

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



Office of Government Ethics

In Re: R [REDACTED] Pemberton
Case No.: 1140-001

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, R. Pemberton. Respondent agrees that the resulting Negotiated Disposition is a settlement of the above-titled action, detailed as follows:

I. FINDINGS OF FACT

Respondent worked for the Department of Consumer and Regulatory Affairs ("DCRA") as the Administrative Officer for Vacant Building Enforcement, a management position that supports the Board for the Condemnation of Insanitary Buildings, for approximately four years, until his separation from service on September 27, 2013. During the time of Respondent's employment at DCRA, a contractor known to Respondent was a DCRA contractor and was listed on the DCRA abatement list to be called for emergency repairs, landscaping, and other services needed on vacant properties located in the District. Accordingly, that contractor was a prohibited source. In addition, during the time of Respondent's employment with DCRA, Respondent contacted that contractor to perform services and verified to DCRA that the contractor performed those services.

In addition, DCRA designated Respondent as an employee required to file a Confidential Financial Disclosure Statement ("CFDS") for calendar year 2012. Respondent timely filed his CFDS form on May 15, 2013. Question 8 on the CFDS form states, "Please list all gifts you received from a prohibited source² in an aggregate value of \$100 in a calendar year." In response to that question, Respondent listed "none." On March 30, 2012, however, Respondent received a loan in the amount of \$40,000 from the contractor, which he used in April 2012 to purchase (and subsequently make repairs to) a property located at 421 Quackenbos Street, N.W. Washington, D.C. 20011.

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."

² Prohibited Source is defined in the Ethics Act as "any person that: (A) Has or is seeking to obtain contractual or other business or financial relations with the District government; (b) Conducts operations or activities that are subject to regulation by the District government; or (c) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities." D.C. Official Code § 1-1161.01(46).

II. NATURE OF MISCONDUCT

Respondent's conduct is in violation of District Personnel Manual ("DPM") Chapter 18, § 1803.2(a), which states: "a District government employee shall not solicit or accept, either directly or through the intercession of others, any gift from a prohibited source." DPM § 1803.2(b) includes "loan" in the definition of gift.

Because Respondent solicited and accepted a gift from the contractor, a prohibited source, to purchase real property in Washington, D.C., he is in violation of DPM § 1803.2(a).

III. TERMS OF THE NEGOTIATED DISPOSITION

Respondent acknowledges that his conduct was in violation of the District Code of Conduct and for his conduct is fined in the amount of \$5,000. The Ethics Board may assess a civil penalty for a violation of the Code of Conduct of not more than \$5,000 per violation, or 3 times the total amount of the unlawful gift. (D.C. Official Code § 1-1162.21(a)(1)). In agreeing to a fine in the maximum amount of \$5,000, but without adding the multiplier to increase it further, the parties recognize that the loan agreement itself has the characteristics of an arms-length transaction insofar as it included a commercially competitive interest rate and exacting repayment terms. It should also be noted that the loan was fully satisfied, including interest, prior to commencement of this investigation.

Respondent agrees to pay the \$5,000 fine in three payments, as follows. The first payment, in the amount of \$2,500, will be made by close of business October 16, 2014. The second payment, in the amount of \$1,250, will be made by close of business November 21, 2014. The third payment, in the amount of \$1,250, will be made by close of business January 9, 2015. Payments should be made 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 \$5,000 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.³ Because the Office is, at this time, foregoing requesting that the Ethics Board hold an open and adversarial

³ Section 221(a)(1) (D.C. Official Code § 1-1162.21(a)(1)).


hearing on this matter, Respondent agrees to waive 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.



R. Pemberton

9/28/14
Date

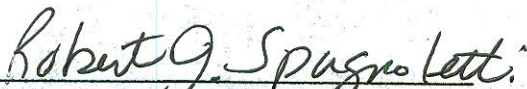


Darrin P. Sobin
Director of Government Ethics

9/28/14
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 *by LMR*
Chairman, Board of Ethics and Government Accountability

October 2, 2014
Date

rc/sp/ds