

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

IN THE MATTER OF)
)
Rhonda Chappelle)
Advisory Neighborhood Commissioner)
(Commissioner))
Advisory Neighborhood Commission)
(ANC) 5B07)
1341 Queen Street, N.E.)
Washington, D.C. 20002)

DATE: November 5, 2003

DOCKET NO.: Investigation 03-01

ORDER

Statement of the Case

This matter arises out of a complaint filed by Regina James (complainant), ANC Commissioner for 5B03, 1363 Adams Street, N.E., Washington, D.C., 20018, 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 in June 2002, ANC Commissioner for 5B07, Rhonda Chappelle (respondent), violated the conflict of interest statute when she received round-trip airfare to Orlando, Florida, valued at \$250.00, from Bannum, Inc. (Bannum) headquartered in Clearwater, Florida, to inspect one of its facilities. According to complainant, Bannum is a business which then sought a permit from the Department of Consumer and Regulatory Affairs (DCRA) to construct a halfway house in the District's Ward 5, and ANC 5B proffered its disapproval thereof by vote in February and March 2003, when respondent abstained in the former and voted in the latter. Moreover, complainant alleges that respondent never informed ANC 5B of her Florida visit and that respondent assisted Bannum in presenting the affected matter before federal court in Washington, D.C. in April 2003.

Issues

1. Whether respondent violated D.C. Official Code §1-1106.01(c) when she allegedly received round-trip airfare from Bannum to Orlando, Florida in June 2002 to inspect a Bannum facility when the question of whether to approve a DCRA permit for Bannum to construct a similar facility in the District's Ward 5 was before ANC 5B in February and March 2003; and, when she allegedly assisted Bannum in federal court in Washington, D.C. on the same matter in April 2003?

2. If respondent violated the Act when she received round-trip airfare from Bannum to Orlando, Florida in June 2002 to inspect a Bannum facility when the question of whether to approve a DCRA permit for Bannum to construct a similar facility in the District's Ward 5 was before ANC 5B in February and March 2003; and, further, if respondent violated the Act when she allegedly assisted Bannum in federal court in Washington, D.C. on the same matter in April 2003, whether respondent violated D.C. Official Code §1-1106.01(g) when she failed to inform the Board of Elections and Ethics and ANC 5B of her June 2002 visit to Orlando, Florida at Bannum's expense?

Background

By letter to the Office of Campaign Finance (OCF) received on June 11, 2003, complainant stated that she discovered on April 1, 2003, that respondent may have received roundtrip airfare from Bannum, Inc. of Clearwater, Florida, to inspect one of its facilities; and, that on April 20, 2003, respondent was assisting Bannum during a hearing in federal court in Washington, D.C. See Exhibit A. She wrote, "Commissioner M. Rhonda Chappelle continues her involvement with Bannum, Inc. in violating the public trust as being a participant abetting Bannum in the federal system, and in the appellant process that ANC5B brought before the Board of Zoning Adjustment [i]n spite of (sic) the commission[']s stalwart opposition against Bannum locating a community based residential facility prohibited in a C-M-2 district as define[d] in title 11 of [the D.C. Municipal Regulations]." Enclosed therewith were the minutes from the ANC 5B meetings of February 6 and March 6, 2003. Upon review of the complaint and the accompanying documents, OCF instituted an investigation into this matter. June 20, 2003.

On June 20 and 23, 2003, OCF dispatched letters to respondent and complainant, respectively, to advise that an investigation had commenced in this matter; and, requested further information thereon. By letter dated June 24, 2003, OCF also requested information from Bannum. Responses were due no later than July 3, 2003.

On July 2, 2003, OCF received the affidavit of David Lowry (Lowry), the Executive Director of Bannum. See Exhibit B. On the same date, OCF received a letter from complainant listing the names of certain persons for follow-up contact by the Office.

On July 30, 2003, the deadline for respondent's reply to OCF, respondent had not submitted any written reply. On that date, a subpoena issued from the District of Columbia Board of Elections and Ethics ordering respondent's statement on August 8, 2003 at 10:00 a.m. On that date, OCF received respondent's written statement by facsimile; and, on August 29, 2003, OCF received the original statement. See Exhibit C.

Also, on August 29, 2003, OCF queried James Crawford (Crawford), mentioned by Lowry and complainant, as to his knowledge of the alleged matters. On September 2, 2003, Mr. Crawford, the Community Organizer for D.C. Prisoners' Legal Services Project, Inc., of Washington, D.C., responded by letter. See Exhibit D.

The scope of the OCF investigation, which was conducted until September 20, 2003, 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(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 §1-1106.02(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 her verified letter and its enclosures, received by OCF on June 11, 2003. Respondent relies upon her August 8, 2003 reply to OCF’s request for information.

Respondent declared that she was never a Bannum employee: “I do not and have not worked on behalf of Bannum, Inc. at any time.” Respondent wrote that sometime in March 2002, during its public meeting, it was brought to the attention of the ANC by Crawford that Bannum intended to open a halfway house in the area. She continued that after several meetings with chairpersons of each affected ANC, Crawford and Rahim Jenkins (Jenkins), a member of the Office of the Mayor, Jenkins suggested that the three (3) ANC chairpersons visit an urban Bannum facility. Bannum’s Orlando, Florida site was selected; and, respondent admitted to visiting the site and that Bannum paid her roundtrip airfare. She adamantly pointed out, “It was not a gift.” Respondent denied assisting Bannum in federal court and explained that she did not vote in February 2003 ANC on the matter pertaining to Bannum because she was unaware of the contents of the letter to be submitted by the ANC regarding Bannum.

OCF relies upon the affidavit and letter of Lowery and Crawford, respectively. In his July 1, 2003 affidavit, Lowry confirmed, through his counsel, Kevin M. Cox, Esquire, of Auburn, New York, that, at the recommendation of an executive official in the District's Office of the Mayor, and solely for the purpose of educating the ANC on the Bannum operation, Bannum paid roundtrip airfare to its Orlando, Florida facility for respondent to visit. Lowry emphasized throughout his affidavit that Bannum had the backing of the federal Bureau of Prisons and that it had obtained an option to lease the property proposed for the halfway house, subject to zoning verification. Lowry listed the many organizations and persons with whom Bannum representatives met "to reach out to the community in order to educate the community about the program and to demonstrate [its] willingness to work with the community and become an asset to it, rather than working against it." Lowry said that all were informed "that the District of Columbia had provided verification that [the] proposed facility could be located at 2210 Adams Place, N.E. as a matter of right." Additionally, Lowry stated that, "Bannum, Inc. did not ask anyone at any time to vote for or against us on any matter. This was simply a showing of good faith on Bannum, Inc.'s part." Lowry further averred that Crawford volunteered as a liaison to promote Bannum to the community and that Chappelle was not in any way associated with Bannum.

Crawford confirmed the Orlando, Florida visit and that he attended, at the expense of his employer, D.C. Prisoners' Legal Services Project, Inc. He stated that he encouraged the visit so that the ANC representatives could view the Bannum halfway house facility in an urban setting. He further confirmed, consistent with the statements of Chappelle and Lowry, that he arranged and facilitated meetings in Ward 5 to create a working relationship between Bannum and the community.

Findings of Fact

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

1. Bannum is in the business of operating Community Corrections Centers (centers) pursuant to contracts awarded through competitive bidding by the United States Department of Justice, Bureau of Prisons (BOP), Washington, D.C.; and currently operates nine (9) centers nationwide. Exhibit (Exh.) B at No. 3.
2. Early in 2000, through the BOP, Bannum sought to establish a center in the District of Columbia; and, on November 16, 2000, Bannum obtained an option to lease 2210 Adams Place, N.E., subject to zoning verification, Bannum's ability to use the property as a center, and Bannum's award of the contract from the BOP. Id. at No. 5.
3. On November 30, 2000, Bannum commenced a campaign to obtain zoning approval from the District of Columbia for the operation of a center and began to meet with local officials and community leaders in pursuance of this effort. Id. at No. 6.

4. On November 26, 2001, Bannum obtained zoning approval of 2210 Adams Place, N.E. as a center; and, the BOP awarded Bannum the contract to construct a center thereon. Id.
5. Between February and March 2002, Crawford approached Bannum, on behalf of D.C. Prisoners' Legal Services Project, and volunteered to act as a liaison and to create a working relationship between Bannum and the community. Id.; Exh. D.
6. On April 18, 2002, Bannum met with, inter alia, respondent, James Berry, Rahim Jenkins, and Crawford; and, respondent was encouraged, in part, by Crawford, and not Bannum, to view a Bannum facility to benefit from seeing firsthand the operation of a Bannum federal center program. Id.; Exh. B.
7. Soon thereafter, it was agreed that the Orlando, Florida site was the appropriate Bannum center for inspection. Id.
8. On June 11, 2002, Bannum paid for a roundtrip coach fare plane ticket for respondent to travel to its Orlando, Florida center to visit and inspect the site. Id.
9. Lowry believed that respondent's visit and inspection was a demonstration of Bannum's willingness to educate the community about the program and its willingness to work with the community and be an asset to it, rather than working against it because Bannum had been provided with verification that the proposed center could be located at 2210 Adams Place, N.E. as a matter of right. Exh. B. at Nos. 6 & 11.
10. Before Bannum could construct a center at 2210 Adams Place, N.E., Bannum required the support of the Ward 5 community and its leaders to obtain certain permits from other District agencies. See Exh. A.
11. Respondent was an ANC Commissioner representing 5B07. Exh. C.
12. Bannum paid the airfare for respondent to visit and inspect its Orlando, Florida center, when it was still trying to garner support from the Ward 5 community and its leaders, including ANC commissioners, for construction of the proposed center. Exh. B.
13. On February 6, 2003, ANC 5B took official action, at its public meeting, to submit a letter of appeal to the District's zoning board to delay DCRA consideration for issuance of a permit to Bannum for construction of the center at 2210 Adams Place, N.E. Exh. A, Attachment (Att.) 1.
14. At the February 2003 ANC 5B public meeting, wherein ANC 5B took official action to submit a letter of appeal to the District's zoning board to delay DCRA

consideration for issuance of a permit to Bannum for construction of the center at 2210 Adams Place, N.E. respondent abstained. Id.

15. The record of the February 2003 ANC 5B public meeting does not reflect that respondent advised the ANC of her June 2002 Orlando, Florida trip to visit and inspect a Bannum center. Id.
16. On March 6, 2003, ANC 5B took official action, at its public meeting, to issue a resolution that it was strongly opposed to Bannum's renovation of 2210 Adams Place, N.E. and locating a center therein. Exh. A, Att. 2.
17. At the March 2003 ANC 5B public meeting, wherein ANC 5B took official action to issue a resolution that it was strongly opposed to Bannum's renovation of 2210 Adams Place, N.E. and locating a center therein, respondent voted. Id.
18. The record of the March 2003 ANC 5B public meeting does not reflect that respondent advised the ANC of her June 2002 Orlando, Florida trip to visit and inspect a Bannum center. Id.
19. Respondent is not an employee or associate of Bannum. Exhs. B-C.

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 her Advisory Neighborhood Commission, respondent is required to take action on proposed District policy regarding, inter alia, licenses and permits; 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.
3. Respondent received "a thing of value," pursuant to D.C. Official Code §1-1106.01(c), when she accepted a roundtrip coach fare plane ticket to Orlando, Florida to visit and inspect the Bannum center site.
4. Respondent did not receive the roundtrip coach fare plane ticket to Orlando, Florida, pursuant to D.C. Official Code §1-1106.01(c), based upon any understanding that her actions or judgment would be influenced thereby because Bannum believed that it did not require respondent's vote on any action regarding its contract with BOP and respondent believed she was encouraged to visit and inspect the Orlando, Florida facility to observe Bannum's operations; but, it can

reasonably be inferred that the thing of value influenced her in the discharge of her duties because she accepted it.

5. In February 2003, respondent was in a conflict situation created by a personal interest, and violated the Act, pursuant to D.C. Official Code §1-1106.01(g) when she abstained from voting on a matter involving Bannum, because she accepted a roundtrip coach fare plane ticket to Orlando, Florida to visit and inspect the Bannum center site to become aware of its operations for her own understanding, since she failed to inform the ANC on the public record of her June 2002 action.
6. In March 2003, respondent was in a conflict situation created by a personal interest, and violated the Act, pursuant to D.C. Official Code §1-1106.01(g) when she voted on a matter involving Bannum, because she accepted a roundtrip coach fare plane ticket to Orlando, Florida to visit and inspect the Bannum center site to become aware of its operations for her own understanding, since she failed to inform the ANC on the public record of her June 2002 action.
7. In accordance with 3 D.C.M.R. §3711.2, respondent may be fined a maximum of \$4,000.00 for failing to disclose on the record at the February and March 2003 public ANC meetings of her personal interest with Bannum because she received “a thing of value,” pursuant to D.C. Official Code §1-1106.01(c), when she accepted a roundtrip coach fare plane ticket to Orlando, Florida to visit and inspect the Bannum center site.

Recommendation

I hereby recommend that the Director of the Office of Campaign Finance impose a fine of \$4,000.00 upon respondent for her failure to disclose on the record at the February and March 2003 public ANC meetings of her personal interest with Bannum because she received “a thing of value,” pursuant to D.C. Official Code §1-1106.01(c), when she accepted a roundtrip coach fare plan ticket to Orlando, Florida to visit and inspect the Bannum center site and it could reasonably be inferred that the “thing of value” influenced her in the discharge of her duties because she accepted it.

I hereby further recommend that, pursuant to the investigation herein, the Director of the Office of Campaign Finance issue, within 15 days of the issuance of this Order, show cause orders to James Boozer and Bannum, Inc. to determine whether either violated the provisions of the Conflict of Interest Act, relative to the matters contained herein.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that a fine of \$4,000.00 be imposed upon respondent for her failure to disclose on the record at the February and March 2003 public ANC meetings of her personal interest with Bannum because she received “a thing of value,” pursuant to D.C. Official Code §1-1106.01(c), when she accepted a roundtrip coach fare plan ticket to Orlando, Florida to visit and inspect the Bannum center site and it could reasonably be inferred that the “thing of value” influenced her in the discharge of her duties because she accepted it.

IT IS FURTHER ORDERED that, pursuant to the investigation herein, show cause orders to James Boozer and Bannum, Inc. to determine whether either violated the provisions of the Conflict of Interest Act, relative to the matters contained herein.

Date

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order.

Rose Rice
Legal Assistant

cc: The Honorable Anthony A. Williams
Mayor, District of Columbia

The Honorable Vincent Orange
Ward 5 Member, City Council

The Honorable David A. Catania
At-large Member, City Council

The Honorable Kathleen Patterson
Ward 3 Member, City Council

The Honorable Carol Schwartz
At-large Member, City Council

The Honorable Sharon Ambrose
Ward 6 Member, City Council

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James C. Crawford
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NOTICE

Pursuant to 3 D.C.M.R. §3711.5 (1999), 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 420, 2000 14th Street, N.W., Washington, D.C., 20009.