

BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS
FRANK D. REEVES MUNICIPAL BUILDING
2000 FOURTEENTH STREET, N.W., SUITE 433
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF:

The Honorable Yasmin Romero-Castillo
Advisory Neighborhood Commission 1D01
3354 Mount Pleasant Street, N.W., #9
Washington, DC 20010
Respondent

Docket No.: FI-2012-116

ORDER

I. Introduction

This matter was docketed on July 17, 2012 pursuant to a complaint filed by Terrance Lynch alleging that Yasmin Romero-Castillo, Advisory Neighborhood Commissioner, 1D01, may have violated the District of Columbia's conflict of interest statute, D.C. Official Code §§ 1-1162.23 et seq. by voting on matters in which she is alleged to have a personal financial interest as an officer of the 3145 Mount Pleasant Street Tenants' Association, Inc. (hereinafter referred to as Tenants' Association). Specifically, it is alleged that on May 15, 2012, Commissioner Romero-Castillo introduced [to ANC 1D] and voted in favor of the following resolutions: (1) "Approve Application for Low Income Housing Tax Credits for 3145 Mount Pleasant Street", and (2) "Do Not Designate 3145 Mount Pleasant Street as Blighted, or Vacant". Further, the complaint alleged that Commissioner Romero-Castillo has an ownership interest in the referenced real property by virtue of her affiliation with the Tenants' Association, and that her approval of these actions would result in "millions in financing for the property's rehabilitation" and "tens of thousands of dollars" in property tax relief for the owners of this property.

II. Findings of Fact

On June 27, 2002, the 3145 Mount Pleasant Tenants' Association, Inc. was organized and incorporated in the District of Columbia¹ (Exhibit 1). The organization was established to help the tenants of 3145 Mount Pleasant Street, N.W. to collectively address poor building conditions, rent increases, and illegal evictions.

On March 13, 2008, a massive fire destroyed the four-story apartment building known as the Deauville Apartments located at 3145 Mount Pleasant Street, N.W. According to media reports, nearly 200 people were displaced and left homeless in what has been called the "first five-alarm blaze in the District in nearly 30 years." It was stated further that the owner of the apartment building, who lives in Pennsylvania, planned to rebuild the building, and that it could take up to 18 months to do so.

On June 15, 2010, ANC 1D introduced and voted on a formal resolution to the District of Columbia Department of Housing and Community Development (DHCD) entitled: "Approve 3145 Mount Pleasant Street Tenants' Association Funding²" (Exhibit 2). The purpose of the resolution was to urge DHCD to approve the application of the Tenants' Association for acquisition funding to develop property located at 3145 Mount Pleasant Street, N.W., Washington, D.C. to provide 100% low-income rental housing. The resolution was passed by a 5-to-0 vote by ANC 1D Commissioners Edwards, Lepanto, Bosserman, Tunda and McKay.

On June 17, 2010, the District of Columbia Department of Housing and Community Development proposed a District of Columbia Community Development Block Grant loan in the

¹ Articles of Incorporation of 3145 Mount Pleasant Street Tenants' Association, Inc.

² Minutes of ANC 1D meeting on June 15, 2010

amount of \$4,137.00 to the 3145 Mount Pleasant Street Tenants' Association, Inc. to fund the acquisition of real property located at 3145 Mount Pleasant Street, N.W., Washington, D.C.³ (Exhibit 3). The proposal included a ninety (90) day conditional commitment for the referenced loan to fund the acquisition of the property at 3145 Mount Pleasant Street, N.W. Further, the proposal indicated that the property is to be used as permanent housing for persons with income levels at or below 80% of the Area Median Income for the Washington Metropolitan Statistical Area (AMI).

On July 2, 2010, the Secretary of the District of Columbia transmitted a Council Contract Summary⁴ to the District of Columbia Council of the proposed loan agreement for \$4,137,000 between the Department of Housing and Community Development (DHCD) and 3145 Mount Pleasant Street Tenants' Association, Inc. from the Community Development Block Grant program⁵ for a ten-day Council review period (Exhibit 4). The proposed contract would be deemed approved on July 12, 2010, unless a resolution of approval or disapproval is introduced within the ten day review period. According to the contract summary, DHCD would provide 100% funding for costs associated with the acquisition of sixty-seven units of affordable housing located at 3145 Mount Pleasant Street, N.W.

On July 26, 2010, a deed was executed between Deauville Partners, LLC located in Glenside Pennsylvania and 3145 Mount Pleasant Street Tenants' Association, Inc. conveying the property located at 3145 Mount Pleasant Street, N.W., Washington, D.C. to 3145 Mount Pleasant Street Tenants' Association, Inc.⁶ (Exhibit 5).

³ DHCD proposal for Community Development Block Grant Loan to 3145 Mount Pleasant Street Tenants' Association, Inc. dated June 17, 2010

⁴ Council Contract Summary submitted by DHCD to the District of Columbia Council dated July 2, 2010

⁵ A Block Grant is a consolidated grant of federal funds, formerly allocated for specific programs, that a state or local government may use at its discretion for such programs as education or urban development.

⁶ Deed to property located at 3145 Mount Pleasant Street, N.W., Washington, D.C.

On November 2, 2010, Yasmin Romero-Castillo was elected to office as ANC Commissioner representing Single Member District (SMD) 1D01. Ms. Romero-Castillo was elected to serve a 2-year term commencing on January 2, 2011 through January 2, 2013.

On November 16, 2010, ANC 1D introduced and voted on a formal resolution entitled, “No Vacant Property Tax for the Deauville”, to advise the DC Department of Consumer and Regulatory Affairs (DCRA) to exempt property located at 3145 Mount Pleasant Street, N.W. from the vacant building registration requirements of D.C. Official Code §42-3131, and to remove and exempt it from the vacant building lists compiled pursuant to D.C. Official Code §§ 42-3131.16 and 42-3131.16a⁷ (Exhibit 6). The resolution passed by a 4-to-0 vote by ANC 1D Commissioners Bosserman, McKay, Edwards and Scott.

On May 15, 2012, at a meeting convened by ANC 1D, Commissioner Jack McKay introduced a resolution on the record: “Approve Application for Low Income Housing Tax Credits for 3145 Mount Pleasant Street” (Exhibit 7). The purpose of the resolution was to advise the DC Department of Housing and Community Development (DHCD) to approve the application of the National Housing Trust/Enterprise Preservation Corporation (NHTE) and the Tenants’ Association for the federal 9% low income housing credits to finance the redevelopment of affordable housing [at] the site of the former Deauville Apartments [to be renamed the Monsenor Romero Apartments].⁸ The resolution passed by a 4-to-0 vote by Commissioners Terrell, Phelan, Romero-Castillo, and McKay, with Commissioner Edwards abstaining from voting (emphasis added).

⁷ Minutes of ANC 1D meeting on November 16, 2010

⁸ Minutes of ANC 1D meeting on May 15, 2012

Additionally, on May 15, 2012 at its ANC meeting, Commissioner Jack McKay offered a resolution on the record: “Do Not Designate 3145 Mount Pleasant Street as Blighted, or Vacant.” The purpose of the resolution was to advise the DC Department of Consumer and Regulatory Affairs (DCRA) and the DC Office of Tax and Revenue (OTR) not to designate the property located at 3145 Mount Pleasant Street, NW as “blighted”, and to remove and exempt the property from the vacant building registration requirements in D.C. Official Code §§ 42-3131.16 and 42-3131.16(a) respectively.⁹ The resolution was passed by a 5-to-0 vote by Commissioners Terrell, Phelan, Romero-Castillo, McKay and Edwards (emphasis added).

On May 22, 2012, at a special meeting of ANC 1D, Commissioner Phelan moved that three (3) resolutions passed during the May 15, 2012 meeting concerning: (1) support of the application for tax credits for 3145 Mount Pleasant Street, (2) designation of 3145 Mount Pleasant Street as blighted, and (3) authorization of a letter to DHCD supporting the application of tax credits to NHTE and the Tenants’ Association be rescinded (Exhibit 8). Whereupon, the motion to reconsider the referenced resolutions passed by a 4-to-0 vote. Further, at this meeting, Commissioner Romero-Castillo read a statement into the record concerning her belief that she did not have a conflict of interest by voting on matters involving the Deauville Apartments at the May 15, 2012 meeting. Notwithstanding, she stated that she would neither participate in the discussion nor vote on these matters to avoid jeopardizing the ANC’s vote on the property.¹⁰ Thereupon, Commissioner Romero-Castillo left the meeting.

On August 7, 2012, OCF issued a Notice of Hearing, Statement of Violations and Order of Appearance to compel Commissioner Romero-Castillo’s (hereinafter referred to as Commissioner) appearance at a hearing scheduled for August 20, 2012.

⁹ Minutes of ANC 1D meeting on May 15, 2012

¹⁰ Minutes of ANC 1D special meeting on May 22, 2012

On August 14, 2012, after obtaining information that English was not the Commissioner's primary language, OCF issued a Notice of Postponement of the August 20, 2012 hearing to procure the services of a Spanish-speaking interpreter. On August 28, 2012, OCF issued a final Notice of Hearing to schedule the appearance of the Commissioner on September 10, 2012.

On September 10, 2012, a letter from the Acting Director of the District of Columbia Department of Housing and Community Development (DHCD) to the National Housing Trust/Enterprise Preservation Corporation (NHTE) was issued (Exhibit 9). The letter stated that NHTE was selected to receive \$997,302 in funding, in the form of low income housing tax credits, to support NHTE's construction of a new building of affordable housing units located at 3145 Mount Pleasant Street, N.W.¹¹

On September 10, 2012, the Commissioner appeared at OCF's hearing, accompanied by Blake A. Biles, Esq. of Arnold & Porter LLP, counsel to the Tenants' Association. Also present was Erik Sejas-Moscoso, of Multicultural Community Service, who served as English/Spanish interpreter during the proceeding.

Commissioner Romero-Castillo stated that she is a Salvadoran-American, and that she was elected to serve ANC 1D01 in 2010. Further, she stated that she is currently a candidate for ANC member to represent SMD 1D01 in the 2012 General Elections. The Commissioner added that she has lived in the District of Columbia for 16 years, and that for 12 of those years she resided at the

¹¹ The National Housing Trust/Enterprise Preservation Corporation is a joint effort of the National Housing Trust and Enterprise Community Partners, Inc., which collaborates with local partners and investors to raise the capital necessary to buy and renovate affordable apartments that are at risk of being converted to market rate, or that are deteriorating.

Deauville Apartments located at 3145 Mount Pleasant Street, N.W. Moreover, the Commissioner was a tenant at the Deauville Apartments when it was destroyed by fire in 2008.

The Commissioner stated that she is the current President of the 3145 Mount Pleasant Street Tenants' Association, and that she has held that position since June 2002. She added that her role as president is to represent the tenants of the apartment building against any problems. Further, the Commissioner stated that she and the Tenants Association's Board of Directors represent the tenants, along with a team of lawyers at Arnold & Porter, and a non-profit organization, the National Housing Trust (NHT), when meeting with District of Columbia Government officials to protect the rights of tenants and "to get the building back as it was promised."

Commissioner Romero-Castillo further stated that there was a loan from the government to purchase the land on which the former Deauville apartment building was located. The loan was made to the National Housing Trust (NHT) on behalf of the Tenants' Association. The Commissioner added that the tenants of the former Deauville Apartments are low-income families with no ability to contribute financially to the rebuilding of the destroyed apartment building.

Commissioner Romero-Castillo testified that there was "someone" concerned that she should not have deliberated and voted on matters involving 3145 Mount Pleasant Street, N.W. Consequently, Commissioners representing ANC 1D consulted with Gottlieb Simon, Executive Director of the District's Office of Advisory Neighborhood Commissions, on the handling of such concern. On May 22, 2012, as a result of consultation with Mr. Simon, an emergency meeting of ANC 1D was convened where certain matters voted on at the May 15, 2012 meeting were re-introduced and re-voted. The Commissioner stated that she was not present at the subsequent meeting, and thereby did not participate in any manner relative to the matters requiring official action.

During the hearing, Blake A. Biles, Esq., counsel to the Tenants' Association, clarified that the building (the former Deauville Apartments) was purchased in 2010 from the owner through a loan from the D.C. Government, facilitated by National Housing Trust (NHT), which made the application. According to Mr. Biles, transactions of this type with the government normally include the simultaneous acquisition and reconstruction of the building. However, he stated, in this case, NHT only received money to acquire the building (i.e., the land), and has made applications for money to rebuild (the apartment dwelling). Mr. Biles further added that the foregoing situation has existed for two (2) years, and "rather than have NHT work through a subsidiary holding out of the building, the ownership of the building was transferred to the Tenants' Association, where none of the [former] tenants have any financial interest in the association." Moreover, Mr. Biles stated that if funds are obtained from the D.C. Government to rebuild the apartment building, the deed will be transferred to a new, non-profit limited liability company (LLC) created to build it.

On September 20, 2012, the hearing officer conducted a telephone interview with Gottlieb Simon, Executive Director of the District of Columbia Office on Advisory Neighborhood Commissions. Mr. Simon stated that he did not attend ANC 1D's meeting on May 15, 2012, but he became aware of the situation involving Commissioner Romero-Castillo sometime following that meeting. He stated that he consulted with ANC 1D Commissioners and advised that Commissioner Romero-Castillo's alleged conflict of interest could be cured by convening a special meeting where actions of the previous meeting are rescinded on the record, and those matters re-introduced and re-voted. Mr. Simon recalled that Commissioner Romero-Castillo persisted in her belief that she did not have a conflict of interest. Consequently, she was advised to make such statement on the record at the subsequent meeting, and to remove herself from further participation at that meeting.

III. Conclusions of Law

D.C. Official Code § 1-1161.01(43) defines the term, “person” as an “individual, . . . , corporation, . . . and any other organization.”

The 3145 Mount Pleasant Street Tenants’ Association, Inc., for which Commissioner Romero-Castillo serves as an officer, has been a duly registered corporation in the District of Columbia since June 27, 2002. Consequently, we conclude that 3145 Mount Pleasant Street Tenants’ Association, Inc. is considered a “person”.

D.C. Official Code § 1-1161.01(47)(E) provides that a “public official” means “[a]n Advisory Neighborhood Commissioner.

On November 2, 2010, Yasmin Romero-Castillo was elected to serve a two-year term as ANC Commissioner representing Single Member District (SMD) 1D01. Her term commenced on January 2, 2011 and terminates on January 2, 2013.¹² Therefore, we conclude that Commissioner Romero-Castillo is a public official.

D.C. Official Code § 1-1162.23(a) provides, “[n]o employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, . . . application, . . . or other particular matter, or attempt to influence the outcome of a particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee’s financial interests or the financial interests of a person closely affiliated with the employee” (emphasis added).

¹² See certification of D.C. Board of Elections posted on November 25, 2011

D.C. Official Code § 1-1161.01(11)(A) states the term, [d]irect and predictable effect means “there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest;”

D.C. Official Code § 1-1161.01(18) defines an “employee” as “a person who performs a function of the District government and who receives compensation for the performance of such services . . .”.

D.C. Official Code § 1-1161.01(43) provides that a person closely affiliated with the employee means . . . an affiliated organization.”

While Commissioner Romero-Castillo is not an employee of the District of Columbia as defined by D.C. Official Code § 1-1161.01(18), she, nonetheless, is a public official held to certain standards in D.C. Official Code § 1-1162.23(a), the District’s conflict of interest statute. These laws prohibit the use of the Commissioner’s official position, or her personal and substantial participation in matters, to influence the outcome of a particular matter where she or a “person closely affiliated with her”, may have a financial interest. Further, the prohibition includes official participation in matters likely to have a “direct and predictable effect” on certain financial interests.

The Articles of Incorporation of 3145 Mount Pleasant Street Tenants’ Association, Inc., as well as testimony obtained during OCF’s hearing, clearly substantiate that Commissioner Romero-Castillo is an officer, specifically, the President, of the Tenants’ Association. Therefore, pursuant to D.C. Official Code § 1-1161.01(43), the Tenants’ Association is considered a “person closely affiliated” with the Commissioner.

On July 26, 2010, the Tenants' Association acquired the deed to property located at 3145 Mount Pleasant Street, N.W., thereby evidencing ownership of such property by the Tenants' Association. Notwithstanding, the Articles of Incorporation of the Tenants' Association specifically state, "no part of the income or assets of the corporation shall inure to the benefit of or be distributable to its members, directors or officers or other private persons . . ." (emphasis added). Therefore, the Commissioner is removed from any personal financial benefit inuring to the Tenants' Association by virtue of its ownership of the property at 3145 Mount Pleasant Street, N.W.

The resolution offered by ANC 1D on May 15, 2012 relative to its support for DHCD's approval of the application for low income housing tax credits for 3145 Mount Pleasant Street, N.W., in fact, would benefit the Tenants' Association as owners of such property. Similarly, ANC 1D's resolution urging the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) not to designate 3145 Mount Pleasant Street as blighted or vacant, also would benefit the Tenants' Association because doing so would allow the current plans for restoration and rebuilding to proceed on the property owned by the Tenants' Association. Further, such designation would remove the bureaucratic red tape associated with registration and fee payment requirements relative to this property, thereby indirectly benefitting the Tenants Association.

According to the Minutes of its meeting on May 15, 2012, ANC 1D proposed the foregoing resolutions for official action relative to the property located at 3145 Mount Pleasant Street, N.W., among other reasons, to support and promote the forward progress of an increasingly "fragile financial package." Commissioner Romero-Castillo voted affirmatively on these matters, and by doing so violated the prohibitions in D.C. Official Code § 1-1162.23(a) against participating in matter(s) likely to have a "direct and predictable effect" on the financial interests of a "person closely affiliated with her", i.e., the Tenants' Association. Further, her vote influenced the outcome

of matters affecting the financial interests of the Tenants' Association, thereby precipitating an actual conflict of interest.

Notwithstanding, at a special meeting convened on May 22, 2012, ANC 1D rescinded all actions taken at the May 15, 2012 meeting affecting the property at 3145 Mount Pleasant Street, N.W., and re-introduced those matters for official action at the instant meeting. According to the Minutes of the May 22, 2012 meeting, Commissioner Romero-Castillo read a statement into the record, and thereupon removed herself from further participation in the meeting. Consequently, she effectively recused herself from any official action which would affect the outcome of the re-introduced matters relative to the Tenants' Association.

It has been well established through documentary and testimonial evidence that Commissioner Romero-Castillo has no personal financial interest in the Tenants' Association, nor in the property owned by it located at 3145 Mount Pleasant Street, N.W. Consequently, the Commissioner's timely decision to follow recusal procedures at a subsequent meeting in an apparent conflict of interest situation (involving complex financial transactions between the District of Columbia Government and other interested organizations) cured the conflict of interest violation.

D.C. Official Code § 1-1162.23(c)(1) provides that "[a]ny elected official who, in the discharge of the elected official's official duties, would be required to act in any manner prohibited under subsection (a) of this section shall make full disclosure of the financial interest, prepare a written statement describing the matter and the nature of the potential conflict of interest, and deliver the statement to: (B) In the case of an elected official other than a member of the Council, the Ethics Board."

D.C. Official Code §1-1161.01(19) states the "Ethics Board" means the District of Columbia Board of Ethics and Government Accountability established by §1-1162.02.

Notwithstanding the Commissioner's belief that she did not have a conflict of interest relative to the Deauville Apartments or the Tenants' Association, she read a statement into the record of ANC 1D on May 22, 2012 indicating that she would not participate or vote on matters involving 3145 Mount Pleasant Street, N.W. to avoid jeopardizing the vote on the property.¹³ The minutes of ANC 1D further reflect that after reading the referenced statement, the Commissioner left the meeting. Commissioners McKay, Phelan, Edwards and Terrell, thereby constituting a quorum, continued with the business of ANC 1D. Consequently, we conclude that Commissioner Romero-Castillo followed recusal procedures outlined in the conflict of interest statute.

Based on the foregoing, we conclude the following: (1) that Commissioner Romero-Castillo did not introduce certain resolutions to ANC 1D involving property located at 3145 Mount Pleasant Street, N.W., (2) that on May 15, 2012, the Commissioner voted on matters involving property located at 3145 Mount Pleasant Street, N.W. owned by the Tenants' Association, thereby violating the conflict of interest statute; (3) that on May 22, 2012, Commissioner Romero-Castillo recused herself from official action(s) on matters involving the property at 3145 Mount Pleasant Street, N.W. when she read a statement into the official record of ANC 1D and abstained from further participation at this meeting; (4) that Commissioner Romero-Castillo cured the conflict of interest occasioned by her prior vote(s) on matters involving the Tenants' Association as a result of her timely rehabilitative actions.

Nonetheless, we caution the Commissioner to carefully consider all official actions that she may take in the future in view of current conflict of interest law(s) which reach not only official actions which may affect her own personal financial interests, but those of any person, including an organization, with which she is closely affiliated.

¹³ Minutes of ANC 1D meeting on May 22, 2012

IV. Recommendation

In view of the foregoing and information included in the record, I hereby recommend that the Director dismiss this matter.

Date	/s/ Jean Scott Diggs Senior Hearing Officer
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V. Concurrence

In view of the foregoing, I hereby concur with the Recommendation.

Date	/s/ William O. SanFord General Counsel
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VI. Order

Based upon the foregoing findings of fact and conclusions of law, it is this 9th day of October, 2012:

ORDERED, that this matter be hereby dismissed.

Dated: October 9, 2012

/s/ Cecily Collier-Montgomery Director Office of Campaign Finance
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This Order may be appealed to the Board of Elections within 15 days from the date of issuance.

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order by email and by regular mail on October 9, 2012 on the following:

The Honorable Yasmin Romero-Castillo
Commissioner, ANC 1D01
3354 Mount Pleasant Street, N.W., #9
Washington, D.C. 20010

Mr. Terrance Lynch
1737 Kenyon Street, N.W.
Washington, D.C. 20010

Blake A. Biles, Esq.
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004

_____/s/_____

NOTICE

Any party adversely affected by an Order of the Director may obtain review of the Order by filing a “Request for a Hearing de novo” with the Board of Elections. Pursuant to 3DCMR §3711.5 (March 2007), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this Order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 433, 2000 Fourteenth Street, N.W., Washington, D.C. 20009.

List of Exhibits

- 1 Articles of Incorporation – 3145 Mount Pleasant Street, Tenants’ Assoc., Inc. (June 27, 2002)
- 2 Minutes – ANC 1D (June 15, 2010)
- 3 DHCD Proposal for Community Development Block Grant Loan (June 17, 2010)
- 4 Council Summary Contract (July 2, 2010)
- 5 Deed – 3145 Mount Pleasant Street, N.W., Washington, D.C. (July 26, 2010)
- 6 Minutes – ANC 1D (November 16, 2010)
- 7 Minutes – ANC 1D (May 15, 2012)
- 8 Minutes – ANC 1D (May 22, 2012)
- 9 Letter to NHTE from DHCD (September 10, 2012)