

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



Office of Government Ethics

In Re: S [REDACTED] Brown
Case No.: 1548-001

PUBLIC NEGOTIATED DISPOSITION

Pursuant to section 221 (a)(4)(A)¹ of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012, D.C. Law 19-124, D.C. Code § 1-1162.21(a)(4)(A) (“Ethics Act”), the Office of Government Ethics (the “Office” or “OGE”) hereby enters into this public negotiated settlement agreement with the Respondent, S. Brown. Respondent agrees that the resulting disposition is a settlement of the above-titled action, detailed as follows:

I. FINDINGS OF FACT

Respondent is a Fire Protection Engineer in the Permitting Operations / Fire Protection Division at the Department of Consumer and Regulatory Affairs (“DCRA”) and has held that position since 2007. Respondent’s duties and responsibilities include reviewing permit applications for code compliance and providing guidance to applicants to help them bring their applications into compliance. Respondent’s job duties also require that he process walk-in permit applications at the DCRA fire review desk.

An architect or builder may submit a permit application to DCRA by one of two processes. The online process requires that an applicant submit the application online through ProjectDox. Once the application is uploaded into the online system, a DCRA manager assigns reviewers (e.g., fire, structural, electrical) to review the permit. In some cases, such as an application to build a fence, permits are not assigned to a fire reviewer. In other, more complex jobs, such as commercial building permit applications, fire reviewers are assigned to review the application. All assigned reviewers must approve the permit application before it is issued. Applicants can access ProjectDox to see whether a reviewer has approved or made comments regarding their application. Applicants may also submit their permit applications through an in-person process. In those cases, applicants may go to DCRA’s main office, submit their permit application to intake, and then take the permit to each assigned division for permit review and approval. If each division approves the permit, the permit is issued that same day.

¹ Section 221(a)(4)(A) of the Ethics Act provides, “[i]n addition to any civil penalty imposed under this title, a violation of the Code of Conduct may result in the following: ... [a] negotiated disposition of a matter offered by the Director of Government Ethics, and accepted by the respondent, subject to approval by the Ethics Board.”

On November 5, 2014, Respondent entered into a domestic partnership with the owner of an architect consulting firm that often appears before DCRA with permit applications for its projects based in Washington, D.C. In mid-August 2015, Respondent married the owner of the company. An investigation revealed that, on two separate occasions, Respondent took official action on permit applications submitted by his spouse, on behalf her company, in violation of the conflicts of interest provisions in the Ethics Act.²

First, on August 3, 2015, Respondent reviewed Permit Number B1509401, an “addition alteration repair permit,” which was submitted by his spouse. The permit pertained to a residential property and was assigned to Respondent for fire review. According to Respondent’s supervisor, in early 2015, DCRA changed its internal policies so that fire reviewers, such as Respondent, were no longer required to review residential permits. Instead, the new policy required residential reviewers to perform fire reviews for residential permit applications. If a fire reviewer were assigned to a residential property, they were instructed to select “N/A,” so that the permit could be reviewed by a residential reviewer. Upon learning that her residential permit application had been assigned to fire review despite this new policy, Respondent’s spouse contacted him for assistance. Respondent admitted during his interview with OGE that he went into Acela, DCRA’s internal permit review system, and selected “N/A” (not applicable) for the fire review portion of this permit application. Because he did not view selecting “N/A” as an official action, Respondent did not inform his supervisor that the permit application was submitted by his spouse and he did not recuse himself from working on this permit. This permit was ultimately approved by DCRA after it was reviewed and approved by several disciplines, including, but not limited to the following departments: zoning, energy, green, structural, mechanical and water.

Second, on February 12, 2016, Respondent’s spouse brought an “alteration and repair permit,” Permit Number B1604648, for window and door replacements to DCRA for in-person processing. The DCRA intake officer assigned the fire review desk, which on this date was staffed by Respondent, to review this walk-in application. Respondent admitted during his interview with OGE that he performed and approved the fire review section of this permit application. In subsequent correspondence with OGE, Respondent admitted that he should have recused himself from conducting this review. This permit was ultimately approved by DCRA.

Respondent and his spouse cooperated fully with OGE’s investigation by submitting to interviews and providing this Office with documents upon request. In addition, Respondent swiftly accepted responsibility and expressed remorse for his conduct.

² See D.C. Official Code §1-1162.23.

II. NATURE OF MISCONDUCT

Respondent violated the following provisions of the Code of Conduct, as set forth below:

- **Count One: Conflict of Interest**

On August 3, 2015, Respondent violated D.C. Official Code §1-1162.23(a)³ when he entered “N/A” on a permit application (B1509401) that his spouse had submitted for approval to DCRA. By selecting “N/A” on the permit application, Respondent helped move her permit application through the DCRA review process. Respondent’s spouse was a “person closely affiliated”⁴ with him at the time he took this action, given that they had previously entered a domestic partnership on November 5, 2014.

- **Count Two: Conflict of Interest**

On February 12, 2016, Respondent violated D.C. Official Code §1-1162.23(a) when he approved a permit (B1604648) that his spouse brought to DCRA for in-person review. His spouse was a “person closely affiliated” with Respondent at the time he took this action, given that they were married in mid-August 2015.

III. TERMS OF THE NEGOTIATED SETTLEMENT

Respondent acknowledges that his conduct was in violation of the District Code of Conduct in that he violated the conflict of interest provisions set forth in the Ethics Act. Respondent agrees to pay a \$1,000 fine and attend ethics training provided by OGE within six months of the full execution of this Negotiated Disposition Agreement. Respondent also promises not to engage in such conduct in the future. The fine shall be paid by having \$50.00 per pay period automatically deducted from Respondent’s bi-weekly paycheck from the District government commencing immediately and continuing until such time as the fine amount is fully satisfied. By this agreement, Respondent expressly authorizes the Office of Pay and Retirement Services (OPRS) to make these deductions and to transfer such funds to the Board of Ethics and Government Accountability. In the event that Respondent’s employment with the District government ceases prior to complete satisfaction of the fine amount, Respondent agrees that any outstanding fine

³ D.C. Official Code §1-1162.23(a) provides, “No employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee’s financial interests or the financial interests of a person closely affiliated with the employee.”

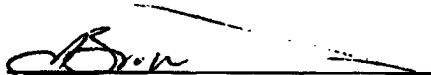
⁴ A “person closely affiliated” with a District employee is defined as a “spouse, dependent child, general partner, a member of the employee’s household, or an affiliated organization.” D.C. Official Code §1-1161.01(43).

amount will be satisfied by the Respondent from the District government for unused annual leave. Respondent acknowledges that, whether or not OPRS completes this deduction as described herein, Respondent is nonetheless solely responsible for satisfying the fine amount.


Respondent also understands that if he fails to pay the \$1,000 fine in the manner and within the time limit provided above, pursuant to section 221 (a)(5)(a) of the Ethics Act (D.C. Official Code §1-1162.21 (a)(5)(A)), the Ethics Board may file a petition in the Superior Court of the District of Columbia for enforcement of this settlement and the accompanying Board Order assessing the fine. Respondent agrees that this Negotiated Disposition is not just an admission of wrongdoing, but constitutes various factual admissions by him that may be used in any subsequent enforcement or judicial proceeding that may result from his failure to comply with this agreement.

Respondent further understands that if he fails to adhere to this agreement, the Office may instead, at its sole option, recommend that the Ethics Board nullify this settlement and hold an open and adversarial hearing on this matter, after which the Board may impose sanctions up to the full statutory amount (\$5,000 per violation) as provided in the Ethics Act for each violation. Because the Office is, at this time, foregoing that the Ethics Board hold an open and adversarial hearing on this matter, Respondent agrees to waive any statute of limitation defenses should the Board decide to proceed in that matter as a result of Respondent's breach of this agreement.

The mutual promises outlined herein constitute the entire agreement in this case. By our signatures, we agree to the terms outlined herein.


S. Brown
Respondent

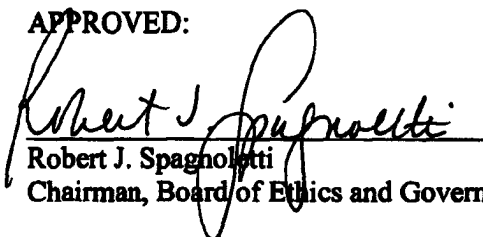
12/5/2016
Date


Darrin P. Sobin
Director of Government Ethics

12/5/2016
Date

This agreement shall not be deemed effective unless and until it is approved by the Board of Ethics and Government Accountability, as demonstrated by the signature of the Chairman below.

APPROVED:


Robert J. Spagnoli
Chairman, Board of Ethics and Government Accountability

12/8/16
Date