



Miami-Dade Commission on Ethics & Public Trust
Investigative Report

**CASE
CLOSED**

Date:

3/5/19

Investigator: Susannah Nesmith

Case No.: PI 19-08

Complainant: Det. Joshua Koop, Miami Shores PD

Subject/Case Name: Shores pension

Date Opened: Feb. 14, 2019

Date Submitted: March 5, 2019

Allegation(s):

Miami Shores improperly hired an attorney who works at the same law firm where one of the council members was the Miami managing shareholder.¹

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:

On March 3, 2019, this investigator spoke with the complainant about the documents he had forwarded to me (the relevant ones are listed below) and his concerns about the process for amending the Village's pension plan to allow for employees to participate in the DROP and then retire and be immediately rehired by the Village.

This investigator watched the video of the November 6, 2018 meeting when the change to the pension plan was heard on first reading and attended the February 5, 2019 meeting. At both meetings the Village council was informed that the change to the pension plan was necessary to protect the pension's continued status as non-profit in the eyes of the IRS. It was also explained that failure to make the change would force employees who took advantage of past practice, without knowing that the practice had not been codified in the ordinance, could be forced to pay back DROP money they had received, or have their future pension payments docked.

¹ Steven Zelkowitz is a Village Commissioner and was the Managing Shareholder in the Miami office of Gray Robinson. Richard E. Burke is the Gray Robinson attorney the Village engaged to assist them in resolving their pension issues. Zelkowitz was not an elected official at the time the Village retained Mr. Burke and did not vote or participate in the decision to hire Burke.

Documents/Exhibit Review:

Thirty-one invoices to the Village of Miami Shores for the services of Gray Robinson attorney Richard E. Burke, totally approximately \$145,000 and cover a period between February 2015 to November 2018.

The general employee and police DROP summaries.

Undated memo from Richard E. Burke to Village Manager Tom Benton laying out the steps the IRS requires under it's "Voluntary Correction Program" that includes a retroactive ordinance to conform the terms of the retirement plans to the way they were actually operated.

Campaign records from the 2015 Miami Shores election, in which Steven Zelkowitz ran for commission. Mr. Burke was not a contributor to his campaign.

A February 19, 2019 email from Mr. Zelkowitz to Paul Calli and copied to COE Executive Director Jose Arrojo. In it, Mr. Zelkowitz explains that Mr. Burke was engaged by the Village on the pension issue before Mr. Zelkowitz was elected. Mr. Zelkowitz also said "With respect to your questions, Mr. Burke was resident in the Orlando office of Gray Robinson and I was in the Miami office and, yes, I was the Managing Shareholder of the Miami office. I never spoke with Mr. Burke or any other Gray Robinson attorney about the matter. I do not even recall ever meeting Mr. Burke. Gray Robinson had over 300 attorneys at the time and I did not know them all, especially those in other offices. The firm implemented the necessary ethical wall protocols. I did not receive any origination credit or personal gain with respect to the work that Mr. Burke performed for the Village."

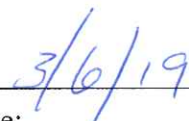
The online biography of Mr. Burke, states "the majority of his practice currently involves governmental (retirement) plans. The rules that apply to theses arrangements are significantly different than the requirements applicable to private sector retirement programs, which makes this area a specialty practice within a specialty practice."

Conclusion:


After discussion with the Ethics Advocate, it was determined that this matter would be closed with no further action. Since the hiring of Burke pre-dated Zelkowitz' election to office, Zelkowitz did not engage in any conflicting behavior. The past practice of the Village regarding the re-hire of retired employees, is a policy decision made by the Village, not an ethics matter.



Susannah Nesmith, COE Investigator



Date:

Approved by:


Michael Murawski, Advocate

 3/5/19

José Arrojo, Executive Director