

**THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD**

x

In the Matter of

Isabel Acevedo
Hans Arntsen
Dubravko Cebalo
Jose Concepcion
Nathaniel Diego
Iman Elhakam
Dante Espiritu
Denis Huderski
Veronica Julius
George Mascia
George Pardo
Himanshu Patel
Suresh Patel
Josefina Quimbo
Monica Rich
Alexander Santana
Jamil Sheikh
Lisette Urena

FD No. 2012-01

x

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

Upon consideration of all papers submitted in this matter, the Conflicts of Interest Board (“COIB” or “the Board”) determines as a matter of law that the appeals of the above captioned Department of Citywide Administrative Services (“DCAS”) employees are granted on default and they are not required to file financial disclosure reports for calendar year 2010.¹

Each of the above named employees was notified of his or her designation, pursuant to New York City Administrative Code § 12-110 (hereinafter “NYC Admin. Code”), as an employee required to file a financial disclosure report for calendar year 2010. Between April 18, 2011, and May 9, 2011, each employee timely appealed his or her designation as a required filer to DCAS.² Between April 27, 2011, and May 20, 2011, DCAS denied each of the appeals with

¹ Financial disclosure reports pertaining to a particular calendar year are filed in the next calendar year. For example, reports relating to 2010 were filed in 2011.

² Isabel Acevedo appealed on May 9, 2011; Hans Arntsen, Denis Huderski, and George Mascia appealed on April 25, 2011; Dubravko Cebalo appealed on April 26, 2011; Jose Concepcion,

the simple statement, “The appeal you filed challenging your requirement to file a financial disclosure report with the Conflicts of Interest Board (COIB) for calendar year 2010 has been denied,”³ and advised the filer of the option either to file the 2010 financial disclosure report or to appeal further to the Board.⁴

Between April 28, 2011, and May 20, 2011, each of the DCAS employees timely appealed to the Board his or her designation as a required filer of a 2010 financial disclosure report by the agency.⁵

Dante Espiritu, Alexander Santana, Jamil Sheikh, and Lissette Urena appealed on April 19, 2011; Nathaniel Diego, Iman Elhakam, and George Pardo appealed on April 26, 2011; Veronica Julius appealed on April 27, 2011; Himanshu Patel and Suresh Patel appealed on April 18, 2011; and Josefina Quimbo and Monica Rich appealed on April 20, 2011.

³ On May 20, 2011, DCAS denied the appeal of Isabel Acevedo; on April 27, 2011, DCAS denied the appeals of Hans Arntsen, Jose Concepcion, Dante Espiritu, Denis Huderski, George Mascia, George Pardo, Himanshu Patel, Suresh Patel, Josefina Quimbo, Monica Rich, Alexander Santana, Jamil Sheikh, and Lissette Urena; on May 4, 2011, DCAS denied the appeal of Veronica Julius; and on May 6, 2011, DCAS denied the appeals of Dubravko Cebalo, Nathaniel Diego, and Iman Elhakam.

⁴ Pursuant to Board Rules § 1-17(d)(1) then in effect, an employee whose appeal is denied by the agency shall, within thirty days of service of the denial, either submit a financial disclosure report to the Board or file an appeal with the Board. A March 12, 2012, decision of the Board of Collective Bargaining invalidated this rule. Accordingly these appeals are being decided under the Financial Disclosure Appeals Process, which was entered into upon agreement between the City, the Board, and DC 37 prior to the rule being promulgated. The procedures for an appeal to the agency under the Appeals Rule and the Appeals Process are nearly identical. *See* Financial Disclosure Appeals Process § D(3) (an employee whose appeal is denied by the agency shall, within thirty days of service of the denial, either submit a financial disclosure report to the Board or file an appeal with the Board). *See also* footnote 13, *infra*.

⁵ Isabel Acevedo appealed to the Board on May 20, 2011; Hans Arntsen, Suresh Patel, and Jamil Sheikh appealed to the Board on April 28, 2011; Dubravko Cebalo appealed to the Board on May 19, 2011; Jose Concepcion, Nathaniel Diego, Iman Elhakam, Veronica Julius, Craig Spiegel, and Lissette Urena appealed to the Board on May 9, 2011; Dante Espiritu appealed to the Board on May 4, 2011; Denis Huderski, George Mascia, George Pardo, Josefina Quimbo, and Alexander Santana appealed to the Board on May 2, 2011; and Himanshu Patel and Monica Rich appealed to the Board on April 29, 2011. On January 27, 2012, pursuant to Board Rules § 1-17(d)(5) then in effect, the Board’s Director of Financial Disclosure served the filers and the agency with her recommendation that the Board grant all 18 appeals on the ground that the agency failed to comply with the requirements of Board Rules § 1-17(b)(6) which required that: “A decision of the agency head or his or her designee that denies an appeal shall set forth the reasons for and evidence relied upon in reaching such decision. Such denial shall be predicated on a showing that the employee meets the requirements of at least one of the filing categories set forth in New York City Administrative Code § 12-110(b)(3)-(4) and §§ 1-02, 1-14, and 1-15 of the Board’s rules. “

Section 12-110(b) of the New York City Administrative Code sets forth the categories of required filers of financial disclosure reports. These categories include those that are easily identifiable, e.g., elected and political party officials⁶ and candidates for public office,⁷ and those that require analysis of an employee's duties and responsibilities, e.g., policymakers⁸ and filers who have contracting responsibilities ("contract filers").⁹

The Financial Disclosure Appeals Process sets forth the procedures to appeal a designation as a required filer of a financial disclosure report. Pursuant to this Process, if the employee appeals to his or her agency the designation as a required filer of a financial disclosure report, the agency must determine that appeal on the merits *and must set forth the reasons the employee falls within one of the filing categories*. Financial Disclosure Appeals Process § B7 states that "Any written decision of the agency head or agency head's designee that denies an appeal ... **must set forth the reasons for that determination and the specific evidence in support of the determination**" (emphasis added). It further states that "[a]gencies are advised that the burden rests upon the agency to come forward with specific evidence showing that the employee performed duties falling within one of the filing categories set forth in New York City Administrative Code § 12-110(b)(3)-(4) and Rules of the City of New York, Title 53, §§ 1-02, 1-14, and 1-15."

The single statement forming the basis of DCAS's determination of each of the filers appeal - "The appeal you filed challenging your requirement to file a financial disclosure report with the Conflicts of Interest Board (COIB) for calendar year 2010 has been denied" - fails to set forth the reasons for the decision or the evidence relied upon in reaching the decision. In addition, the determination is not predicated on a showing that each respective employee meets the requirements of at least one of the filing categories.¹⁰

The Board now holds that an agency's failure to set forth any reasons for its denial of an employee's appeal is, in effect, a failure to respond within the required time frame; and the aforementioned appeals, and any such future appeals, shall therefore be deemed granted upon default.¹¹ Accordingly, the appeals of the aforementioned DCAS employees are deemed granted upon default, as DCAS failed to meet the Process's requirements concerning an agency's denial of a financial disclosure appeal, and the agency's decision is reversed. This decision shall apply only to the financial disclosure report concerning calendar year 2010.¹²

⁶ NYC Admin. Code § 12-110(b)(1).

⁷ NYC Admin. Code § 12-110(b)(2).

⁸ NYC Admin. Code § 12-110(b)(3)(a)(3).

⁹ NYC Admin. Code § 12-110(b)(3)(a)(4).

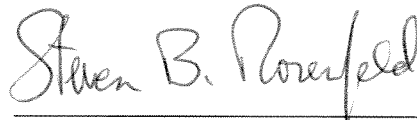
¹⁰ The filing categories are found in NYC Admin. Code § 12-110(b).

¹¹ See Financial Disclosure Appeals Process § B(5) (If the agency head or the agency head's designee fails to meet the 14-day deadline [to render a decision after the employee submits a written statement], the appeal shall be granted upon default).

¹² "In the case of any appeal that is granted by default, the grant of the appeal shall apply to that filing year only and shall not be a determination on the merits." Financial Disclosure Appeals Process § E(5).

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Administrative Code §12-110(c)(2) and the Financial Disclosure Appeals Process § D(8)(a), that DCAS's denials of the above-captioned employees' appeals concerning the financial disclosure report concerning calendar year 2010 are reversed, and the appeal of each above-captioned employee of DCAS' designation of the employee as a required filer of a financial disclosure report for calendar year 2010 is granted upon default.¹³

The Conflicts of Interest Board



By: Steven B. Rosenfeld, Chair

Monica Blum
Andrew Irving
Burton Lehmann
Erika Thomas-Yuille

Dated: April 19, 2012

cc:

Isabel Acevedo
Hans Arntsen
Dubravko Cebalo
Jose Concepcion
Nathaniel Diego
Iman Elhakam
Dante Espiritu
Denis Huderski
Veronica Julius
George Mascia
George Pardo

¹³ The Board notes that the failure of two of the appellers, Dante Espiritu and Jamil Sheikh, to comply with procedural requirements could have justified DCAS dismissing their appeal pursuant to Board Rules § 1-17(1)(b)(2) then in effect: Mr. Espiritu and Mr. Shikh each filed the initial notice of appeal with the agency, but neither submitted the required written statement setting forth the reasons he believe he was not required to file a financial disclosure report. Similarly, under the Financial Disclosure Appeals Process, failure to submit the required written statement or request a meeting with the agency head or agency head's designee within fourteen days after filing the notice of appeal constitutes a waiver of the right to appeal. *See* Financial Disclosure Appeals Process § B4. However, DCAS did not deny these two appeals on that ground; accordingly, they, too, are granted on default for DCAS's failure to specific its reason for denying the appeal.

Himanshu Patel
Suresh Patel
Josefina Quimbo
Monica Rich
Alexander Santana
Jamil Sheikh
Lissette Urena

Shameka Boyer, Assistant Commissioner, DCAS