

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

x

In the Matter of

John Begley
NicoleAnn Dawson
Naeem Janjua
Adeshola Laguda
Kenneth Lau
Katherine Lawrence
Archibald Mbatt
Annfiera Jarvis McPherson
Yalin Qiu

FD No. 2013-4

x

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

Upon consideration of all papers submitted in this matter, the appeals of the above captioned Department of Citywide Administrative Services (“DCAS”) employees are granted on default, and they are not required to file an annual disclosure report for calendar year 2012.¹

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 an annual disclosure report for calendar year 2012. Between April 9, 2013, and April 30, 2013, each employee timely appealed his or her designation as a required filer to DCAS.² Between April 22, 2013, and May 13, 2013, DCAS denied each of the appeals.³ Between April 26, 2013, and June 26, 2013, each of the DCAS employees appealed to the

¹ Annual disclosure reports pertaining to a particular calendar year are filed in the next calendar year. For example, reports relating to 2012 were filed in 2013.

² John Begley appealed on April 30, 2013; NicoleAnn Dawson, and Naeem Janjua appealed on April 17, 2013; Adeshola Laguda appealed on April 12, 2013; Kenneth Lau and Yalin Qiu appealed on April 16, 2013; Katherine Lawrence appealed on April 9, 2013; Archibald Mbatt appealed on April 22, 2013; and Annfiera Jarvis McPherson appealed on April 26, 2013.

³ DCAS denied John Begley’s appeal on May 13, 2013, NicoleAnn Dawson’s appeal on May 1, 2013, Naeem Janjua’s appeal on April 29, 2013, Adeshola Laguda’s appeal on April 26, 2013, Kenneth Lau’s appeal on April 29, 2013, Katherine Lawrence’s appeal on April 22, 2013, Archibald Mbatt’s appeal on May 6, 2013, Annfiera Jarvis McPherson’s appeal on May 9, 2013, and Yalin Qiu’s appeal on April 29, 2013.

Conflicts of Interest Board (“COIB” or “the Board”) his or her designation as a required filer of a 2012 financial disclosure report by the agency.⁴

Section 12-110(b) of the New York City Administrative Code sets forth the categories of required filers of annual disclosure reports. These categories include those that are easily identifiable, e.g., elected and political party officials⁵ and candidates for public office,⁶ and those that require analysis of an employee’s duties and responsibilities, e.g., policymakers⁷ and filers who have contracting responsibilities (“contract filers”).⁸

The Financial Disclosure Appeals Process sets forth the procedure to appeal a designation as a required filer of an annual disclosure report. Pursuant to this Process, an employee appeals to his or her agency the designation as a required filer of an annual disclosure report by filing a notice of appeal⁹ and submitting a written statement in support of that appeal within 14 days after filing the notice of appeal.¹⁰ The agency must provide the employee with the full 14-day period to submit written documents in support of the appeal,¹¹ must timely determine the appeal within 14 days after the time allotted to the employee to submit a written statement,¹² and must set forth the reasons for its determination and provide specific evidence that the employee falls within one of the filing categories.¹³

⁴ Pursuant to the Financial Disclosure Appeals Process, which was entered into upon agreement between the City, the Board, and DC 37, an employee whose appeal is denied by the agency shall, within thirty days of service of the denial, either submit an annual disclosure report to the Board or file an appeal with the Board. See Financial Disclosure Appeals Process § D(3). DCAS notes that John Begley’s appeal to COIB was not timely. However, for the reasons set forth in this opinion, the issue of the timeliness of his appeal is moot.

⁵ NYC Admin. Code § 12-110(b)(1).

⁶ NYC Admin. Code § 12-110(b)(2).

⁷ NYC Admin. Code § 12-110(b)(3)(a)(3).

⁸ NYC Admin. Code § 12-110(b)(3)(a)(4).

⁹ Financial Disclosure Appeals Process § B(2).

¹⁰ Financial Disclosure Appeals Process § B(4)(a). Failure to submit a written statement “shall waive the right to appeal except if an employee can show good cause for his or her failure to submit a written statement.” Financial Disclosure Appeals Process § B(4).

¹¹ Financial Disclosure Appeals Process § B(4). The agency must afford the employee the full 14-day period from the time the notice of appeal is filed to submit a written statement in support of the appeal; failure to do so results in the appeal being granted on default; *Matter of Acito, et. al.*, FD Order 2012-2 (August 28, 2013); *Matter of DeLisi*, FD Order 2013-2 (August 22, 2013).

¹² Financial Disclosure Appeals Process §§ B(5), E(6).

¹³ Financial Disclosure Appeals Process § B(7). The Board has previously found that an agency’s failure to set forth any reasons for its denial of an employee’s appeal is a failure to respond within the required time frame and results in the employee’s appeal being granted on default. *Matter of Acevedo, et. al.*, FD Order 2012-1 (April 19, 2012).

DCAS failed to provide each of the above-captioned employees with the full 14-day period with which to submit a written statement in support of the appeal and made its determinations before that 14-day period had expired:

Employee	Written statement was due:	Appeal was decided:
John Begley	May 14, 2013	May 13, 2013
NicoleAnn Dawson	May 1, 2013	May 1, 2013
Naeem Janjua	May 1, 2013	April 29, 2013
Adeshola Laguda	April 26, 2013	April 26, 2013
Kenneth Lau	April 30, 2013	April 29, 2013
Katherine Lawrence	April 23, 2013	April 22, 2013
Archibald Mbatt	May 6, 2013	May 6, 2013 ¹⁴
Annifiera Jarvis McPherson	May 10, 2013	May 9, 2013
Yaim Qiu	April 30, 2013	April 29, 2013

The Board has previously found that an agency’s failure to provide an employee with the full 14-day period in which to submit documents in support of an appeal will result in the appeal being granted on default because the decision is premature.¹⁵ Accordingly, as DCAS’s determination of each of the above-captioned employee’s appeal was premature, by delegation,¹⁶ the Executive Director grants the above-captioned employees’ appeals of the designation as a required filer of an annual disclosure report for calendar year 2012 on default for calendar year 2012.¹⁷

WHEREFORE, IT IS HEREBY ORDERED, pursuant to delegation by the Board, Administrative Code §12-110(c)(2), and Financial Disclosure Appeals Process §§ B(5) and (E)(5), that each of the above captioned employee’s appeal of the designation as a required filer

¹⁴ In three cases (Dawson, Laguda, and Mbatt), DCAS decided the appeal on the date the written statements were due, although the 14-day time period to render a decision commenced the following day. *See Matter of Delisi*, footnote 11, *supra*. DCAS determined these appeals on the merits, although it could have deemed these appeals waived for failure to submit a written statement. *See* footnote 18, *infra*.

¹⁵ *See* footnote 11, *supra*.

¹⁶ On August 22, 2013, the Board delegated to the Executive Director the ability to grant on default those appeals by public servants who seek review of their agency’s determination that they must file an annual disclosure report pursuant to New York City Administrative Code § 12-110(c), where the agency has failed to provide the employee with the requisite time for submitting written documents in support of the appeal. *See* August 22, 2013 delegation.

¹⁷ 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).

of an annual disclosure report for calendar year 2012 is granted on default for calendar year 2012 only.¹⁸

The Conflicts of Interest Board



By: Mark Davies, Executive Director

Dated: November 7, 2013

cc: John Begley
NicoleAnn Dawson
Naeem Janjua
Adeshola Laguda
Kenneth Lau
Katherine Lawrence
Archibald Mbatt
Annfiera Jarvis McPherson,
Yalin Qiu
Shameka Boyer, Deputy Commissioner for Administration, DCAS
Thomas Cooke, DC37

¹⁸ Seven of the appellars - John Begley, NicoleAnn Dawson, Naneem Janjua, Adeshola Laguda, Kenneth Lau, Archibald Mbatt, and Yalin Qiu - failed to comply with procedural requirements, a failure that could have justified DCAS dismissing their appeal pursuant to Board Rules § 1-17(1)(b)(2) then in effect: the aforementioned employees each filed the initial notice of appeal with the agency, but neither submitted the required written statement in support of the appeal. 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 seven appeals on that ground; accordingly, they, too, are granted on default for DCAS's failure to timely determine the appeal.