

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



Office of Government Ethics

In Re: J ██████ McKenzie
Case No: 1028-006

NEGOTIATED DISPOSITION

Pursuant to section 221(a)(4)(E)¹ of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012, D.C. Law 19-124, D.C. Official Code § 1-1161.01 *et seq.*, the Office of Government Ethics (the “Office”) hereby enters into this public Negotiated Disposition with the Respondent, J. McKenzie (“Respondent”). Respondent agrees that the resulting disposition is a settlement of the above-titled action, detailed as follows:

I. FINDINGS OF FACT

Respondent has been an employee of the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”) since 2008. Respondent is a Combo Construction Inspector in the Illegal Construction Division. As a Combo Construction Inspector Respondent performs field inspections of properties and buildings under construction in the District of Columbia to ensure that they are in compliance with the approved plans for the property and the applicable construction codes. Respondent also owns and manages a private architectural consulting business, the JNM Group, Inc. (“JNM Group”), incorporated in Washington D.C. in 2012. JNM Group is an architectural consulting firm that creates designs for residential and commercial spaces, and its office is located in the District of Columbia as well. As the Owner of JNM Group, Respondent draws layouts for residential houses and commercial buildings in the District for private clients. These drawings are then submitted to DCRA for approval. On each set of drawings reflecting the building plans, Respondent’s initials, “JM,” appear in the “Drawing” portion at the bottom of each page and identify “JM” as the drawer. Each set of drawings also bear the logo of JNM Group on each page and lists the Architect of the drawings as “The JNM Group, Inc.”

Respondent admitted, in written responses to questions from the Office, that “for each project [he] created several schematic design layouts for each client to choose one they wanted built.” Each client paid JNM Group \$500 for the final design, and then either Respondent or a contracted draftsman completed the sets of drawings. Respondent admitted to receiving this

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

payment for ten properties within the District, and further admitted to designing the complete set of drawings for three properties in the District ([REDACTED] [REDACTED], and [REDACTED]) and being paid the rest of the contracted fees for those services.

Specifically, Respondent admitted that he drew the final design layout for a project at [REDACTED] [REDACTED] Washington, D.C. A contracted draftsman completed the drawings, and those drawings were then submitted to DCRA for review and approval. On October 9, 2012, Respondent was asked by his supervisor to stop by [REDACTED] and provide his supervisor with an update on the condition of the property. On October 12, 2012, Respondent indicated in an email to his supervisor that he had met with the owner of the property and would remain in contact with the owner to ensure the property remained in compliance. At no point before, during, or after inspecting the property at [REDACTED] or before, during, or after he met with the owner of the property, the same owner who had paid him for the final design layout, did Respondent tell his supervisor that he and his company were involved in the design of the drawings for the construction on the property.

Respondent also admitted that he drew the final design layout for a project at [REDACTED] [REDACTED] Washington, D.C. A contracted draftsman completed the drawings, and those drawings were then submitted to DCRA for review and approval. On June 5, 2013, Respondent was assigned by his supervisor to inspect the property at [REDACTED]. He inspected the property and reported that no one was on the site at the time of his inspection, but that the property was compliant with the scope of the permit. On October 9, 2013, after inspecting the property a second time, Respondent again indicated that no one was on site during his inspection, but that he advised the property owner to secure the property. Finally, on February 26, 2014, after inspecting the property a third time, Respondent spoke to the owner of the property about repairing a neighbor's metal fence that had been damaged, and indicated that he would follow up with the owner to ensure it was fixed in a few weeks. At no point before, during, or after he was assigned to, and did inspect the property at [REDACTED] or before, during, or after he met with the owner of the property, the same owner who had paid him for the final design layout, did Respondent tell his supervisor that he and his company were involved in the design of the drawings for the construction on the property.

Respondent further admitted that he drew the final design layout for a project at [REDACTED] [REDACTED] Washington, D.C. A contracted draftsman completed the drawings, and those drawings were then submitted to DCRA for review and approval. On March 31, 2014, Respondent responded to an email from a DCRA Plan Reviewer who was reviewing the [REDACTED] plans, indicated that he was responsible for the drawings, and signed the email "J [REDACTED] McKenzie, LEED GA, Owner, The JNM Group, Inc." At the same time that Respondent was discussing these drawings for [REDACTED] in his capacity as owner of JNM Group, he was also inspecting property at [REDACTED] which was owned by the same person who he was working with on the [REDACTED] property. Respondent did not tell the zoning personnel he worked with on that inspection, or his supervisors, that he was in business with the owner of the property he was inspecting.

Respondent stated that each client was aware that Respondent was employed with DCRA, and that he has remained unbiased throughout all of his dealings involving his JNM Group clients and DCRA. Respondent also stated that he held his position as inspector as his first priority.

II. NATURE OF MISCONDUCT

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

- **Count One:** Financial Conflict of Interest

Respondent violated D.C. Official Code § 1-1162.23(a)², in that Respondent substantially participated through decision and investigation, via an inspection, in a particular matter, of properties owned by his clients where he or a contracted employee of his company, JNM Group, had drawn the building plans, in a manner that he knew was likely to have a direct and predictable effect on his financial interests and the financial interests of a person closely affiliated with him; notably that his outside ongoing business relationship with these property owners insofar as his JNM Group's clients would suffer if he were to issue any Stop Work Orders on property they owned, and that the property owners, individuals with whom Respondent was closely affiliated via their business with JNM Group, would be financially affected by the issuance of a Stop Work Order or evidence of a violation found on property they owned.

- **Count Two:** Maintaining a Financial Interest in an Outside Entity

Respondent violated DPM § 1804.1(d)³ in that Respondent maintained a financial and economic interest in his outside business, JNM Group, as Owner of the company, while there was a likelihood that this business would be involved in an official government action or decision taken by Respondent, such as an inspection of property after a complaint, and in fact Respondent's company JNM Group was involved in an official government action or decision taken by Respondent when he inspected projects at [REDACTED]

² D.C. Official Code § 1-1162.23(a) states: "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."

³ DPM § 1804.1(d) states that an employee may not engage in any outside employment or other activity which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee. Activities or actions which are not compatible with government employment include, but are not limited to, the following... (d) maintaining financial or economic interest in or serving (with or without compensation) as an officer or director of an outside entity if there is any likelihood that such entity might be involved in an official government action or decision taken or recommended by the employee.

██████████ and ██████████ where he and his company had been involved in the drawing and submission of the building plans.

- **Count Three:** Serving in a Representative Capacity for an Outside Entity in a matter before the District

Respondent violated DPM § 1804.1(h)⁴ in that Respondent represented JNM Group's clients as Owner of JNM Group and drawer of the building plans, before his own agency, DCRA, while still an employee at DCRA, by creating a complete set of drawings for building plans for ██████████ and ██████████ with his initials and his company's name affixed to them, and providing these drawings to the property owner, who submitted them to DCRA for approval.

- **Count Four:** Serving in a Representative Capacity for an Outside Entity in a matter before the District

Respondent violated DPM § 1804.1(h) in that Respondent represented JNM Group's clients as Owner of JNM Group and drawer of the building plans, before his own agency, DCRA, while still an employee at DCRA, by drawing several schematic design layouts and drawing the final design for the building plan, employing the draftsman who completed the drawings for the building plan, and providing completed sets of drawings for ██████████ and ██████████ with his initials and his company's name affixed to them, to his client, the property owner, who submitted the drawings to DCRA for approval.

- **Count Five:** Serving in a Representative Capacity for an Outside Entity in a matter before the District

Respondent violated DPM § 1804.1(h) in that Respondent represented JNM Group's clients as Owner of JNM Group and drawer of the building plans, before his own agency, DCRA, while still an employee at DCRA, by drawing several schematic design layouts and drawing the final design for the building plan, employing the draftsman who completed the drawings for the building plan, and providing completed sets of drawings for ██████████ with his initials and his company's name affixed to them, to his client, the property owner, who submitted them to DCRA for approval.

III. TERMS OF THE NEGOTIATED DISPOSITION

⁴ DPM § 1804.1(h) states that an employee may not engage in any outside employment or other activity which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee. Activities or actions which are not compatible with government employment include, but are not limited to, the following... (h) serving in a representative capacity or as an agent or attorney for any outside entity involving any matter before the District of Columbia.

Respondent acknowledges that his conduct was in violation of the District Code of Conduct in that he: (1) substantially participated in inspections of properties owned by clients of his company, JNM Group, and of properties where he himself had designed the drawings for the construction, in a manner that he knew was likely to have a direct and predictable effect on his finances, the finances of his company, and the finances of his clients; (2) that he maintained a financial interest, as owner, in an outside entity, JNM Group, while there was a likelihood that JNM Group would be involved in official government decisions made or actions taken by Respondent; and, (3) that Respondent repeatedly served in a representative capacity, as Owner of JNM Group and drawer of many layouts and drawings, for an outside entity, JNM Group, in matters before the District. Respondent agrees to pay a fine in the amount of **\$10,000** and promises not to engage in such conduct in the future. In return for Respondent's acknowledgement and promise, the Office will not seek any further remedy or take any further action relating to the above misconduct.

Respondent agrees to pay the \$10,000 fine in payments as follows. The first payment, in the amount of \$850.00 will be made by close of business on May 11, 2015. The remaining \$9,150.00 shall be paid as follows: \$850 on June 8, 2015, \$850.00 on July 6, 2015, \$850.00 on August 10, 2015, \$850.00 on September 7, 2015, \$850.00 on October 5, 2015, \$850.00 on November 9, 2015, \$850.00 on December 7, 2015, \$850.00 on January 11, 2016, \$850.00 on February 8, 2016, \$850.00 on March 7, 2016, and \$650.00 on April 11, 2016. Payment will be accepted by money order, made out to the D.C. Treasurer, and provided to the Office of Government Ethics.

Respondent also understands that if he fails to pay the **\$10,000** 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 Negotiated Disposition 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 Ethics Board may impose sanctions up to the full statutory amount (\$5,000 per violation) as provided in the Ethics Act for each violation.⁵ Because the Office is, at this time, foregoing requesting that the Ethics Board hold an open and adversarial hearing on this matter, Respondent waives any statute of limitation defenses should the Ethics Board decide to proceed in that manner as a result of Respondent's breach of this agreement.

The mutual promises outlined herein constitute the entire agreement in the above-titled action. By our signatures, we agree to the terms outlined herein.

⁵ Section 221(a)(1) (D.C. Official Code § 1-1162.21(a)(1)).


McKenzie

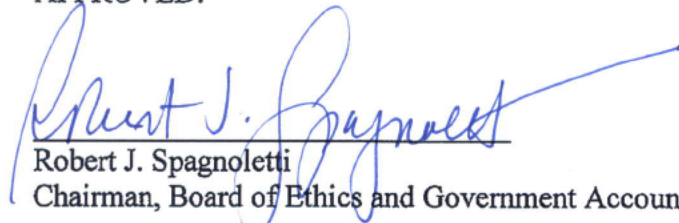
5/3/2015
Date


Darrin Sobin
Director of Government Ethics

5/4/15
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. Spagnoletti
Chairman, Board of Ethics and Government Accountability

5/7/15
Date

DS/CP