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**MIAMI-DADE COUNTY
COMMISSION ON
ETHICS & PUBLIC TRUST**

IN RE: SERGIO ROK

C 07-18

PUBLIC REPORT & FINAL ORDER ACCEPTING SETTLEMENT AGREEMENT

The ADVOCATE filed the above-referenced COMPLAINT against RESPONDENT Sergio Rok, a member of the Downtown Development Authority (DDA), a City of Miami Board, alleging violations of the City of Miami Conflict of Interest Code at Section 2-611 (a).

The grounds for the COMPLAINT arose from a City audit conducted in June 2007. The COMPLAINT contended that during 2006-2007 while RESPONDENT Rok was a member of a City Board and, simultaneously, the manager of the Flagler First Corporation, LLC (FFC), he twice renewed a City of Miami contract on behalf of the FFC. According to County Ethics Opinion RQO 98-18, the renewal of a preexisting contract constitutes a "new agreement."

Pursuant to the Code of Miami-Dade County, Section 2-1068, the jurisdiction of the Commission on Ethics & Public Trust extends to "any person required to comply with the County or municipal Code of Ethics Ordinances [and the] Conflict of Interest Ordinances...." The City of Miami Conflicts of Interest Code at Section 2-611 (e) states that violations of the City's Conflicts of Interest Code "may be considered by and subject to action by the Miami-Dade County Commission on Ethics."

RESPONDENT Rok's alleged behavior violates the City of Miami Conflicts of Interest Code at Section 2-611, which is "applicable to and binding upon every officer, official and employee of the city, including every member of any board, commission or agency of the city."¹ Specifically, at Section 2-611 (a) the Code states that no board members "shall enter into any contract or transact any business with the city or any person or agency acting for the city."

¹ Subsequent to the alleged actions of RESPONDENT Rok, the City of Miami Attorney's Office issued Legal Opinion No. 07-002 stating that members of the Miami Downtown Development Authority are municipal board members.

The Commission on Ethics found legal sufficiency in the matter on September 20, 2007, and probable cause on October 24, 2007. On November 27, 2007, the Ethics Commission entered into a SETTLEMENT AGREEMENT with the RESPONDENT in which the RESPONDENT maintained that he acted in good faith but acknowledged that his actions constituted a violation of the City of Miami's Ethics Code. The Commission on Ethics agreed to dismiss the second charge against the RESPONDENT in exchange for RESPONDENT's agreement not to contest the first charge against him, to pay a fine of two hundred fifty dollars (\$250.00), and to accept a LETTER OF INSTRUCTION in full satisfaction of the COMPLAINT.

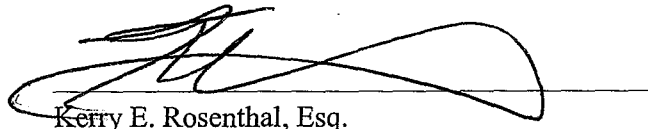
Therefore it is:

ORDERED AND ADJUDGED THAT the Ethics Commission finds the RESPONDENT's plea of no contest, fine of two hundred fifty dollars (\$250.00), and acceptance of a LETTER OF INSTRUCTION full satisfaction of the COMPLAINT.

DONE AND ORDERED by the Miami-Dade County Commission on Ethics & Public Trust in public session on December 19, 2007.

MIAMI-DADE COUNTY COMMISSION ON
ETHICS & PUBLIC TRUST

By:



Kerry E. Rosenthal, Esq.

Chairman



MIAMI-DADE COUNTY
COMMISSION ON ETHICS & PUBLIC TRUST

MIAMI-DADE COUNTY COMMISSION ON ETHICS AND PUBLIC TRUST

GENERAL LETTER OF INSTRUCTION

The Office of the Independent Advocate filed complaint number C07-18 with the Miami-Dade County Ethics Commission against a member of the City of Miami's Downtown Development Authority (DDA). The grounds for the complaint arose from an audit conducted in June of 2007 by City of Miami Auditor Victor Igwe. The complaint alleged a violation of Section 2-612(a) of the Miami Code.

Facts:

In approximately June 2007 City of Miami Auditor Victor Igwe released an audit report that cited several appearances of conflicting interests. Included among those instances was Mr. Igwe's observation that a member of the City's DDA was also corporate officer for **Flagler First Corporation, L.L.C. (FFC)**. Mr. Igwe observed that FFC had a contract with the City and that the DDA was a City Board.

In approximately January 2002, **Flagler First Condominiums, L.L.C (FFC)**, was created. In 2003, 2004 and 2005, the DDA board members father, was listed as the manager of FFC. In the 2006 limited liability annual report, the father is deleted as manager and the DDA board member is listed as the manager of FFC. The DDA board member is also listed as manager in the 2007 annual report.

1. On or about December 2002, the City entered into an agreement with FFC whereby, among other things, FFC was to receive approximately \$1,800,000 (one million eight hundred thousand dollars) to develop a certain number of residential condominium units as affordable housing (the Project). The original intent was to complete the Project within thirty (30) months or by June 2005.
2. In early June 2005 when it became apparent that the Project could not be completed because of certain delays, the City and FFC entered into Amendment #1 extending the completion date of the project to December 23, 2006.
3. At the time that the DDA board member signed Amendment #1 he was a member of the DDA. In a memorandum dated March 20, 2007 from City Attorney Jorge Fernandez he opined that members of the City's DDA are municipal board members. On or about January 2007, the City and FFC entered into Amendment #2 which further extended the Project completion date to June 30, 2007. The DDA member was a member at the time that he signed Amendment #2

Relevant Ordinances:

Sections 2-611 and 2-612 of the City of Miami Code read as follows:

Sec. 2-611. Applicability of article. This article shall be applicable to and binding upon every officer, official and employee of the city, *including every member of any board, commission or agency of the city.* (emphasis added)

Sec. 2-612. Transacting business with city; appearances before city boards; post-employment restrictions; participation in the award of certain contracts under the procurement ordinance; penalties, etc.

- (a) No person included in section 2-611 shall enter into any contract or transact any business with the city or any person or agency acting for the city, or shall appear in representation of any third party before any board, commission or agency of which such

person is a member. No employee shall appear in any capacity on behalf of any third party before any board, commission or agency of the city. Any such contract or agreement entered into or appearance made in violation of this section shall render the transaction voidable...

In Ethics Request for Opinion (RQO) #98-19 the Ethics Commission held that an extension of a pre-existing contract with Miami-Dade County constituted a new agreement such that a County vendor who was not a County employee at the time that her initial contract with the County was entered into, was subsequently barred from extending her contract with the County when the initial contract term was set to expire. Pursuant to RQO 98-19, the extension of a pre-existing contract constitutes a "new agreement" which the DDA board member was prohibited from entering into while he was a member of a City board i.e. the DDA.

Conclusion:

The subject DDA board member was a member of a City Board in December 2006 as well as January 2007. He should not have entered Amendment #1 and Amendment #2 of the original 2002 contract between FFC and the City as it created a conflict of interest under Section 2-612(a) of the City code. After hearing testimony from the subject DDA member, the Ethics Commission determined that the DDA as a whole could benefit from an explanation of the relevant conflict of interest rules and ordinances that apply to DDA members. Accordingly, the Ethics Commission issues this General Letter of Instruction to highlight sections 2-611 and 2-612 of the City of Miami Code and emphasize their applicability to the DDA as well as other City boards. The Ethics Commission highly recommends the City provide training and instruction to all its' board members to reduce the occurrence of similar conflicts.