



CLOSE-OUT MEMO

Criminal Investigation

Public Corruption Unit

A.S.A.: Joseph M. Centorino

INVESTIGATION #: 64-08-6

SIGNATURE: *Joseph M. Centorino*

DATE: 11/12/09

JOSEPH M. CENTORINO, Division Chief, PC Unit

DATE: 11/12/09

JOSE J. ARROJO, Chief Assistant

DATE: 11/12/09

ORIGINATION DATE: 1/25/08

SUBJECT(S): Angel Gonzalez

EMPLOYMENT: Commissioner, City of Miami

INVESTIGATOR: Inv. Karl Ross

INTERNAL AFFAIRS

INVESTIGATOR:

AGENCY: Miami-Dade County Commission

AGENCY:

PHONE: on Ethics

PHONE:

CONCLUSION

CHARGES FILED

COURT CASE NUMBER:

CRIME

STATUTE

DEGREE

Exploitation of Official Position

Miami-Dade County Code, Section 2-11.1 (g)

2° M

OTHER:

BACKGROUND

This investigation was opened following a debriefing on May 14, 2008 of Eduardo Borges, a former City of Miami employee and director of the Neighborhood Enhancement Team (NET) office in the Allapattah area. Borges at that time was one of several defendants in a criminal case involving employees of the City of Miami Capital Improvements Department. Borges suggested during the debriefing that the subject, who has served as District 1 Commissioner in the City of Miami since 2001, may have been involved in a corrupt relationship with Juan Delgado, President and owner of Delant Construction Company.



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Delant is a local company that has been involved in several construction projects connected to the City of Miami. Borges cited two projects in District 1 that he suspected could have involved corrupt activity involving the subject--the Allapattah Wynwood Community and Development Center (AWCDC) Day Care Center project in 2005, and a more recent project for construction of elderly housing through Allapattah Community Action Inc. (ACAI). Both projects were built by non-profit entities utilizing federal funds transmitted through the City of Miami. Borges did not have any direct evidence of corruption, but said he believed that a possible source of funds paid to the subject may have come through a substantial increase in funding approved for the Day Care Center by the City Commission. He also suggested that Delant may have paid the subject for security services (the subject at one time was involved in the security business) and that Delant/Delgado may have funneled payments through the subject's daughter, Elizabeth Gonzalez. Borges' information was sketchy and incomplete, but credible enough to merit further investigation.

INVESTIGATION

An investigation was commenced with the Miami-Dade Commission on Ethics which at that time was investigating the subject for failing to properly report income on financial disclosure forms filed in connection with his elected position in the City of Miami. Investigator Karl Ross, who was assigned to that investigation, assumed the lead investigative role in this one also.

In the course of the investigation, numerous subpoenas were issued by the State Attorney's Office to obtain sworn testimony from individuals believed to have knowledge of the suspected corruption. These included, among others, present and former employees of the City of Miami Community Development Department; individuals involved with the AWDCD; Miriam Urrea, who heads ACAI; and Xiomara Pacheco, Director the Allapattah Business Development Authority, Inc. (ADBA), which formerly employed the subject as its director and which had constructed the Ralph Plaza I & II housing projects (the investigation centered on Ralph Plaza II); representatives of AA Security, a defunct security company that had worked for Delant and also employed the subject. Delant owner Juan Delgado and Delant project manager Felix Gomez, the subject's Chief of Staff, Frank Castaneda, his daughter, Elizabeth Gonzalez, and his wife, Maria Elena Gonzalez, were all interviewed by this writer pursuant to subpoena. It is noteworthy that the subject himself submitted to three separate sworn statements, all done voluntarily and without promise of immunity or any other benefit.

Personal bank records for the subject and his family members were obtained and examined, as well as bank records for Delant, AWDCD, AA Security, and other entities connected to the subject and his family. Records were also obtained from the City of Miami regarding the Day Care project, as well as emails from the subject's office.

It was determined that the subject provided assistance in some form to each of the three projects under review. In respect to the ACAI project, the subject assisted ACAI in securing a \$325,000 bridge loan for the project, following a written request for assistance from Delgado to Castaneda. The bridge loan was not used, but the granting of it succeeded in preserving for ACAI a \$9 million grant through U.S. HUD for the project. Regarding the ABDA Ralph Plaza II project, the subject helped to secure \$815,000 in funding through the City's Department of Community Development. Delant benefited from these actions as the selected contractor on each, although no evidence was developed to indicate that its selection for these projects was procured through the subject's efforts.

The most significant assistance provided through the subject came on the AWDCD Day Care Center. The subject attended preconstruction meetings, voted for and advocated a City Commission Resolution providing an increase of \$300,000 over the \$765,000 contract price proposed by Delant. Following the award of the contract, Frank Castaneda, the subject's Chief of Staff, facilitated the processing of the city's payments to Delant.

The bid process that AWDCD was required by HUD to follow in selecting a contractor for the project was found to be deeply flawed. The project was essentially awarded to Delant by the head of the AWDCD, Heriberto Fonseca, prior to any public bidding. When the city stepped in and forced AWDCD to go out to bid,¹ two other bids were then obtained from other contractors, one for \$1,288,500 and another for \$998,889. Delant's original proposal was for \$765,000. Fonseca steered the project to Delant, and then obtained by City Commission Resolution an increase in the contract price of \$300,000, for a total contract price of \$1,065,000. The subject voted on the resolution. Fonseca, however, steadfastly

¹ The City of Miami itself was not in charge of the bid since AWDCD was the party that applied for and received the funds. However, a public bid process was required by HUD regulation, which the City attempted to induce Fonseca to follow.



denied that he was ever pressured or forced by the subject or anyone else into awarding the construction contract to Delant. No evidence was obtained from any other witness pointing to the subject as the reason that the contract was awarded to Delant.

Felix Gomez, project manager for Delant, denied that any improper influence was exerted by the subject or his staff during the process. He questioned the competence of Fonseca, and attributed delays in the City's release of funds to Delant to Fonseca's lack of experience and knowledge of the process. He said he spoke to Frank Castaneda about the funding delays, but not to the subject. Gomez also stated that the \$300,000 funding increase was justified due to increases in costs attributable to Davis-Bacon requirements, permit and impact fees, performance bonds and increased construction costs.

While the subject clearly assisted and supported Delant at various times in its city-connected projects, no actions taken by the subject on behalf of projects in which Delant held a financial interest were in and of themselves illegal or outside of the bounds of ethical behavior. Clearly, the subject was pushing for the funding and completion of significant publicly-funded housing projects in his district. Any underlying illegality, if it occurred, would necessitate a finding of evidence that the subject used his public position to obtain an improper material benefit for himself, his family, or some other party.

No direct evidence of any direct financial transfer between Delant and the subject was found in the course of interviews or analysis of bank and other records. No evidence of a lavish lifestyle or significant unexplained assets or expenditures were found in the subject's finances. However, a substantial, irregular and highly suspicious benefit to his daughter, Elizabeth Gonzalez, was found. Between July 16, 2004, and May 5, 2006, Elizabeth Gonzalez received payments totaling \$47,500 from Delant. It was determined that Ms. Gonzalez performed no services for Delant in consideration of the payments. It was also determined that the subject had obtained part-time employment from AA Security between April 2002 and September 2003, through the recommendation of Delant owner Juan Delgado, for which he received \$51,000 in compensation. While evidence indicated that the subject did provide sporadic consulting services to AA, little documentation of his work was available. Further, Delgado stated that he had the impression that he may have actually paid for the subject's hiring when AA revised the rates it charged Delant for security services.

Concerning the AA security employment, AA owners testified that the subject was hired upon the recommendation of Delgado. They indicated that the subject was hired due to their inexperience in the field, and that he helped provide business leads and marketing advice that they found useful and worth the wages paid to him. They disputed Delgado's assumption that the cost of the subject's employment was passed on to Delant in a rate increase. The rate increase did not directly coincide with the subject's employment, and was an across-the-board increase to all customers of AA. It could not be proven that the subject did not earn the payments from AA, nor that the referral of AA to the subject was part of any *quid pro quo* for favorable government action, as opposed to a friendly gesture on the part of Delgado to help the subject. Undoubtedly, Delgado was motivated to curry favor with the subject for his company's benefit and admitted as much in his statement. However, Delgado stopped short of ascribing any corrupt motive to the subject or providing evidence of same.

The placement of Elizabeth Gonzalez on the Delant payroll during the time that the Day Care Center contract was being awarded and the project completed is more problematic. While no evidence of an explicit *quid pro quo* was provided by anyone, the circumstances alone provide a possible circumstantial case of Unlawful Compensation against the subject that would need to be supplemented by the testimony provided by one or more of the three principals involved--Juan Delgado, Elizabeth Gonzalez, and Angel Gonzalez himself.

JUAN DELGADO

Juan Delgado, through his attorney, Mark Seiden, asked for and received use and derivative use immunity through the issuance of a subpoena. He testified that the subject had spoken to him about the fact that his daughter, who had recently graduated from Florida International University, was looking for a job. The subject made an overture to Delgado regarding the possibility of her being hired by Delant. Delgado suggested to the subject that she come to Delant's office to apply. According to Delgado, he never saw Elizabeth Gonzalez when she came to Delant, but he unilaterally placed her on the payroll at \$500 per week in July 2004. Delgado was explicit about his motive. He said he hoped that doing so would be beneficial to his company in its quest for work on city-sponsored projects in the subject's district. In other words, he admitted to a corrupt motive on his part in placing the District 1 City Commissioner on his company's payroll.



However, Delgado's motive is not proof of a corrupt intent on the part of the subject. Delgado was unable to provide further evidence of something done or said by the subject that would have proven such intent.

Delgado said that he did not discuss with the subject what he had done for his daughter. He said he continued to pay Elizabeth Gonzalez until May 2006 and never met with her or asked her to perform any work for his company during that time. Delgado said he believed that he was helping to pay for Elizabeth Gonzalez's education. Delgado said that sometime prior to May 2006 he had a conversation with the subject in which the subject told him that his daughter, who had completed an MBA at Nova Southeastern University during 2005, was now out of school and did not need her position at Delant any longer. Delgado said he then removed her from the payroll.

ELIZABETH GONZALEZ

Elizabeth Gonzalez appeared for her statement pursuant to subpoena and was accompanied by her attorney, Milton Hirsch. She recounted that her relationship with her father had been strained for years; that she rarely spoke with him; and that there were periods of estrangement from him, including during the time she was on the Delant payroll. Ms. Gonzalez's description of the difficult relationship between herself and her father was corroborated in statements taken from her parents, her former and current boyfriends, and others interviewed during the investigation.

Ms. Gonzalez acknowledged that sometime after she had graduated from FIU, her father suggested that she go to Delant to apply for a job; that she did so and met with someone at the Delant office, but not Juan Delgado; and that shortly thereafter she began to receive her weekly paychecks. She said she expected to be asked to perform some work for Delant, but was never asked to do so. According to Ms. Gonzalez, it never occurred to her that she was doing anything wrong in accepting the no-show position at Delant. During the calendar year 2005, Ms. Gonzalez said she was a full-time student in the Nova Southeastern MBA program while she continued to receive the Delant checks.

Ms. Gonzalez claimed not to have spoke to her father about the situation until sometime in the fall of 2004, several months after she was placed on the Delant payroll. According to Ms. Gonzalez, she had a brief conversation with her father in which he asked her if she was working. She testified that when she told him about receiving the paychecks from Delant but not ever performing any work, he became very upset with her and told her it was wrong and she should not be doing so. An argument ensued in which her father told her he would speak to Delgado and put an end to the arrangement. According to Elizabeth Gonzalez, it was the only conversation she had about the Delant position with the subject while she was receiving the compensation.

Ms. Gonzalez said that she kept all of the funds she received from Delant and that all of the money went toward her own personal expenses and that none of it went to the subject. An analysis of Ms. Gonzalez's bank records indicated that most of the funds were deposited into her own personal bank account. Several checks, however, were deposited into a bank account managed by the mother, Maria Elena Gonzalez. According to Elizabeth and her mother, these checks were deposited by Mrs. Gonzalez as a matter of convenience with the intention of giving the cash back to Elizabeth, which Mrs. Gonzalez confirmed she did.

ANGEL GONZALEZ

During the first of his three voluntary statements, taken on December 19, 2008, Angel Gonzalez was questioned about income from his rental properties that went unreported on his Form 1 Financial Disclosure forms for several years. He acknowledged the lapse and later admitted to the violations before the Miami-Dade Commission on Ethics based on a non-criminal complaint filed by the Commission Advocate.

Angel Gonzalez was asked in his second voluntary statement on February 2, 2009, which focused on the Day Care Center issues, whether any family member of his had worked for Delant. This statement was taken prior to the receipt of definitive evidence about Elizabeth Gonzalez and her Delant connection. The subject denied that any family member had worked for Delant, a technically true though less than forthright answer. However, following that statement, in an off-the-record discussion, he sought to amend his testimony through this attorney by proffering that his daughter, Elizabeth, had held a part-time job at Delant for some period of time.

Following the testimony of Juan Delgado in the investigation revealing the payments made to Elizabeth Gonzalez, the subject submitted to a third statement on June 15, 2009. At that time he gave testimony that was substantially



consistent with that of his daughter, whose testimony was not taken until October 20, 2009.² The subject acknowledged the difficult relationship existing between him and his daughter. He admitted asking Delgado to allow her to apply for a job with Delant. He stated that he never intended for her to be given a "no show" job and was unaware of what Delgado had done until an argument he had with his daughter during the fall of 2004 when she revealed the arrangement to him and he expressed disapproval of it.

The subject claimed to have called Delgado at some unspecified time thereafter, and that he told Delgado he was upset about the arrangement and asked Delgado to stop the payments. The subject said that Delgado declined, and said that he (Delgado) was doing nothing wrong in helping Elizabeth complete her education, and that he was free to spend his own money as he saw fit. The subject said that the only other conversation he had with Delgado occurred when he told Delgado during 2006 that his daughter had finished school and had a job in a bank.

Delgado testified that he had very few conversations with the subject, and had no recollection of a conversation in which he and the subject had a disagreement about continuing the arrangement he had with the subject's daughter.

The subject voluntarily submitted to a polygraph examination, which was administered by Slattery Associates, Inc. He was tested regarding the following questions and answers:

Did you know your daughter would not have to work when Delgado offered her a job?
Answer - NO

When you told your daughter it was wrong that she accept money from Delgado without working did it cause a split in the family? Answer - YES

When you tried to talk to Delgado about him giving your daughter money without work, did he say I'm not giving you anything I can help her if I want? Answer - YES

Do you remember ever giving Juan Delgado any specific benefit because of what he did for your daughter? Answer - NO

Was Juan Delgado ever given any special privilege or allowance by you because of what he did for your daughter? Answer - NO

Are you telling the truth that there was never any Quid-Pro-Quo between you and Delgado due to your daughter's alleged job? Answer - YES

The examiner found the subject to have been truthful in his answers to all six questions.

CONCLUSION

In order to charge the subject with Unlawful Compensation (F.S. 838.016), a felony crime, it would require proof beyond a reasonable doubt that he acted with a corrupt intent to solicit or receive a benefit from Delgado in exchange for some action he might take as a public official. There is no doubt that he did take actions as an official of the City of Miami that proved favorable to Delgado's company. The question at the heart of the investigation is whether he acted corruptly in soliciting or receiving a benefit in the form of his daughter's unearned salary from Delant.

There is no evidence that the subject directly solicited a "no show" job for his daughter. The evidence indicates that he did solicit a job for her, something that was ethically improper given Delant's interest in ongoing projects funded by the City of Miami; the subject's position to affect the funding of those projects; the conditions that the City might place on those projects; and other issues that might arise during the construction of the projects, such as the timing of payments. However, there is no direct evidence that there was a contemplated *quid pro quo* at the time of the job solicitation from Delgado, who was a known contractor but also his friend. The actions taken by the subject regarding the AWDCD Day

² The delay in taking a statement from Elizabeth Gonzalez was due to her insistence, through her attorney, on receiving immunity for her testimony, and the fact that several collateral financial matters involving her and their possible connection to the subject remained under investigation. Those collateral matters have since been resolved without implicating the subject.



Care Center, the ACAI project, and the ABDA-sponsored Ralph Plaza II project, appear to have occurred in response to problems or issues that arose during the pre-construction or construction phases of those projects, and did not involve any extraordinary or unethical actions on his part.

It is troubling that the subject was informed about Delgado's gratuitous employment of his daughter several months later, yet continued to act on matters pertaining to Delant in his capacity as a City of Miami Commissioner. The employment of his daughter by Delant and his failure to recuse himself from acting on such matters created an overwhelming appearance of impropriety.

This writer analyzed the evidence closely to determine whether a felony charge of Unlawful Compensation could be proven beyond a reasonable doubt. This was done in consultation with other senior attorneys in the State Attorney's Office, including ASA Penny Brill, Chief of the Legal Division. A consensus emerged from the discussion that it would be difficult to prove a felony due to the lack of evidence of a corrupt intent on the part of the subject; the fact that the subject himself did not receive a direct financial benefit; and the fact that the subject's actions on Delant's behalf, though significant, were not inconsistent with actions he may have taken as an advocate for his district, and did not result in any provable harm to the city.

Further, the *only* evidence to contradict the subject's testimony that he attempted to end his daughter's connection to Delant soon after first hearing about it came from Juan Delgado. This essential witness testimony may soon become unavailable in any prosecution of Angel Gonzalez. Although Delgado received immunity for his testimony in this investigation, he will not go unprosecuted. Delgado will be charged shortly as a co-defendant in an unrelated pending case against defendant Raul Masvidal, for Delgado's role in laundering the proceeds of public funds stolen from Miami-Dade County. As result, his testimony against this subject would be compromised at best, and could become unavailable due to his being a criminal defendant.

The fact that the subject passed a polygraph examination regarding his actions and intentions was considered, but was not dispositive in the analysis.

There is no question that the subject violated the Miami-Dade County Code in exploiting his public position to gain employment for his daughter. The Code provision in question can be prosecuted either as a non-criminal violation before the Miami-Dade Commission on Ethics or as a criminal misdemeanor. Given the seriousness of the circumstances surrounding the violation, this writer determined that a criminal prosecution was warranted. Once confronted with the certainty that he would be charged criminally, the subject agreed to enter into a negotiated plea agreement with the State Attorney's Office that will result in his resignation from the office of City of Miami Commissinoer. Specifically, a negotiated plea agreement has been entered into between the State and the subject that will result in his pleading guilty and being adjudicated on one count of Exploitation of Official Position pursuant to Section 2-11.1 (g) of the Miami-Dade County Code. Conditions of the plea include, among other provisions, six-months of probation, resignation from office, \$7500 in investigative costs, and cooperation by the subject on pending and future investigations.

This investigation is now closed.

