

BEFORE THE DIRECTOR  
OF THE  
OFFICE OF CAMPAIGN FINANCE  
D.C. BOARD OF ELECTIONS AND ETHICS  
2000 14<sup>TH</sup> STREET, N.W., SUITE 420  
WASHINGTON, D.C. 20009  
(202) 671-0550

IN THE MATTER OF	)	
	)	
<b>Alexander Padro</b>	)	DATE: August 8, 2008
<b>Advisory Neighborhood</b>	)	
<b>Commissioner</b>	)	DOCKET: Full Investigation 2008-101
<b>Advisory Neighborhood</b>	)	
<b>Commission</b>	)	
<b>2C01</b>	)	
<b>1519 8<sup>th</sup> Street, N.W.</b>	)	
<b>Washington, D.C. 20001</b>	)	

**ORDER**

**Statement of the Case**

This matter arises out of a complaint filed by Mahdi Leroy J. Thorpe, Jr. (complainant), of the East Central Civic Association, 1704 5<sup>th</sup> Street, N.W., Washington, D.C., 20001, alleging a violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), as amended, D.C. Official Code §§1-1101.01 et seq. (2001 Edition). Complainant alleges, inter alia, that “[o]n November 7, 2007 at a public Advisory Neighborhood Commission 2-C meeting [Alexander Padro (respondent)] made a motion and voted to support the O Street Market Project to be developed by Roadside Development in [his] ANC 2C-01 Single Member District[, that respondent serves as Executive Director of the Shaw Main Streets Program] which has received financial donations from Roadside Development[, and that respondent receives] public funding from the District of Columbia receiving thousands of dollars near the half million or quarter million dollar mark and [paying himself] a salary in the \$50,000 to \$60,000 range as the Executive Director of the Shaw Main Streets Program which is funded by the District of Columbia Deputy Mayor for Economic Development[.]”

**Issues**

1. Whether respondent violated D.C. Official Code §1-1106.01(a) when he allegedly realized personal gain through official conduct by voting, in his capacity as Advisory Neighborhood Commissioner of ANC 2C-01, to support the O Street Market Project, to be developed by Roadside Development, at the November 7, 2007 Advisory Neighborhood Commission (ANC) meeting of ANC 2C because respondent serves as Executive Director of the Shaw Main Streets Program which receives financial donations from Roadside Development?

2. Whether respondent violated D.C. Official Code §1-1106.01(b) when he allegedly used his official position of “Advisory Neighborhood Commissioner of ANC 2C-01,” to vote at the November 7, 2007 Advisory ANC meeting of ANC 2C, to obtain public funding from the District of Columbia government to subsequently pay himself a salary of between \$50,000 and \$60,000 as the Executive Director of the Shaw Main Streets Program, which is funded by the District of Columbia Deputy Mayor for Economic Development?

3. Whether respondent violated D.C. Official Code §1-1106.01(c) when he, in his capacity as “Advisory Neighborhood Commissioner of ANC 2C-01,” allegedly solicited and received financial donations from Roadside Development in exchange for his support of its development of the O Street Market Project, at the November 7, 2007 Advisory Neighborhood Commission (ANC) meeting of ANC 2C?

4. If respondent violated the Act when he realized personal gain through official conduct by voting, in his capacity as Advisory Neighborhood Commissioner of ANC 2C-01, to support the O Street Market Project, to be developed by Roadside Development, at the November 7, 2007 ANC 2C meeting; or when he, in his capacity as “Advisory Neighborhood Commissioner of ANC 2C-01,” solicited and received financial donations from Roadside Development in exchange for his support of its development of the O Street Market Project, at the November 7, 2007 ANC 2C meeting, whether respondent violated D.C. Official Code §1-1106.01(g) when he failed to so inform the Board of Elections and Ethics and ANC 2C of same?

### **Background**

By letter to the Office of Campaign Finance (OCF) received on November 9, 2007, complainant filed a formal complaint against respondent for violating the conflict of interest law of the District of Columbia. Soon thereafter, the undersigned received information via a telephone call from complainant that documentation to substantiate the allegation would be forthcoming. That documentation was received on November 20, 2007. Whereupon, the undersigned received information by another telephone call from the complainant that additional documentation to substantiate the allegation would be forthcoming. On February 12, 2008, the undersigned received an e-mail which listed the names of potential witnesses in this matter. Upon review of the complaint in its entirety, OCF accepted the submission on March 13, 2008.<sup>1</sup>

On that date, letters were dispatched to respondent and Roadside Development at 1730 Rhode Island Avenue, N.W., in Washington, D.C. Armond Spikell of the latter responded on April 1, 2008; and, pursuant to a request for an extension of time within which to respond, respondent submitted his answer on April 9, 2008, with supporting documentation. On June 4, 2008, Armond Spikell was summoned and questioned by the

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<sup>1</sup> On March 24, 2008, complainant sought to amend this complaint. Inasmuch as the letter was not verified under oath and was not accompanied by supporting documentation relevant to the complaint, in accordance with 3 D.C.M.R. §3701 (March 2007) of OCF regulations, the amendment was not accepted.

undersigned and William O. Sanford, OCF Senior Staff Attorney. Additionally, Timothy Mack, member of the Board of Directors of Shaw Main Streets, was summoned and questioned by same on June 6, 2008.

The scope of the OCF investigation, which was conducted until June 13, 2008, encompassed reviewing and verifying all submitted information, in light of the OCF and ANC statutes; research; and in-house meetings.

**Relevant Statutory and Regulatory Provisions**

D.C. Official Code §1-309.10(a) reads, in part, “Each [ANC] may advise the [Council], the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect that Commission area.”

D.C. Official Code §1-309.10(c)(1) reads, in part, “Proposed District government actions covered by this part shall include, but shall not be limited to, actions of the [Council], the executive branch, or independent agencies, boards, and commissions. [E]ach agency, board and commission shall, before . . .the formulation of any final policy decision or guideline with respect to . . .requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area. . .provide. . .notice of the proposed action[.]”

D.C. Official Code §1-309.10(d)(3)(A) reads, “The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission’s issues and concerns.”

D.C. Official Code §1-1106.01(a) reads, “The Congress declares that elective and public office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust.”

D.C. Official Code §1-1106.01(b) reads, in part, “No public official shall use his or her official position or office to obtain financial gain for himself or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated[.]”

D.C. Official Code §1-1106.01(c) reads, “No person shall offer or give to a public official or a member of a public official’s household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution or promise of future employment, based on any understanding that such public official’s official actions or judgment or vote would be influenced thereby, or

where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his or her duties, or as a reward, except for political contributions publicly reported pursuant to §1-1102.06 and transactions made in the ordinary course of business of the person offering or giving the thing of value.”

D.C. Official Code §1-1106.01(g) reads, “Any public official who, in the discharge of his or her official duties, would be required to take an action or make a decision that would affect directly or indirectly his or her financial interests or those of a member of his or her household, or a business with which he or she is associated or must take an official action on a matter as to which he or she has a conflict situation created by a personal, family or client interest, shall:

“(1) Prepare a written statement describing the matter requiring action or decision, and the nature of his or her potential conflict of interest with respect to such action or decision;

“(2) Cause copies of such statement to be delivered to the District of Columbia Board of Elections and Ethics [(Board)];

...

“(3) [I]f he or she has no immediate superior, except the Mayor, he or she shall take such steps as the Board prescribes through rules and regulations to remove himself or herself from influence over actions and decisions on the matter on which potential conflict exists[.]”

D.C. Official Code §1-1106.01(h)(1) defines “business” to mean “any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted for profit.”

D.C. Official Code §1-1106.01(h)(2) defines “business with which he or she is associated” to mean “any business of which the person or member of his or her household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value, and any business which is a client of that person.”

D.C. Official Code §1-1106.02(i) (2) states, “Members of Advisory Neighborhood Commissions shall be covered under the conflict of interest provisions of §1-1106.01.”

Pursuant to 3 D.C.M.R. §3711.1, “Upon a determination. . .that a violation has occurred, the Director may ministerially impose fines upon the offending party[.]”

Pursuant to 3 D.C.M.R. §3711.2, “Fines shall be imposed as follows:

...

“(w) Accepting, soliciting or giving any thing of value to influence official government actions \$2000;”

...

“(z) Failure to disclose potential conflicts of interest

2000[.]”

For good cause shown pursuant to 3 D.C.M.R. §3711.6, the Director of Campaign Finance may modify, rescind, dismiss or suspend any fine.

**Summary of Evidence**

Complainant relies upon his verified letter and its attachments, as perfected on March 13, 2008. Complainant believes that respondent “stands to benefit financially by serving as the Executive Director of the Shaw Main Streets Program and voting on economic development projects [that] are before Advisory Neighborhood Commission 2-C.” Complainant’s Letter (CL) at p. 1.

Respondent relies upon his April 9, 2008 reply to OCF’s request for information. He believes that the OCF statute is inapplicable because his employer, Shaw Main Streets, Inc., is not a “business for profit,” as defined by D.C. Official Code §1-1106(h)(1). Notwithstanding, he avers that “[a]t no time have I ever used my official position to solicit any financial gain for myself, any member of my household, or any business with which I am associated.” Respondent pointed out that, as a Shaw Main Streets, Inc. employee, he is not under any obligation to support, in his “capacity as an elected Advisory Neighborhood Commissioner,” development projects. Respondent’s Letter (RL) at pp. 1-2.

Respondent advises (RI) that he has been an elected ANC Commissioner of ANC 2C01 since November 2000; and, that the site of the development project by Roadside Development is located in ANC 2C01. He further advises that he has only been employed with Shaw Main Streets, Inc. (SMS) since December 2004; and, that his “salary would be due and payable to [him] regardless of whether Roadside Development or any other private sector partner was a sponsor of the organization.” According to Respondent, Roadside Development has provided monetary contributions to Shaw Main Streets, Inc. for community improvement projects, such tree box improvements and activities associated with the annual Keep Shaw Beautiful Day, as “a demonstration of their corporate philosophy of wanting to strengthen the neighborhoods in which they are active.” Id.

Respondent clarifies that “a separate pool of DC Main Streets grant monies” from the District of Columbia government covers salaries and benefits for all DC Main Street program executive directors. However, he avers that he does “not have an employer/employee relationship with the District of Columbia government [which] does not exercise any influence” over his votes as an ANC Commissioner. RL at pp. 2-3.

Respondent declares that he began advocating “on behalf of the O Street Market” since his “first campaign for the ANC 2C01 set in 2000.” At that time, he determined, “through surveys of neighborhood residents” that bringing businesses to the area was a priority with his constituents. RL at p. 3.

Among other things, Respondent wrote that he is well aware of the rules requiring recusal by public officials who may be faced with a conflict situation. He elucidated that he recused himself “by abstaining from the vote on a grant to Shaw Main Streets, Inc.” at an October 6, 2004 Advisory Neighborhood Commission 2C meeting. RL at p. 4.

On June 4, 2008, Armond Spikell of Roadside Development appeared at the OCF offices for a recorded interview (SI), under oath, which was conducted by the undersigned and Mr. SanFord. Mr. Spikell stated that Roadside Development acquired the O Street Market property, located in Respondent’s ANC Single Member District, 2C01, in August 2001, and formulated a plan for development. Among other things, he confirmed what he wrote in his April 1, 2008 response that Roadside Development “believes strongly in working with communities and the organizations that support them as [their] successes are mutually dependent”; and, sought and received consistent support from all members of the ANC (including that of complainant, who was initially an ANC Commissioner). He said that Roadside Development has a history of contributions to Shaw Main Streets, Inc. (SMS); and, other Shaw community organizations, e.g., Bread for the City, Emmaus and Citizen’s Organized patrol Efforts (COPE). He further confirmed that, “[a]s a major property owner in Shaw, Roadside has supported Shaw Main Streets’ . . . efforts to promote the revitalization of the Shaw community [and Roadside has] supported Shaw Main Streets from its inception both with financial sponsorships and volunteer participation.”

On June 6, 2008, Timothy C. Mack, a member of the 12 person Board of Directors of SMS appeared at the OCF offices for a recorded interview (MI), under oath, which was also conducted by the undersigned and Mr. SanFord. Mr. Mack spoke at length about the development of SMS and said that it is a District of Columbia nonprofit corporation, organized in 2004, to promote small communities within large cities, pursuant to the DC Main Streets Program under the District’s Department of Small and Local Business Development (DSLBD) ([www.reSTOREdc.dc.gov](http://www.reSTOREdc.dc.gov)). Mr. Mack stated that Respondent began as an elected founder/Board member and active supporter almost four (4) years ago. He said that respondent later became Executive Director, a non-voting Director in accordance with the SMS By-Laws, because he was performing the work.

Mr. Mack averred that SMS received funding from, among other sources, Roadside Development and the District of Columbia Government from October 1, 2007 through September 30, 2008. According to Mr. Mack, from 2005 through 2007, Roadside Development contributed donations for special projects and as an annual sponsor, one of the mechanisms through which SMS is financed. He said that Roadside Development has been helpful, “but no more than any other developer.” At the same time, the District government, through the DSLBD, proffered a grant to SMS of \$164,000 with an earmarked portion of \$100,000 of its Neighborhood Investment Funds (NIF), as is usual with DC Main Streets Programs, to solely subsidize the salary of the Executive Director. Mr. Mack said that respondent receives about \$60,000.

Pursuant to our query as to whether Respondent's salary is dependent upon either organization, Mr. Mack answered that all sponsorships are for general overhead and do not constitute salaries in any way. He further answered that, whether or not the District government offered additional funding or not, the Executive Director would be paid a salary from the NIF monies.

**Findings of Fact**

Having reviewed the allegations and the entire record in this matter, I find:

1. In 2000, Respondent was elected Commissioner for ANC 2C01; and, is currently serving his fourth term. Records of the D.C. Board of Elections and Ethics (BOEE Records).
2. Since 2001, Roadside Development has been a major property owner in the Shaw community investing approximately \$325,000,000 to develop retail space at the O Street Market in Respondent's ANC Single Member District, 2C01; and, regularly contributes to organizations that support them especially to promote mutually dependent successes. SI.
3. In 2002, the DC Main Streets program was created "to support the establishment and implementation of lasting, comprehensive revitalization initiatives in DC's traditional neighborhood business districts [with a] goal to support retail investment in the District through the retention and expansion of existing businesses and the recruitment of new businesses." [www.reSTOREdc.dc.gov](http://www.reSTOREdc.dc.gov).
4. As early as November 2002, Respondent joined in an overwhelming ANC vote in support of the Roadside Development redevelopment of the O Street Market. RL at Advisory Neighborhood Commission 2C Public Meeting Minute of Wednesday, November 6, 2002.
5. In 2004, Respondent initially became a founder, among others, of Shaw Main Streets, Inc. (SMS), a District of Columbia nonprofit corporation to, among other things, receive commercial revitalization services from the DC Main Streets Program. FY08 DC Main Streets Grant Letter of Agreement Shaw Main Streets, Inc. (Agreement).
6. SMS also accepted donations for sponsorships and various special projects from various organizations and development companies for general overhead and to provide a useful service to the community; and, that these monies were not available as salaries for employees. MI.
7. Later in 2004, and while continuing as the elected Commissioner of 2C01 and supporting the Roadside Development redevelopment of the O Street Market,

Respondent accepted the non-voting Executive Director position of SMS and relinquished the position of SMS voting Director. RL at p. 1; MI.

8. From 2005 through 2007, Roadside Development, among others, became an annual sponsor of SMS, by donating \$15,000 over the three (3) year period; and, also contributed \$6524.48 to specific SMS projects. MI.
9. At the October 6, 2004 ANC meeting of 2C, wherein ANC 2C took official action with regard to a proposed grant for SMS, Respondent recused himself and did not vote. RL at p. 4; RL at Advisory Neighborhood Commission 2C Public Meeting Minute of Wednesday, October 6, 2002.
10. By October 2007, DC Main Streets Program was renamed reSTORE DC/DC Main Streets Program with the same purposes to revitalize neighborhood business districts and small businesses; and, subsumed under the District's Department of Small and Local Business Development (DSLBD). [www.reSTOREdc.dc.gov](http://www.reSTOREdc.dc.gov).
11. Effective October 1, 2007, SMS entered into agreement with DSLBD to implement the DC Main Streets Program in Shaw and received a grant therefrom for \$164,000, of which \$100,000 of such monies was from Neighborhood Investment Funds (NIF) for the specific purpose of funding the salary of the SMS Executive Director. See Agreement.
12. The restriction of NIF monies for the salary of the SMS Executive Director is consistent with the restriction of monies for all other DC Main Streets Program Executive Directors. MI; see Agreement.
13. The salary of the SMS Executive Director, and any other executive director of a DC Main Streets Program, remains constant notwithstanding the financial activities of SMS, and any other DC Main Streets Program. Id.
14. At the November 7, 2007 ANC meeting of 2C, Respondent voted, again, in support of the Roadside Development of the O Street Market Project. CL; RL.

### **Conclusions of Law**

Based upon the record, in its entirety, and the evidence, I therefore conclude:

1. As a public official of the District of Columbia, Respondent is subject to the Act's conflict of interest statute at D.C. Official Code §1-1106.01.
2. As an Advisory Neighborhood Commissioner in the District of Columbia at public meetings of his Advisory Neighborhood Commission, respondent is required to take action on proposed District policy regarding, inter alia, planning



and streets; and, that the resulting recommendation from the ANC must be strongly considered by the concerned District agency, in accordance with D.C. Official Code §1-309.10(a)

3. Respondent did not realize personal gain for himself through official conduct, as stated in D.C. Official Code §1-1106.01(a) by voting, in his capacity as Advisory Neighborhood Commissioner of ANC 2C-01, to support the O Street Market Project, to be developed by Roadside Development, at the November 7, 2007 Advisory ANC meeting of ANC 2C, inasmuch as Respondent serves as Executive Director of Shaw Main Streets, Inc., which receives financial donations from Roadside Development; because Respondent's salary emanates solely from a financial source ear-marked for the purpose of paying Respondent's salary and wholly apart from any contributions donated to Shaw Main Streets, Inc. by Roadside Development, and the vote did not affect or impact upon his salary.
4. Respondent did not realize personal gain for Shaw Main Streets, Inc. through official conduct, as stated in D.C. Official Code §1-1106.01(a) by voting, in his capacity as Advisory Neighborhood Commissioner of ANC 2C-01, to support the O Street Market Project, to be developed by Roadside Development, at the November 7, 2007 Advisory ANC meeting of ANC 2C, inasmuch as Respondent serves as Executive Director of Shaw Main Streets, Inc., which receives financial donations from Roadside Development; because Shaw Main Streets, Inc. is a legal entity through which business is not conducted for profit.
5. Respondent did not violate D.C. Official Code §1-1106.01(b) when he allegedly used his official position of "Advisory Neighborhood Commissioner of ANC 2C-01," to vote at the November 7, 2007 Advisory ANC meeting of ANC 2C, in favor of the O Street Market Project, to be developed by Roadside Development, assuming en arguendo, that the District Government favored this developer, without evidence, that the vote was taken to ensure the continued award of grants by the District Government to Shaw Main Streets, Inc., to obtain public funding from the District of Columbia government from which to subsequently pay himself a salary between \$50,000 and \$60,000 as the Executive Director of the Shaw Main Streets, Inc.
6. Respondent did not violate D.C. Official Code §1-1106.01(c) when he, in his capacity as "Advisory Neighborhood Commissioner of ANC 2C-01," assuming en arguendo, solicited and received financial donations from Roadside Development on behalf of Shaw Main Streets, Inc., to obtain public funding from the District of Columbia government from which to subsequently pay himself a salary between \$50,000 and \$60,000 as the Executive Director of the Shaw Main Streets, Inc., in exchange for his support of its development of the O Street Market Project, at the November 7, 2007 Advisory Neighborhood Commission (ANC) meeting of ANC; because, the vote did not affect the award of D.C. Main Streets Program monies

to Shaw Main Streets, Inc. inasmuch as Respondent's salary emanates solely from a financial source ear-marked for the purpose of paying Respondent's salary and wholly apart from any contributions donated to Shaw Main Streets, Inc. by Roadside Development such that Respondent would receive his salary regardless of the amount and number of contributions donated to Shaw Main Streets, Inc. by Roadside Development, or any other entity, and, additionally, any contributions donated to Shaw Main Streets, Inc. by Roadside Development, would be excepted from the statute as "transactions made in the course of business" since Roadside Development regularly contributes to organizations that support them.

**Recommendation**

I hereby recommend the Director of the Office of Campaign Finance to dismiss this complaint.

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Date

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Kathy S. Williams  
General Counsel

**ORDER OF THE DIRECTOR**

**IT IS ORDERED** that this matter be dismissed. Attachments are available for review or copying in OCF, upon request.

This Order may be appealed to the Board of Elections and Ethics within 15 days from issuance.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cecily E. Collier-Montgomery  
Director

**SERVICE OF ORDER**

This is to certify that I have served a true copy of the foregoing Order to complainant, respondent and other interested parties on Friday, August 8, 2008.

\_\_\_\_\_  
**NOTICE**

Pursuant to 3 D.C.M.R. §3711.5 (1999), any fine imposed by the Director shall become effective on the 16<sup>th</sup> 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 420, 2000 14<sup>th</sup> Street, N.W., Washington, D.C., 20009.