

**BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
SUITE 420, 2000 14TH STREET, NW
WASHINGTON, D.C. 20009
(202) 671-0550**

IN THE MATTER OF)	DATE: April 7, 2011
)	
Myla J. Moss)	
Advisory Neighborhood Commissioner)	
Advisory Neighborhood Commission 1B01)	DOCKET: Full Investigation 2011-101
Respondent)	

ORDER

Introduction

This matter comes before the Office of Campaign Finance (OCF) upon the referral of the Office of The Inspector General for the District of Columbia of information that Myla J. Moss (the Respondent), in addition to being the Advisory Neighborhood Commission Member for Single Member District 1B01, Myla J. Moss is a Board Member for the Howard Theatre Restoration, Inc., (HTR), a 501(c)(3) nonprofit organization, and that HTR Board Members are required to make an annual \$3,000.00 contribution to HTR. It is alleged that on August 5, 2010, at the regular monthly meeting of Advisory Neighborhood Commission 1B, the Respondent Moss made a motion and voted to “approve the Howard Theatre grant application in the sum of \$4,000.00 and that the Commission utilize the additional \$1,000.00 to place an ad in the brochure from ANC 1B congratulating the theatre on its 100th anniversary”; and that both the grant and the advertisement were approved.

Following the review of information compiled in this matter, the Office of Campaign Finance initiated the investigation of these allegations to determine whether the Respondent may have violated the provisions 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). More specifically, the issue presented is whether Myla J. Moss violated D.C. Official Code § 1-1106.01 (a) when she allegedly realized personal gain through official conduct by voting, in her capacity as Advisory Neighborhood Commissioner of ANC 1B-01, to support the approval of the Grant to Howard Theatre Restoration, at the August 5, 2010 Advisory Neighborhood Commission (ANC) meeting of ANC 1B because Respondent serves as a Member of the Board of HRT and is required to make an annual contribution of \$3,000.00 to HRT. 1

1 See Appendix for Documents comprising OCF’s Investigative Record of this Matter.

By Correspondence dated February 2, 2011, the Office of Campaign Finance notified the Respondent Moss of the initiation of the investigation, and extended the opportunity for the Respondent to respond to the allegations in a notarized document with supporting documentation. On March 11, 2011, Myla J. Moss, through Counsel, John F. Mercer, Esquire, submitted a Response to the Notice of Full Investigation, accompanied by the sworn Affidavits of the Respondent, and Rodney L. Ellis, MD, Interim Chairman of the Board, Howard Theatre Restoration, Inc., and other documentation. Dr. Ellis' Statement was further supplemented on April 2, 2011.

Findings of Fact

Myla J. Moss, the Respondent, was elected Commissioner for ANC1B, Single Member District 01, in the November 4, 2008 General Election, to serve the term of office from January 2, 2009 to January 2, 2011. Prior thereto, the Respondent served several terms as the Commissioner of ANC 1B10. Commissioner Moss was re-elected to this elective office in the November 2, 2010 General Election. (Certified Election Results of the District of Columbia Board of Elections and Ethics). The Howard Theatre Restoration, Inc., is a 501(c)(3) nonprofit organization, engaged in a collaborative effort with the District of Columbia and other private entities to raise funds to revitalize, preserve, and protect the historic Howard Theatre located in ANC 1B in the District of Columbia. The HRT projects that it will take an estimated \$28 million to fully renovate and endow The Howard Theatre. The organization has launched a capital campaign to raise funds to complete the construction of the building and the endowment of its educational programs. The reconstruction effort for the Howard Theatre is managed by The Howard Theatre Development Group, LLC (HTDG), which is made up of the Ellis Development Group and Four Points, LLC. The Design effort is spearheaded by the architects Martinez & Johnson. See www.howardtheatre.org.

Myla J. Moss was introduced to the HTR project in January 2005 when Ellis Development reached out to the community to solicit their input on the development of the Howard Theatre site. Ellis Development asked the Respondent to be a member of the HTR as a way to represent the community's interests. Respondent participated in the negotiations to secure a community benefits package which included a job fair to hire D.C. residents to build and work in the theatre upon its completion; and the use of the theatre once a month. Respondent became involved in the HTR in 2006, and has served as Chair of the HTR Community Committee, Secretary for the HTR Executive Committee, and as a Liaison Member of the Board. Prior thereto, Respondent supported the HTR in public meetings before ANC 1B, through discussions with the ANC community, requests for permits from the D.C. Department of Consumer and Regulatory Affairs and the Board of Zoning, and the submission of correspondence and testimony on three occasions before the Council of the District of Columbia.

The organizational structure of the Howard Theatre Restoration, Inc. is comprised of the Board of Directors (volunteer), the Board of Trustees (volunteer), and a volunteer staff. Members are elected approximately annually according to need in the areas of organizational development, community connections, fundraising, and relationships with

private and public agencies. Each Member of the HTR Board is requested to voluntarily pledge to contribute, raise, or provide professional services in the amount of three thousand dollars (\$3,000.00) per year, as a goal. The pledge is neither a contract nor a commitment for which a penalty of any type may be imposed if not met; or a condition which must be met to remain on the Board. There are no special entitlements, advantages or benefits provided to those who meet the commitment. The monetary commitment acts as an encouragement and incentive for Board Members to seek support for the organization, which depends upon contributions to accomplish its goals. Board Members are not compensated for their services. Rodney L. Ellis, MD, serves as the Interim Chairman of the Board of Directors for the Howard Theatre Restoration, Inc. Myla J. Moss is currently the Secretary of the HRT and a Member of the Board of Directors. Ms. Moss did not make monetary contributions to the HRT during calendar years 2009, 2010, and 2011.

On June 25, 2010, the Howard Theatre Restoration, Inc., submitted a Grant Application to Advisory Neighborhood Commission 1B through Ruth Pagani, the HRT Grants and Finance Manager, for the amount of \$5,000.00. The purpose of the request was to support the community celebration commemorating the 100th Anniversary of the Howard Theatre. The community event was to include a groundbreaking for the Theatre followed by an art exhibit and celebration at the DC Historical Society on August 10, 2010. The funds were to be used to defray the printing and reproduction costs of the event brochure, as well as the administrative costs of the event. The total cost of the project was \$21,500.00. Myla Moss volunteered to have the ANC consider helping defray the cost of the Program for the event by contributing to the printing and graphic design fees, and placing an ad in the program.

On July 27, 2010, the Grants Committee of ANC 1B met to consider Grant Applications, including the application of the Howard Theatre Restoration, Inc. Commissioners Rosemary Akinboni, Committee Chairperson, Brianne Nadeau, Member, and Juan Lopez, Member, were present. The Committee heard from Dr. Rodney Ellis on behalf of the HRT. Dr. Ellis requested that the Grants Committee support the Grant Application in the amount of \$5,000.00, which would contribute to the printing and production of the commemorative program. The Grants Committee recommended that the ANC Commission support the grant in the amount of \$1,500.00.

On August 5, 2010, Advisory Neighborhood Commission 1B held its regular monthly public meeting. The Agenda included the July 27, 2010 Report of the Grants Committee and consideration by the Commission of the recommendations of the Grants Committee. Commissioner Moss (the Respondent) introduced Dr. Ellis, who explained the grant application. Respondent moved by motion the approval of the HRT application in the sum of \$4,000.00, and that the ANC utilize the additional \$1,000.00 to place an ad in the brochure from ANC 1B congratulating the Theatre on its 100th Anniversary. Further, Commissioner Moss extolled the virtues of the grant during the discussion before the ANC, and voted affirmatively in favor of the approval of the grant application. The recorded vote was four (4) yes, three (3) no, and o abstain.

The August 5, 2010 Grant Award of \$4000.00 approved by Advisory Neighborhood Commission 1B to the Howard Theatre Restoration, Inc., was not used to offset the pledge of Myla J. Moss as a HRT Board member to support the restoration effort.

Conclusions of Law

D.C. Official Code § 1-1106.02 (i)(2) provides that Members of Advisory Neighborhood Commissions are subject to the prohibitions set forth in the Conflict of Interest Statute. D.C. Official Code § 1-1106-01 (a) states: “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) prohibits, *inter alia*, a public official from using his or her public 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”. The term “business” is defined by D.C. Official Code § 1-1106.01 (h)(1) 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.” Further, Advisory Neighborhood Commissions are authorized by D.C. Official Code § 1-309.13 (l) to expend funds it receives through the annual budget allocation in the form of grants for public purposes within the Commission area.

In this case, Myla J. Moss serves as a Commissioner in ANC 1B, and is a Member of the HRT Board of Directors. Advisory Neighborhood Commission 1B approved on August 5, 2010 at its public meeting the grant application of Howard Theatre Restoration, Inc., for the amount of \$5,000.00. Commissioner Moss voted affirmatively to approve the Grant Application. Howard Theatre Restoration, Inc., is a 501(c)(3) nonprofit organization. The Members of the HRT Board of Directors serve on a volunteer basis without compensation. The Board members are requested to make an annual pledge of \$3,000.00 to support the Organization. Fulfillment of the pledge is voluntary.

In her Declaration to OCF, Myla J. Moss maintained that in the calendar years 2009, 2010, and 2011, she did not make a monetary contribution to HTR, nor was she penalized or admonished for not doing so. Moreover, Dr. Rodney Ellis, the Interim Chairman of the Howard Restoration Theatre, affirmed that the HRT Board Members serve on a volunteer basis; that Myla Moss is currently the HRT Recording and Business Secretary and a Voting Member of the Board; and that Board Members are asked to voluntarily contribute, raise, or provide professional services in the amount of \$3,000.00 as a goal.

Dr. Ellis confirmed that the Grant Award of \$4000.00 received by the Howard Theatre Restoration, Inc., was not offset against any personal financial commitment by pledge of Myla J. Moss, as a HRT Board Member, to support the restoration effort, and that Myla J. Moss did not make monetary contributions to the Howard Restoration Theatre, Inc., during calendar years 2009 and 2010.

On the basis of the foregoing, we conclude that Commissioner Myla J. Moss did not use her official position to obtain financial gain for herself relative to the approval of the Howard Theatre Restoration, Inc., Grant Application by Advisory Neighborhood Commission 1B.

Recommendation

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

Date

William O. Sanford
General Counsel

ORDER OF THE DIRECTOR

WHEREFORE, IT IS HEREBY ORDERED that this matter is hereby dismissed.

Date

Cecily E. Collier-Montgomery
Director

This Order may be appealed to the Board of Elections and Ethics 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 on Myla J. Moss by first class postage pre-paid mail on April 7, 2011.

APPENDIX
(OCF Full Investigation Record 2011-101)

- October 20, 2011 Letter of Referral to the Director, Office of Campaign Finance, from the Office of the Inspector General
- February 2, 2011 Letter of Initiation of Investigation to Myla J. Moss, from the Office of Campaign Finance
- March 11, 2011 Response to Notice of Full Investigation to the Director, Office of Campaign Finance, from Myla J. Moss
 - Exhibit One: Notice of Full investigation Notice
 - Exhibit Two: Affidavit of Myla J. Moss (Respondent)
 - Exhibit Three: Affidavit of Rodney L. Ellis, MD., Interim HRT Board Chairman
 - Exhibit Four: ANC 1B Grant Application of Howard Theatre Restoration, Inc.
 - Exhibit Five: ANC Grants Committee Report/Extracts from Meetings
- April 2, 2011 Statement of Dr. Rodney Ellis, Interim HRT Board Chairman
- Screen Shots of “About Us” and “Support Us” Pages of The Howard Theatre Restoration, Inc., Web Site, www.howardtheatre.org
- Minutes of the August 5, 2010 Monthly Meeting of Advisory Neighborhood Commission 1B
- Board of Elections and Ethics Certified Election Results for Election Years 2008 and 2010
- D.C. Official Code § 1-309.13 (ANC Grant Authority)
- D.C. Official Code § 1-1106.01 (The D.C. Conflict of Interest Statute)
- D.C. Official Code § 1-1106.02 (The Disclosure of Financial Interest Statute)

