

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 MATTERS OF)
)
Jerrily Kress)
Chairperson, D. C. Zoning Commission)
)
Angel Clarens)
Member, D. C. Zoning Commission))
)
Anthony Hood)
Member, D. C. Zoning Commission)

DATE: November 3, 1999

DOCKET NO.: PI 1999-105

ORDER

Statement of the Case

This matter arises out of a complaint filed by Terrance J. Lynch, Executive Director, The Downtown Cluster of Congregations, 1313 New York Avenue, N. W., Washington, D. C., 20005, alleging a violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974, as amended, D. C. Code §§1-1401 *et seq.* (the Act). Mr. Lynch alleges that Jerrily Kress, then chairperson of the D. C. Zoning Commission (DCZC) influenced the other members of the DCZC to hire her as the Director of the Office of Zoning. He stated that, as a result thereof, she resigned from her position as Chairperson of the DCZC with the understanding that she would be hired as the Director.

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Issues¹

1. Whether Jerrily Kress misused her official position, pursuant to D. C. Code §1-1461(b), as chairperson of the DCZC to influence the members of the DCZC to obtain the position of Director of the Office of Zoning?
2. Whether Angel Clarens and Anthony Hood disclosed confidential information, pursuant to D. C. Code §1-1461(e), to Jerrily Kress regarding candidates for the position of Director of the Office of Zoning in the course of or by reason of their official positions as members of DCZC, which gave Ms. Kress an unfair advantage over the other candidates that resulted in her ultimate appointment to the position?

Background

On July 8, 1999, Terrance Lynch complained to OCF that, Jerrily Kress resigned from her position as chairperson of the DCZC with the understanding that she would be hired as the Director of the Office of Zoning, by members Angel Clarens and Anthony Hood. He alleged that Ms. Kress committed a conflict of interest violation “given her position as chairperson, [because] she was in a position to exert significant influence over the other 2 members who determined the person to

¹ Mr. Lynch has dual concerns in this matter: whether Ms. Kress was properly hired by the DCZC and whether Ms. Kress exerted influence over the DCZC to hire her. The D. C. Office of Campaign Finance (OCF) submits that it has jurisdiction in this matter only over the latter. Pursuant to D. C. Code §1-1461 (1999 Repl. Vol.) OCF is authorized to investigate whether any public official attempted to realize personal gain through official conduct. With regard to the former, OCF points out that the position of “Director, Office of Zoning” is a position within the “Excepted Service” and is to be filled in accordance within the procedures therefor. See D. C. Code §5-412.2. According to D. C. Code §1-610.1, “[e]ach employee appointed in the Excepted Service. . .must meet the minimum standards prescribed for the position to which he or she is appointed. Each personnel authority may fill positions in the Excepted Service as provided in this subchapter. Excepted Service employees may be hired noncompetitively.” As a statutory office holder, the Director of the Office of Zoning is hired competitively or noncompetitively, as directed by the DCZC, as the appointing authority, to serve at the pleasure of the DCZC. See also §§902 & 904 of the District Personnel Manual (DPM), Transmittal No. 31, September 14, 1992. Ergo, the issue of the DCZC authority to hire Ms. Kress in the manner in which it dictated is not within the purview of OCF authority; whether or not Ms. Kress used her influence with the members of the DCZC to obtain the position of Director of the Office of Zoning is indeed the only issue of which the OCF may investigate in this matter regarding Ms. Kress.

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be hired."² Upon review of the complaint, OCF initiated a preliminary investigation into this matter. See Attachment A.

On July 16, 1999, OCF sent letters to Terrance Lynch, Jerrily Kress, Angel Clarens and Anthony Hood to advise that OCF had commenced a preliminary investigation, and to request any information relevant to the matter. On July 28, 1999, Mr. Clarens answered on behalf of himself and Mr. Hood and requested an extension in which to reply. On August 2, 1999, Frederick D. Cooke, Jr., Esquire, of Rubin, Winston, Diercks, Harris and Cooke, L.L.P., answered as counsel on behalf of Ms. Kress and also requested an extension in which to reply. The parties requested the extensions until August 13, 1999, to fully provide responses in this preliminary inquiry; both were granted.

On August 2, 1999, OCF received Mr. Lynch's response by letter, wherein he supplied the names and telephone numbers of the members of an independent screening committee that was formed by the DCZC to review applications for the position of the Office of Director of Zoning. On August 4, 1999, OCF received a copy of a Freedom of Information Act (FOIA) request letter sent to Marie Drissel, Special Assistant to the Mayor for Board and Commissions, asking for ". . .any and all letters of resignation submitted by Ms. Jerrily Kress as a member of the D.C. Zoning Commission." On August 9, 1999, Mr. Lynch submitted to OCF a copy of that response by facsimile (fax). See Attachments B-D.

On August 9, 1999, OCF received, by fax, a letter of representation from David Julyan, Esquire, of Julyan and Julyan, on behalf of Ms. Kress. Inasmuch as he had recently been retained as counsel³, he requested an extension in which to file a response. On August 12, 1999, OCF received a similar request from Mr. Clarens, on behalf of himself and Mr. Hood. Extensions were granted until September 3, 1999.

On August 18, 1999, OCF received, by fax, from Mr. Lynch, a copy of a May 26, 1998 form letter from Jerrily R. Kress, sent to members of a DCZC formed District of Columbia Zoning Advisory Committee (ZAC). It is stated therein that "[t]he ZAC is being created to offer recommendations to the Zoning Commission, on matters sanctioned by the Commission. This new Committee will conduct its meetings independently of the Commission. Primary concerns of the Committee shall be to offer recommendations on a new Executive Director[.] You have been selected by the Commission to serve in this capacity." See Attachment E.

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² By letter of July 14, 1999, Mr. Lynch specifically pointed out to what he viewed as irregularities in the DCZC hiring procedure for the position of Director of the Office of Zoning. In fact, Mr. Lynch submitted to OCF copies of a number of letters, dated from July 29, 1999 through October 18, 1999, to and from DCZC and the D. C. Office of Personnel regarding the DCZC hiring procedure for the position of Director of the Office of Zoning. As indicated heretofore in note 1, infra, OCF is without authority to inquire into the issue of the DCZC hiring procedure for the position of Director of the Office of Zoning. Thus, only documents submitted by Mr. Lynch which relate to the instant inquiry will be included in this record.

³ Mr. Cooke is no longer acting as counsel for Ms. Kress.

On September 3, 1999, OCF received responses in this matter from Ms. Kress, with exhibits; Mr. Clarens; and Mr. Hood. All averred, under oath, that there was not any influence by Ms. Kress to obtain the position of Director of the Office of Zoning nor was Ms. Kress guaranteed the aforesaid position. See Attachments F-H.

By letter dated October 8, 1999, OCF issued interrogatories⁴ to 3 members of the ZAC: Steven E. Sher, Director of Zoning Services, Wilkes, Artis, Hedrick and Lane; Tersh Boasberg, Esquire, Law Offices of Tersh Boasberg; and Maybelle Taylor Bennett, Director of Howard University Community Association, Howard University. An extension was granted to Ms. Bennett, and all Answers were received by October 20, 1999. See Attachments I-K.

The scope of the OCF investigation encompassed reviewing and verifying all submitted information; examining pertinent OCF, DCZC, ZAC, and Office of Personnel records; research; and in-house meetings.

Relevant Statutory and Regulatory Provisions

D. C. Code §1-1461(b) states "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, other than that compensation provided by law for said public official."

D. C. Code §1-1461(e) states "No public official shall use or disclose confidential information given in the course of or by reason of his or her official position or activities in any way that could result in financial gain for himself or herself or for any other person."

D. C. Code §1-1461(g) states "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 . . . , and to his or her immediate superior, if any;

. . .

"(4) If he or she is not the Mayor or a member of the Council of the District of Columbia, his or her superior, if any, shall assign the matter to another employee who does not have a

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potential conflict of interest, or, if 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

⁴ A "Statement of Madeliene H. Dobbins" is enclosed as Exhibit C to Ms. Kress' September 3, 1999 response in this matter. Ms. Dobbins is the fourth member of the ZAC.

herself from influence over actions and decisions on the matter on which potential conflict exists."

At 3 D.C.M.R. §9900.1, "to obtain financial gain" is defined as "to realize any monetary profit, or any benefit on which a monetary value can be fixed, by the public official, any member of his or her household, or any business with which the official or a member of the official's household is associated other than that compensation provided by law for that public official."

Summary of Evidence

In support of his complaint, Mr. Lynch submits his notarized letters of July 8 and 28, 1999, and attachments thereto. Ms. Kress, Mr. Clarens and Mr. Hood rely upon their September 3, 1999 notarized responses and any attachments thereto. OCF relies upon the Answers to the

Interrogatories submitted by the members of the ZAC. See OCF Exhibit, "Interrogatories RE: OCF P.I. 1999-105."

Findings of Fact

Having reviewed the allegations and respondents' answers, I find:

1. On May 11, 1998, the DCZC authorized the formation of the ZAC, a 4-member committee, independent of the DCZC, created to offer recommendations to the DCZC on matters sanctioned by the DCZC. Attachment E.
2. At that time, the primary concern and first task of the ZAC was to conduct the initial search for a permanent Executive Director for the Office of Zoning, by seeking applicants, screening the pool of candidates, conducting interviews and making recommendations to the Commission. Id.
3. The ZAC was comprised of former Directors of the Office of Zoning, Madeliene H. Dobbins, Esquire, and Steven E. Sher; and former DCZC commissioners, Tersh Boasberg, Esquire, and Maybelle Taylor Bennett. Attachment B.
4. The D. C. Office of Personnel posted the position of Director of the Office of Zoning on August 20, 1998 as Vacancy Announcement OZ-98-199. Attachment B of Attachment F.
5. The ZAC met on October 29, 1998 to consider the applications received pursuant to Vacancy Announcement OZ-98-199. Attachment C of Attachment F; Attachments I-K.
6. As only a few applications were received, the position was re-advertised on March 1, 1999 as Vacancy Announcement OZ-99-65. Id.

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7. The ZAC next met on April 12 and 21, 1999 to consider only the written applications received: no interviews were conducted of any candidate and the ZAC considered the personal knowledge that members had of some of the applicants. Id., and see Attachment I.

8. A total of 14 applications reviewed by the ZAC, of which 4 applicants were generally suggested were transmitted to the DCZC, on or about April 21, 1999. Attachment C of Attachment F; Attachments I-K.
9. The ZAC did not specifically endorse any of the applications transmitted to the DCZC on or about April 21, 1999. Attachment C of Attachment F; Attachments I-K.
10. None of the members of the ZAC received any communication from Ms. Kress, Mr. Clarens or Mr. Hood attempting to affect their review and consideration of any applications for the position of Director of the Office of Zoning. Id.
11. The DCZC met in executive session on April 29, 1999 to discuss the transmitted applications. Attachments F-H.
12. On April 29, 1999, although members of the DCZC knew 3 of the 4 applicants, generally suggested by the ZAC, the DCZC members were unable to select a candidate for the position at that meeting. Id.
13. The DCZC members met in executive session again on May 6, 1999, to select a candidate for the position of Director of the Office of Zoning, at which time no applicant received the support of more than 1 member. Attachment F, and see Attachments G-H.
14. On May 6, 1999, Ms. Kress, Mr. Clarens and Mr. Hood failed to find any of the 14 applicants appropriate for the job. Attachments F-H.
15. Ms. Kress did not communicate with Mr. Clarens or Mr. Hood on April 29, 1999 or May 6, 1999, in an attempt to negatively influence their review and consideration of the applicants for the position of Director of the Office of Zoning in an effort to promote her own candidacy. Id.
16. After the rejection of the 14 applicants by the members of the DCZC, Ms. Kress began considering her candidacy for the position of Director of the Office of Zoning. Attachment F.
17. On or about May 9, 1999, Ms. Kress shared her interest, for the first time, as a candidate for the position of Director of the Office of Zoning with others. Attachments D and E of Attachment F.

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18. On or about May 10, 1999, Ms. Kress, for the first time, informed Mr. Clarens and Mr. Hood of her interest in the position of Director of the Office of Zoning. Id.
19. Ms. Kress immediately recused herself from any further discussions of the issue dealing with the selection of the Director of the Office of Zoning and desired to resign. Id.
20. Mr. Clarens and Mr. Hood requested that she remain on the DCZC to bring an important case to its conclusion. Id.

21. Mr. Clarens and Mr. Hood discussed Ms. Kress' candidacy in executive session and did not discuss the matter with Ms. Kress. *Id.*
22. Ms. Kress resigned as chairperson of the DCZC on June 15, 1999. Attachment K of Attachment F.
23. Ms. Kress was offered, and subsequently appointed, to the position as Director of the Office of Zoning on June 16, 1999. Attachment J of Attachment F.

Conclusions of Law

Based upon the record and evidence, I therefore conclude:

1. Jerry Kress did not misuse her official position as chairperson of the DCZC to influence Angel Clarens and Anthony Hood, members of the DCZC and the selecting officials, to obtain the position of Director of the Office of Zoning.
2. Angel Clarens and Anthony Hood did not disclose confidential information to Jerry Kress about candidates for the position of Director of the Office of Zoning in the course of or by reason of their official positions as members of the DCZC which gave Ms. Kress an unfair advantage that resulted in her appointment to the position.
3. Therefore, Jerry Kress, Angel Clarens and Anthony Hood did not violate the Act.

Recommendation

I hereby recommend the Director to dismiss this complaint.

Date

Kathy S. Williams
General Counsel

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ORDER OF THE DIRECTOR

IT IS ORDERED that this matter be dismissed.

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 been served with a true copy of the foregoing Order.

Terrance Lynch
Executive Director
The Downtown Cluster of Congregations
1313 New York Avenue, N. W.
Washington, D. C. 20005

David Julyan, Esquire
Julyan and Julyan
700 13th Street, N. W.
Suite 950
Washington, D. C. 20005

Angel Clarens
1053 31st Street, N. W.
Washington, D. C. 20007

Anthony Hood
1859 Channing Street, N. E.
Washington, D. C. 20007

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 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.

