

Conflicts of Interest Bd. v. Collins

OATH Index No. 556/14 (Feb. 11, 2014), *adopted*, Bd. Chair's Dec. (July 30, 2014),
appended

Respondent, a clerical associate in the Staten Island District Attorney's Office, violated the New York City Charter by using her position for personal advantage and using her employee identification for a non-City purpose. At a default hearing, petitioner proved that respondent offered to provide confidential information to a drug dealer in an attempt to obtain drugs for her husband. Petitioner also proved that respondent approached police officers, identified herself as an employee of the prosecutor's office, and displayed her employee identification as the officers investigated her husband for an illegal drug transaction. A \$10,000 fine recommended.

The Board adopted ALJ Miller's findings and penalty recommendation of \$10,000.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
CONFLICTS OF INTEREST BOARD
Petitioner
- against -
RENE COLLINS
Respondent

REPORT AND RECOMMENDATION

KARA J. MILLER, *Administrative Law Judge*

Petitioner, the Conflicts of Interest Board ("the Board"), brought this civil penalty proceeding under Chapter 68 of the New York City Charter ("the Charter") and Title 53 of the Rules of the City of New York. The Board alleged that respondent, Rene Collins, formerly employed as a clerical associate by the Staten Island District Attorney's Office ("the DA's office"), violated sections 2604(b)(2) and 2604(b)(3) of the Charter by offering to provide a convicted drug dealer, Davon Bishop, confidential information as to whether he was under investigation in exchange for Bishop giving respondent's husband, Robert Edmonds, two units of

crack cocaine in January 2013. Petitioner further alleged that, in February 2013, when New York Police Department (“NYPD”) detectives tried to arrest Edmonds outside respondent’s residence, after Edmonds had been observed buying crack cocaine, respondent showed her DA’s office identification to the detectives in an attempt to prevent the arrest of her husband (ALJ Ex. 1) Respondent submitted an answer denying the charges (ALJ Ex. 2).

The record established that the petition and notice of hearing were served properly upon respondent at her last known address by first class and certified mail, return receipt requested (ALJ Exs. 1, 3). The notice of hearing advised respondent of the date, time and place of the settlement conference and trial, her right to representation, and the consequences of a failure to appear at trial (ALJ Ex. 3).

Respondent did not appear at the settlement conference scheduled for October 30, 2013. On November 6, 2013, Erica Gray-Nelson, respondent’s counsel, filed a motion to withdraw as counsel, in which she stated that respondent was not responding to her telephone calls or letters. On November 21, 2013, I held a conference call with respondent, Ms. Gray-Nelson, and Ms. Miller, counsel for petitioner, in which respondent agreed to have Ms. Gray-Nelson remain as her attorney and the trial was adjourned to January 8, 2014 (Tr. 8-9).

Despite participating in the conference call where the new hearing date was selected, respondent failed to appear for the hearing on January 8, 2014. Ms. Gray-Nelson appeared on January 8 and said that respondent had told her during a telephone conversation the day before that she would appear for trial as scheduled. However, on the morning of January 8, respondent left Ms. Gray-Nelson a voicemail message indicating that she would not be present at trial, alluding to some commuting issues with the Staten Island Ferry (Tr. 7-8). At 10:10 a.m., forty minutes past the scheduled start time of the hearing, I found respondent in default based upon her written and actual notice of the hearing, her demonstrated reluctance to participate, and her failure to appear. I also granted Ms. Gray-Nelson’s motion to be relieved as counsel (Tr. 8-9).

For the reasons presented below, I find that petitioner proved the charges and recommend a fine of \$10,000.

ANALYSIS

At the hearing, petitioner relied on documentary evidence and testimony from NYPD Detective Nicholas Velez and Deputy Chief David Frey of the DA's Investigation Bureau. Both witnesses were credible.

Velez testified that he participated in an undercover "buy-and-bust operation" in the West Brighton area of Staten Island on February 16, 2013, with Detective Del Prete (Tr. 13). Shortly after 6:00 p.m. that day, Del Prete provided Velez with the description of a man, later identified as respondent's husband, Edmonds, who had purchased drugs from Bishop in a hand-to-hand exchange on the corner of Broadway and Seneca Street (Pet. Ex. 1; Tr. 15). Velez spotted Edmonds, saw him get into a car, and followed the car to an address on Seneca Street, where respondent lives (Tr. 15-16; Pet. Ex. 1). Edmonds went into his house and the undercover officers waited outside (Tr. 16).

When Edmonds came out of the house, undercover officers approached him, identified themselves, and checked him for weapons (Tr. 16). According to Velez, respondent came out of her house "yelling" and telling the police to get away from her husband (Tr. 16). Velez recalled that respondent had her employee identification in her hand and she said that she worked for the DA's office (Tr. 16-17). Velez tried to talk to respondent but she was "very irate" and "continuously" yelling that she worked for District Attorney Daniel Donovan (Tr. 17). The police did not recover any drugs or contraband from Edmonds and after reviewing his identification, the officers left the scene (Pet. Ex. 2; Tr. 17).

Upon receiving word that Velez had stopped Edmonds in front of a house on Seneca Street, Del Prete went to that location and recognized Edmonds as the person who appeared to have purchased the drugs from Bishop (Pet. Ex. 2). Del Prete also saw respondent stating that she worked in the DA's office, the police had no right to be on her property, and "You know me! My husband hasn't done anything wrong" (Pet. Ex. 2). At the time, Del Prete did not recognize respondent but the next day he recalled that she was someone he recognized from the DA's office (Pet. Ex. 2).

According to Del Prete's report about the incident, he saw Edmonds purchase what appeared to be two ziplock bags of crack cocaine from a man, later identified as Devon Bishop, in exchange for an unknown amount of money about 6:00 p.m. on February 16 (Pet. Ex. 2).

After the exchange, Del Prete stopped Bishop and recovered 43 ziplock bags of crack cocaine from him (Pet. Ex. 2).

After this incident, the Investigation Bureau of the DA's office obtained a search warrant for Bishop's cell phone records. The records were reviewed to see if there was any prior relationship between Bishop and Edmonds (Tr. 25). According to the cell phone records there were dozens of text messages from Edmonds to Bishop from December 2012 to February 2013 (Pet. Ex. 4; Tr. 29). There were also more than two dozen text messages from respondent to Bishop (Pet. Ex. 4).

For example, on February 20, 2013, four days after the police arrested Bishop in possession of a large quantity of cocaine, respondent sent the following text to Bishop, "Hi ita robs wife can u give him 2 til tomorrow or friday will give u 60 in return" (Pet. Ex. 4). The next day, respondent texted Bishop, asking him to "lend him 2 more" and said that she would have "120" when she saw him the following day (Pet. Ex. 4). Less than ten minutes later, respondent texted Bishop, "Also pleas delete my teks thanx" (Pet. Ex. 4).

Respondent sent Bishop more text messages in January 2013 (Pet. Ex. 4). On January 22, she wrote, "Hey its robs wife can u give him 2 on the arm till tomorrow nite nd give him ur full name (real name) nd I will chek it out tomorrow nd let u know if any surprises cummn k" (Pet. Ex. 4). The next day respondent texted Bishop, "Hi its Rene I didn't go to work today im sick so I wil check tomorrow for u also I wil hav ur money before 9 tonite" (Pet. Ex. 4).

Deputy Chief Frey, a long-time employee of the DA's office, testified that the texts indicated that respondent was arranging for illegal drug transactions with a known dealer (Tr. 31). Frey explained that "2 on the arm" meant that respondent was asking Bishop to give her husband drugs for free (Tr. 30, 32). When respondent asked the dealer for his real name and offered to "check tomorrow" if there were any "surprises," she was offering a quid pro quo; in exchange for the drugs she would find out whether Bishop was the subject of any narcotics investigations (Tr. 30-31). According to Frey, that interpretation was supported by the next day's text where respondent informed Bishop that she was out sick and she would "check tomorrow," implying that she was going to use her position at the DA's office to check for confidential information on Bishop's behalf (Tr. 31).

According to Frey, respondent was a clerical associate in the Human Resources unit of the DA's office (Tr. 21). Her responsibilities included administering the payroll (Tr. 21). Respondent, who previously worked as a paralegal in the Criminal Court unit, was also one of the employees assigned on a rotating basis to the District Attorney's desk as a secretary when his secretary went to lunch (Tr. 21, 32).

For the January 2013 incident where respondent asked a drug dealer to give her husband drugs in exchange for confidential information from the DA's office, petitioner accused respondent of engaging in a private transaction that conflicted with her official duties, in violation of section 2604(b)(3) of the Charter. For the February 2013 incident, where respondent allegedly displayed her employee identification and referred to her position in the DA's office when the police confronted her husband in front of their home, petitioner accused respondent of engaging in private business that conflicted with her official business and using her position for personal advantage, in violation of sections 2604(b)(2) and 2604(b)(3) of the Charter.

Under the Charter, "No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties." Charter § 2604(b)(2) (Lexis 2013). The Board's rules provide that "it shall be a violation of section 2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for a non-City purpose." 53 RCNY § 1-13(b) (Lexis 2013). The Charter further prohibits any public servant from using his or her position for "any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect" Charter §§ 2604(b)(3) (Lexis 2013).

Here, the well documented and credible evidence presented that respondent used her position as a public servant for personal gain. Viewed in their entirety, the text messages reveal that respondent arranged for drug transactions on behalf of her husband. The undisputed evidence also supported petitioner's conclusion that respondent sought drugs for her husband in exchange for confidential information that respondent had access to as an employee of the DA's office. This demonstrated that respondent used her position for direct or indirect personal advantage, in violation of section 2604(b)(3) of the Charter.

Similarly, the evidence showed that respondent displayed her employee identification and invoked her position in the DA's office as the police were confronting her husband during an

active narcotics investigation. It is unclear from the record whether respondent's actions had any impact on the police. The police reasonably suspected that respondent's husband was involved in a drug transaction – moments earlier they saw him receive two ziplock bags, containing what appeared to be crack cocaine, during a hand-to-hand exchange, involving a known drug dealer. However, the officers did not find any drugs on respondent's husband when they searched him as he walked out of his house and they did not arrest him after checking his identification. Yet it is clear that respondent attempted to influence the police officers as they were carrying out their duties when she displayed her employee identification for a non-City purpose and used her employment with the DA's office for her personal advantage, in violation of sections 2604(b)(2) and 2604(b)(3) of the Charter.

Accordingly, the charges should be sustained.

FINDINGS AND CONCLUSIONS

1. Respondent was properly served with charges and notice of the hearing.
2. Petitioner proved that respondent attempted to use her position for personal advantage by offering to provide confidential information to a drug dealer in exchange for narcotics, in violation of section 2604(b)(3) of the Charter.
3. Petitioner proved that respondent displayed her employee identification for a non-City purpose, in violation of section 2604(b)(2) of the Charter.
4. Petitioner proved that respondent attempted to use her position for personal advantage, in violation of section 2604(b)(3) of the Charter, when she identified herself to the police as an employee of the District Attorney's office as the officers investigated her husband for participating in a drug transaction.

RECOMMENDATION

Petitioner seeks a total penalty of \$10,000 for respondent's violations of the Charter. That is appropriate.

In support of its penalty request, petitioner cited two cases (Tr. 37, 39). In *Conflicts of Interest Board v. Maldonado*, OATH Index No. 1323/11 (Apr. 4, 2011), *adopted*, Bd. Chair's Dec. (Dec. 8, 2011), the Board fined a building inspector \$2,500 for displaying his badge to a police sergeant, identifying himself as an "inspector," and requesting courtesy for his son who had been arrested for jumping a turnstile. Though the display of the badge and identifying himself as an inspector were two different violations of the Charter, the Board imposed one fine of \$2,500 because the violations occurred during the same course of conduct and it was unclear whether the inspector displayed his badge in response to a request by the police. In *Conflicts of Interest Board v. Smart*, OATH Index No. 2588/09 (June 30, 2009), *adopted*, Bd. Dec. (Nov. 23, 2009), a former eligibility specialist for the Human Resources Administration was fined \$10,000 after a default hearing, for using a secure database in an attempt to steal a victim's identity to obtain a cell phone contract and credit card.

Here, respondent's actions were similar to the misconduct in *Smart* and a comparable fine is appropriate. Respondent did not appear at the hearing, no mitigating circumstances were presented and none are apparent from the record. Moreover, respondent's actions, especially her attempt to use her position to assist a drug dealer, were fundamentally at odds with the mission of her agency. Respondent breached her employer's trust and engaged in conduct that was directly opposed to the agency's law enforcement role. And unlike the inspector in *Maldonado*, respondent did not engage in a momentary lapse in judgment. Rather, like the eligibility specialist in *Smart*, respondent made a calculated decision on more than one occasion to use her position for personal advantage.

Accordingly, I recommend that the Board fine respondent \$10,000.

Kara J. Miller
Administrative Law Judge

February 11, 2014

SUBMITTED TO:

ANDREW IRVING
Acting Chair

APPEARANCES:

CAROLYN LISA MILLER, ESQ.

Attorney for Petitioner

No appearance for Respondent

**THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD**

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In the Matter of

RENE COLLINS

COIB Case No. 2013-258

OATH Index No. 556/14

Respondent.

_____x

**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

Upon consideration of all the evidence presented in this matter, and of the full record, and all papers submitted to, and rulings of, the Office of Administrative Trials and Hearings ("OATH"), the Conflicts of Interest Board (the "Board") hereby adopts the findings of fact and conclusions of law contained in the annexed Report of OATH Administrative Law Judge ("ALJ") Kara J. Miller dated February 11, 2014 (the "Report"), in the above-captioned matter. As recommended in the Report, and as further explained herein, the Board imposes a fine of \$10,000 upon Respondent for violating Chapter 68 of the City Charter, the City's conflicts of interest law.

This enforcement matter involves a former clerical associate for the Staten Island District Attorney's Office (the "DA's office") who offered to provide a convicted drug dealer confidential information as to whether he was under investigation, in exchange for his giving Respondent's husband two units of crack cocaine. In addition, when detectives tried to arrest Respondent's husband outside her home after he was seen buying crack cocaine, Respondent showed her DA's office identification to the detectives in an attempt to prevent her husband's arrest. By offering confidential information to a convicted drug dealer and by attempting to use her City

identification to impede the arrest of her husband, Respondent violated the following provisions of the City's conflicts of interest law and rules of the Board:

New York City Charter §2604(b)(2)

This section states:

"No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties."

Board Rules Section 1-13(b)

This section, interpreting Charter Section 2604(b)(2), states that:

"Except as provided in subdivision (c) of this section, it shall be a violation of City Charter §2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose."

New York City Charter §2604(b)(3)

This section 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."

Petitioner served Respondent with a Notice of Petition on August 26, 2013, alleging that Respondent violated Charter Sections 2604(b)(2) and (b)(3). The Petition sets forth, in its three Causes of Action, the two above-described violations of the City Charter, namely, Respondent's offer to use her position in the DA's office to obtain confidential information in exchange for drugs for her husband and her use of her City identification and her invoking her City position to impede her husband's arrest.

As the record herein demonstrates, and as ALJ Miller found, Respondent was given the opportunity to challenge the allegations about her conduct, but failed to answer the Petition and did not appear for the hearing scheduled for January 8, 2014, thus properly leading ALJ Miller to find her in default and to proceed with the hearing as an inquest.

By way of background into Respondent's failure to appear, the Report noted that Respondent failed to appear for her October 30, 2013, settlement conference, despite receiving a notice of hearing advising Respondent of the date, time, and place of the conference. The notice of hearing also included the date, time, and place of trial, advised Respondent of her right to

representation, and explained the consequences for failing to appear for trial. On November 21, 2013, Respondent took part in a conference call with ALJ Miller, counsel for Petitioner, and counsel for Respondent during which the parties agreed to adjourn trial until January 8, 2014. The day before trial, Respondent told her counsel in a phone conversation that she would appear for the scheduled trial. The morning of the trial, however, Respondent left her counsel a voicemail stating that she would not be at the trial because of an issue with her commute.

The evidence presented at the hearing included documentary evidence, as well as testimony by David Frey, a deputy chief of investigation at the DA's office, and Nicholas Velez, a Staten Island narcotics detective for the NYPD. On February 16, 2013, undercover officers, including Velez, approached Robert Edmonds, Respondent's husband, in front of his home. Edmonds had been spotted by police purchasing drugs from Davon Bishop earlier that day in the West Brighton area of Staten Island. As police patted down Edmonds to check for any weapons on his person, Respondent came out of the house yelling and telling police to get away from her husband. Respondent had her government identification in her hand and repeatedly told police she worked for the DA's office. No drugs were found on Edmonds during this incident and he was not arrested. Following the incident, however, the Investigation Bureau of the DA's office obtained a search warrant for Bishop's cell phone records "to see if there was any prior relationship between Bishop and Edmonds" (ALJ Report 3). The records revealed more than two dozen text messages from Respondent to Bishop, including several messages evidencing a proposal whereby Bishop would give Edmonds two units of crack cocaine in exchange for Respondent finding out, via confidential information at the DA's office, whether Bishop was then being investigated. At the conclusion of the inquest Petitioner requested a fine of \$10,000.

ALJ Miller issued her Report on February 11, 2014, and found, as Petitioner had alleged, that Petitioner had properly served the Respondent with the charges and notice of hearing, that Respondent displayed her employee identification for a non-City purpose in violation of Charter Section 2604(b)(2), as interpreted by Board Rules Section 1-13(b), and that Respondent attempted to use her City position to obtain a personal advantage for her husband, namely, crack cocaine, in violation of Charter Section 2604(b)(3). ALJ Miller recommended a fine of \$10,000, the same amount sought by petitioner. ALJ Miller found the \$10,000 fine was in line with precedent in two related prior cases. In *COIB v. Maldonado*, OATH Index No. 1323/11, COIB Case No. 2010-548 (Dec. 8, 2011), the Board fined a building inspector \$2,500 for displaying his badge to a police sergeant, identifying himself as an "inspector," and requesting courtesy for his son who had been arrested for jumping a turnstile. In *COIB v. Smart*, OATH Index No. 2588/09, COIB Case No. 2008-861 (Nov. 23, 2009), a former eligibility specialist for the Human Resources Administration was fined \$10,000 after a default hearing, for attempting to steal a victim's identity from a secure database.

Following the issuance of the Report on February 11, 2014, the Board sent a copy of the Report to Respondent on March 3, 2014, and reminded her of the opportunity to submit to the Board any comments she might wish to make on the Report. Respondent's comments offer transportation excuses for missing the hearing; offer no rebuttal of the charge that she identified herself by her City position to the detectives who came to her home; suggest that someone else at her office may have been helping the drug dealer in question; and state that the text messages on her phone offer to provide confidential information in exchange for drugs for her husband

were in fact texts sent by her husband, who, she claimed, was using her cell phone. The Petitioner did not submit comments.

The Board concurs in the ALJ's determination that the evidence establishes a violation of Charter Section 2604(b)(3), when Respondent offered to give confidential information to a convicted drug dealer in exchange for drugs, and a violation of Charter Section 2604(b)(2), as interpreted by Board Rules Section 1-13(b), when she used her City identification in an effort to intervene in the detectives' investigation of her husband. The Board cannot credit the unsworn written statements by Respondent, submitted after the trial at which she failed to appear, in the face of the in-person testimony of witnesses whom the ALJ found credible.

With regard to the penalty, the Board accepts ALJ Miller's recommendation to impose a fine of \$10,000 upon Respondent for her violations of Charter Sections 2604(b)(2) and 2604(b)(3), that is, a fine of \$5,000 for each of Respondent's two violations.

For these reasons, the Board finds that Respondent violated Charter Section 2604(b)(2) and Charter Section 2604(b)(3), and, having consulted with Respondent's agency head as required by Charter Section 2603(h)(3), that the penalty for these two violations shall be \$5,000 each, for a total of \$10,000.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Charter Section 2606(b), that Respondent be assessed a civil penalty of \$10,000 to be paid to the Conflicts of Interest Board within 30 days of service of this Order.

Respondent has the right to appeal this Order to the Supreme Court of the State of New York by filing a petition pursuant to Article 78 of the Civil Practice Law and Rules.

The Conflicts of Interest Board

Richard Briffault, Chair
Fernando Bohorquez
Anthony Crowell
Andrew Irving
Erika Thomas-Yuille

Dated: July 30, 2014