

**IN THE MATTER OF ADOLFO CARRION, JR.
COIB CASE NO. 2009-159
NOVEMBER 30, 2011**

SUMMARY: The Board fined a former Bronx Borough President \$10,000 in connection with renovating his home with help from the architect of a development project that sought his official approval. The former Borough President admitted to hiring an architect to design a porch and balcony for his City Island home sometime in 2006 when the architect was involved in a project that would require the Borough President's official review and to causing a two-year delay in being billed for the architect's work. The former Bronx Borough President admitted that hiring the architect created a conflict of interest between his public duties and personal interests because, at the time of the hiring, the architect was part of a team seeking the City's approval of a Bronx development, known as "Boricua Village," and, as the affected Borough President, he would play an official role in that approval process. Even though he was not certain of the architect's involvement in Boricua Village when he hired him, the former Borough President knew the architect was associated with similar projects that had come before the Borough President's Office and was chargeable with exercising reasonable care in ascertaining the relevant facts that could create a conflict of interest with his official duties. The former Bronx Borough President further admitted that, even though the initial construction work on the porch was finished in March 2007 and he paid the builders at that time, he did not receive a bill from the architect until after the *New York Daily News* contacted him in March 2009 about the architect's services, at which time he paid the architect for his work. The former Borough President acknowledged his conduct violated the provision of the City's conflicts of interest law that prohibits the City's elected officials and other public servants from using, or attempting to use, their City positions to obtain any financial gain, contract, license, privilege, or other private or personal advantage, direct or indirect, for the public servant or any individual or firm associated with the public servant. *COIB v. Carrión*, COIB Case No. 2009-159 (2011).

STIPULATION AND DISPOSITION:

WHEREAS, the New York City Conflicts of Interest Board (the "Board") commenced an enforcement action pursuant to Section 2603(h)(1) of Chapter 68 of the New York City Charter ("City Charter") against Adolfo Carrión, Jr. ("Respondent"); and

WHEREAS, the parties wish to resolve this matter on the following terms;

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

1. In full satisfaction of the above-captioned matter, Respondent admits to the following:
 - a. From January 1, 2002, to March 1, 2009, I was Bronx Borough President. As such, I was at all relevant times hereafter mentioned a "public servant" within the meaning of Chapter 68.

- b. In early 2006, I sought to hire an architect to design a porch as part of a renovation project my wife and I were undertaking on our home on City Island in the Bronx. I spoke with my friend Peter Fine, a principal of Atlantic Development Group, LLC (“Atlantic”), about who might be a good architect to do the job. Mr. Fine suggested I speak to Hugo Subotovsky.
- c. At that time, Mr. Subotovsky was the architect for a project Atlantic was developing in the Bronx, called “Boricua Village,” and, along with Mr. Fine, was part of a team seeking the City’s approval for the project through the City’s Uniform Land Use Review Procedure (ULURP) process. As the affected Borough President, I later would be required to review and make a recommendation to the City Planning Commission regarding whether or not the Boricua Village project should be approved in accordance with ULURP. Although I did not know of Mr. Subotovsky’s specific involvement in the Boricua Village project at that time, I knew that he was an architect associated with similar projects that had previously come before my office seeking the City’s approval through ULURP.
- d. At my request, Mr. Fine arranged a meeting with Mr. Subotovsky. During the meeting, my wife and I asked Mr. Subotovsky to do the architectural work for our porch. Mr. Subotovsky agreed to prepare and furnish plans and specifications for the porch and to make the necessary applications to the New York City Department of Buildings to construct the porch.
- e. Mr. Subotovsky and I did not enter into a written agreement specifically addressing compensation and payment for his architectural services. Nonetheless, when I retained Mr. Subotovsky, it was my understanding that he would bill me after his work was complete and I would pay for his services in full at that time. I knew that, as the architect, Mr. Subotovsky’s work would not be complete until after the City’s Department of Buildings approved a final survey of the fully constructed porch and closed out the permit for the project. I also knew that I, as the property owner, was responsible for obtaining the final survey.
- f. Thereafter, Mr. Subotovsky designed the porch and made the necessary filings with the Department of Buildings, which then issued work permits for the porch on January 21, 2007.
- g. On or about January 22, 2007, the City Planning Commission referred the Boricua Village project to the Bronx Borough President’s Office. On March 26, 2007, acting in my capacity as Bronx Borough President, I recommended approval of the Boricua Village project, and it went to the City Planning Commission, which approved the necessary zoning changes thereafter.
- h. The initial construction work on the porch was finished in March 2007. We paid the builders the full \$26,000 for the cost of construction in a timely manner. On March 21, 2007, my wife sent Mr. Subotovsky an email, in which she thanked

him for his help on the porch and, even though the project was not yet complete, asked him to let us know how much we owed him for his work. Mr. Subotovsky did not issue a bill at that time.

- i. My wife and I did not obtain a final survey, and Mr. Subotovsky did not issue a final bill, until after the *New York Daily News* contacted me regarding Mr. Subotovsky's services in March 2009. That month, Mr. Subotovsky performed an inspection and determined that alterations were necessary to correct elements that did not conform to the design. After alterations were made and the City's Department of Buildings closed out the permit for the project, Mr. Subotovsky's architectural firm sent me and my wife an invoice, dated April 15, 2009, for services performed in 2006, 2007, and 2009. We paid this bill for \$4,247.50 promptly after receipt.
- j. I was not certain of Mr. Subotovsky's specific involvement in the Boricua Village project pending ULURP review at the Bronx Borough President's Office. However, I knew that he was an architect associated with similar projects that had previously come before my office seeking the City's approval through ULURP. As a City official, I was chargeable with exercising reasonable care in ascertaining the relevant facts, about which I should have known, that could create a conflict of interest with my official duties. Consequently, I should have ascertained at the time I engaged Mr. Subotovsky as an architect that he was involved in a project that would come before my office in the ULURP process.
- k. Although I was not aware of it at the time, I now acknowledge that, by asking Mr. Subotovsky to provide me with architectural services for my residence while he was part of a team seeking the City's approval for the Boricua Village project through the ULURP process and by failing to undertake and complete the additional tasks necessary for the conclusion of the porch construction project, which caused a delay in my receipt and payment of a final bill from Mr. Subotovsky until April 2009, I violated the City of New York's conflicts of interest law, specifically 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.

I affirm that, other than as acknowledged herein, I neither sought nor obtained any other advantage or financial gain in connection with my porch construction project.

- l. I understand that, because I was engaged in a private transaction with the Boricua Village project's architect, I should have disclosed that private transaction to the

Board, prior to taking official action as an elected official on the project pursuant to City Charter § 2604(b)(1). City Charter § 2604(b)(1) provides:

A public servant who has an interest in a firm which is not prohibited by subdivision a of this section, shall not take any action as a public servant particularly affecting that interest, except that . . . in the case of an elected official, such action shall not be prohibited, but the elected official shall disclose the interest to the conflicts of interest board, and on the official records of the council or the board of estimate in the case of matters before those bodies.

2. In recognition of the foregoing, Respondent agrees to the following:

- a. I agree to pay a fine of Ten Thousand Dollars (\$10,000.00) to the Board by money order or cashier, bank, or certified check, made payable to the “New York City Conflicts of Interest Board,” within seven (7) days of signing this Disposition.
- b. I agree that this Disposition is a public and final resolution of the Board’s charges against me.
- c. 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 in imposing the penalty which is embodied in this 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 any members or employees thereof, relating to or arising out of this Disposition or the matters recited therein.
- d. I confirm that I have entered into this Disposition freely, knowingly, and intentionally, without coercion or duress, and after having had the opportunity to be represented by an 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; and that I fully understand all the terms of this Disposition.
- e. I agree that any material misstatement of the facts of this matter, including of the 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.

3. The Board accepts this Disposition and the terms contained herein as a final disposition of the above-captioned matter only, and affirmatively states that other than as recited herein, no further action will be taken by the Board against Respondent based upon the facts and

circumstances set forth herein, except that the Board shall be entitled to take any and all actions necessary to enforce the terms of this Disposition.

4. This Disposition shall not be effective until all parties have affixed their signatures below.

Dated: November 22, 2011

_____/s/
Adolfo Carrión, Jr.
Respondent

Dated: November 22, 2011

_____/s/
Laurence D. Laufer
Genova, Burns & Giantomasi
Counsel for Respondent

Dated: November 22, 2011

_____/s/
Barry H. Berke
Kramer Levin Naftalis & Frankel LLP
Counsel for Respondent

Dated: November 30, 2011

_____/s/
Steven B. Rosenfeld
Chair
NYC Conflicts of Interest Board