contact Comm. Joseph and Comm. Fleurimond to discuss the matter but said that he mainly was encouraging them to postpone a special meeting for late August as a result of Hurricane Dorian. "All I've ever asked them to do was to have a process and to pick who's best," he said.

Mr. Johnson noted that his firm, Lydecker Diaz, presently serves as outside counsel to the city of North Miami Beach and mainly handles litigation and insurance matters. He said that Joe Geller approached him about submitting a joint proposal, which they ultimately did.

Contact with City Clerk Bernarnd on 10/02/19 regarding Public Records Request

Follow up call to NMB City Clerk Andrise Bernard regarding a Sept. 26, 2019, public records request for the monthly billings statement and activity logs for any phones used for City business by Commissioners Smukler, Joseph, and Fleurimond. She indicated that she was in receipt of the public records request and would attempt to obtain the responsive records from the elected officials in question. She said she did not have the records at this time.

On October 15, COE received, via fax machine, copies of the requested phone records from NMB Comm. Joseph for phone numbers (305) 720-3712 and (786) 897-3773. The records reflected communication with both Stephen Hunter Johnson and Joe Geller, as follows:

- No calls appearing on statement for (305) 720-3712.
- Numerous phone conversations with Johnson and Geller on (786) 897-3773

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|-----------|-------------------------|------------|----------------|-----------|
| 15-aug-19 | Call to Joe Geller | 8:29 a.m. | (305) 409-4431 | 3 minutes |
| 20-aug-19 | Call to Joe Geller | 9:42 a.m. | (305) 409-4431 | 3 minutes |
| 21-aug-19 | Call to Joe Geller | 11:27 a.m. | (305) 409-4431 | 8 minutes |
| 22-aug-19 | Call to Joe Geller | 11:47 a.m. | (305) 409-4431 | 8 minutes |
| 26-aug-19 | Call to Joe Geller | 9:57 a.m. | (305) 409-4431 | 2 minutes |
| 27-aug-19 | Call to Steve Johnson | 12:43 p.m. | (305) 987-1260 | 7 minutes |
| 28-aug-19 | Call to Steve Johnson | 12:04 p.m. | (305) 987-1260 | 7 minutes |
| 28-aug-19 | Call from Steve Johnson | 1:31 p.m. | (305) 987-1260 | 4 minutes |
| 29-aug-19 | Call from Steve Johnson | 1:15 p.m. | (305) 987-1260 | 4 minutes |
| 29-aug-19 | Call from Steve Johnson | 4:25 p.m. | (305) 987-1260 | 7 minutes |
| 30-aug-19 | Call to Steve Johnson | 12:12 p.m. | (305) 987-1260 | 6 minutes |
| 20-aug-19 | Call from Steve Johnson | 7:57 p.m. | (305) 987-1260 | 4 minutes |

Also noted from the phone records for were six (6) calls to and from the main number of the Miami-Dade Ethics Commission (COE) on August 21 and 22.

Document/Audio/Video Review:

Examination of City of North Miami Beach lobbyist registration records

On Sept. 25, COE reviewed the city's lobbyist registration list and found the following:

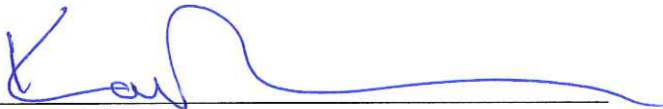
- Joe Geller of Greenspoon Marder LLP registered on July 11, 2019, to lobby the city with respect to "City Attorney Contract," the record states.
- Stephen Hunter Johnson of Lydecker Diaz registered on Aug. 26, 2019, regarding "Provision of Legal Services (Municipal)," the record states.

A public records request was submitted to the North Miami Beach city clerk's office on Sept. 26, 2019, requesting copies of phone records/ billing statements for August 2019 for NMB commissioners Fortuna Smukler, Michael Joseph, and McKenzie Fleurimond.

On Sept. 26, COE obtained a copy of a proposal for City Attorney Legal Services submitted to the City of North Miami on Aug. 27, 2019. The proposal was described in a cover letter signed by state Rep. Joseph Geller as "a collaboration between Greenspoon Marder LLP and Lydecker Diaz LLP." It further stated that: "Greenspoon Marder would be City Attorney and Lydecker Diaz would handle litigation and insurance defense."

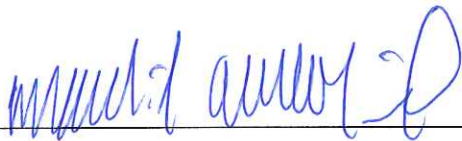
Conclusion(s):

The above findings do not support the anonymous allegation that Stephen Hunter Johnson improperly lobbied any NMB elected officials or staff in connection with a proposal to provide the City with legal services. After discussion with the Ethics Advocate it was determined that this matter would be closed with no further action.

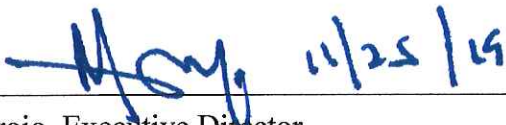


Karl Ross, COE Investigator

Approved by:



Michael Murawski, Advocate



Jose Arrojo, Executive Director