

IN THE MATTER OF JAMES McMANAMON
COIB CASE NO. 2017-047
JUNE 8, 2017

SUMMARY: A New York City Department of Parks and Recreation (“DPR”) Park Supervisor made known to his subordinates that a pipe in his home had frozen and he was unable to fix it. Later that workday, two of his DPR subordinates arrived at his home in a DPR vehicle. One of the subordinates attempted to fix the pipe for twenty minutes while the Supervisor was present. In a three-way settlement with the Board and DPR, the Park Supervisor agreed to forfeit six days of annual leave, valued at approximately \$1,625, and to serve a one-year probationary period for misusing City resources and City personnel by having his subordinates use a DPR vehicle to come work on his home, and misusing his City position to benefit himself by accepting household repair work from his subordinates. The penalty took into account the isolated nature of the violation as well as the relatively small amount of City time and resources misused. *COIB v. McManamon*, COIB Case No. 2017-047 (2017).

STIPULATION AND DISPOSITION:

WHEREAS, the New York City Department of Parks and Recreation (“DPR”) served disciplinary charges against James McManamon (“Respondent”), pursuant to Section 75 of the Civil Service Law, alleging conduct that violated the DPR Standards of Conduct and the City of New York’s conflicts of interest law, found in Chapter 68 of the New York City Charter (“City Charter”); and

WHEREAS, given that related disciplinary charges were pending at DPR, the New York City Conflicts of Interest Board (the “Board”) referred this matter to DPR pursuant to Section 2603(e)(2)(d) of Chapter 68; and

WHEREAS, DPR, the Board, and Respondent wish to resolve the above captioned matters on the following terms,

IT IS HEREBY AGREED by and between the parties as follows:

1. Respondent admits to the following:
 - a. Since May 10, 2001, I have been employed by DPR, most recently as a Park Supervisor. Throughout this period, I have been and remain a “public servant” within the meaning of and subject to Chapter 68.
 - b. On February 12, 2016, I made known to some of my DPR subordinates that a pipe had frozen at my home and that I was unable to repair it.
 - c. That same day, after hearing about the frozen pipe at my home, a City Park Worker and an Associate Park Service Worker, both of whom were my subordinates, came to my home, which is located across the street from their assigned work location, to attempt to repair the pipe. Although I did not see

them arrive, I now understand that the City Park Worker and Associate Park Service Worker drove to my home in a DPR vehicle.

- d. I was present at my home at the time of my subordinates' arrival, and I was present as the City Park Worker attempted to repair the frozen pipe for approximately twenty minutes.
- e. Both the City Park Worker and the Associate Park Service Worker were being paid to work for the City while they were at my home.
- f. I acknowledge that, by having my subordinates drive to my home in a DPR vehicle in order to attempt to repair a frozen pipe at my home during their DPR work hours, I used a City vehicle and City personnel for a non-City purpose in violation of the DPR Standards of Conduct, Chapter 3, Rule X(3)(A), and the City's conflicts of interest law, City Charter § 2604(b)(2), pursuant to Board Rules § 1-13(b), which provide:

No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. [Charter § 2604(b)(2)]

Except as provided in subdivision (c) of this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose. [Board Rules § 1-13(b)]

- g. I acknowledge that, by having my subordinates perform a personal favor for me, I violated City Charter § 2604(b)(3), which states:

No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

2. DPR and the Board, after considering the isolated nature of Respondent's violation as well as the relatively minimal amount of time and resources used by Respondent's subordinates, have determined that the appropriate penalty to resolve this matter is the forfeiture of six (6) days of annual leave, valued at approximately \$1,624.74, and a one-year probationary period.

3. Respondent agrees to the following:

- a. I agree to forfeit six (6) days of annual leave, valued at approximately \$1,624.74.

- b. I agree to a one-year probation, specific to the charges herein, which shall commence on the day I sign this disposition. This probationary period shall be extended by one (1) day for each day during the one-year probationary period that I am unable to perform the duties of my position because of annual leave, sick leave, or leave without pay. Upon violation of this probation I will be demoted to Associate Park Service Worker. Prior to the demotion, I will be entitled a meeting with the Parks Advocate of DPR, Pia Rivera.
- c. The probationary period shall begin the date this stipulation is fully executed and will only be deemed violated should misconduct occur after that date.
- d. I agree that this stipulation and disposition is a public and final resolution of the above-captioned matter only.
- e. I hereby waive any and all rights, including any right to a disciplinary hearing pursuant to Sections 75 and 76 of the Civil Service Law and any applicable collective bargaining agreement.
- f. I knowingly waive on my behalf and on behalf of my successors and assigns any rights to commence any judicial or administrative proceeding or appeal before any court of competent jurisdiction, administrative tribunal, political subdivision, or office of the City or the State of New York or the United States, and to contest the lawfulness, authority, jurisdiction, or power of the Board or DPR in imposing the penalty which is embodied in this stipulation and disposition, and I waive any right to make any legal or equitable claims or to initiate legal proceedings of any kind against the Board or DPR, or any members or employees thereof relating to or arising out of this stipulation and disposition or the matters recited therein.
- g. I confirm that I have entered into this stipulation and disposition freely, knowingly, and intentionally, without coercion or duress, and having been represented by the attorney of my choice; that I accept all terms and conditions contained herein without reliance on any other promises or offers previously made or tendered by any past or present representative of the Board or DPR; and that I fully understand all the terms of this stipulation and disposition.
- h. I agree that any material misstatement of the facts of this matter, including of the stipulation and disposition, by me or by my attorney or agent shall, at the discretion of the Board, be deemed a waiver of confidentiality of this matter.

4. The Board and DPR accept this stipulation and disposition and the terms contained herein as a final disposition of the above-captioned matters only, and affirmatively state that, other than as recited herein, no further action will be taken by the Board or DPR against Respondent based upon the facts and circumstances set forth herein, except that the Board and DPR shall be entitled to take any and all actions necessary to enforce the terms of this stipulation and disposition.

5. This stipulation and disposition shall not be effective until all parties have affixed their signatures below.

Dated: May 19, 2017

_____/s/
James McManamon
Respondent

Dated: May 19, 2017

_____/s/
Michael Coviello
Law Offices of Fausto E. Zapata, Jr.
Attorney for Respondent

Dated: May 24, 2017

_____/s/
Joanna Drucker
Agency Attorney
NYC Department of Parks and Recreation

Dated: June 8, 2017

_____/s/
Richard Briffault
Chair
NYC Conflicts of Interest Board