

Dep't of Social Services (Human Resources Admin.) v. Kassem

OATH Index No. 1456/20 (Apr. 14, 2021)

Petitioner failed to establish that respondent used his agency position and access to agency information in an attempt to obtain personal or financial gain. Charges should be dismissed.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
**DEPARTMENT OF SOCIAL SERVICES
(HUMAN RESOURCES ADMINISTRATION)**
Petitioner
- against -
HAZEM KASSEM
Respondent

REPORT AND RECOMMENDATION

FAYE LEWIS, *Administrative Law Judge*

This is a disciplinary proceeding referred by petitioner, the Department of Social Services Human Resources Administration (“HRA” or “DSS”), against respondent, Hazem Kassem. *See* Civ. Serv. Law § 75 (Lexis 2021). Respondent is an HIV/AIDS Services Administration (“HASA”) case manager assigned to HRA’s Crotona center in the Bronx (Tr. 85). Petitioner alleges that respondent violated HRA rules and Chapter 68 of the City Charter (“City Charter” or the “Conflicts of Interest Law”), sections 2604(b)(2), (3), and (4), by asking former colleagues at the Coney Island HASA center to give his telephone number to any public assistance clients who might be interested in renting an apartment from him. By so doing, petitioner contends that respondent improperly used his agency position and access to agency information otherwise unavailable to the general public for attempted personal and financial gain (“ALJ Ex. 1”).¹

Due to the on-going COVID-19 pandemic, trial was held remotely over two days via WebEx videoconferencing. Petitioner presented documentary evidence and called three witnesses: Supervising Investigator Carolyn Hernandez and Investigator Vinson Chan, both assigned to

¹ The Conflicts of Interests Board (“COIB”) is not a party to this case. After trial was scheduled, DSS forwarded the charges and investigators’ report to COIB and COIB indicated that DSS was free to proceed to trial (ALJ Ex. 2). *See* Charter §§ 2603(e)(2)(d), 2603(g)(2).

HRA's Special Investigations Division ("SID"), and case manager Nelida De La Cruz, who works at the Coney Island Center. Respondent also presented documentary evidence and testified in his own behalf. For the reasons explained below, I recommend that the charges be dismissed.

ANALYSIS

HRA employees are permitted to rent property that they own or manage to rental assistance recipients under procedures enunciated in HRA Procedure 2015-08-OPA, "Renting Living Space to Cash Assistance Participants" (Resp. Ex. G). Under the Procedure, HRA employees "may only rent property that they own or manage to rental assistance recipients under the following conditions": 1) the building must not have any more than eight units, unless an additional "ruling" is obtained from COIB; 2) the rental unit must have the requisite certification(s), such as a certificate of occupancy, in compliance with building codes and rules; and 3) the employee must not work in a location servicing the participant or must be completely insulated from that participant's case. In addition, any employee who wants to rent living space to a rental assistance recipient must submit a "Renting Living Space to Rental Assistance Recipients Questionnaire to the Office of Program Accountability ("OPA") for approval. OPA will then make a "determination." Failure to "adhere to" these requirements "may result in disciplinary action" (Resp. Ex. G). The Procedure notes that it is premised upon guidelines set out in Opinion No. 666 issued by the former Board of Ethics, as modified by Advisory Opinions No. 95-29 and 98-13, issued by COIB (*Id.*).

On January 4, 2019, respondent submitted a questionnaire to HRA's Special Investigation Division ("SID") seeking permission to rent an apartment in a newly purchased house to Norian P., a rental assistance client (Pet. Ex. 3, Resp. Ex. B).² In the questionnaire, respondent indicated that he worked at a different center than the center where Norian P.'s public assistance case was being handled (*Id.*). On February 28, 2019, Investigator Chan approved respondent's application because respondent met the criteria established in Procedure 2015-08-OPA, based upon his representation that he was renting the premise, did not work in the center that provided the client's

² The rental assistance client's name has been redacted in accordance with the Social Services Law, which states that the names of "persons applying for or receiving public assistance and care" are to be withheld from publication. Soc. Serv. Law § 136(1) (Lexis 2021); *see also* 18 NYCRR § 357.1(a) (Lexis 2021) ("[i]nformation to be safeguarded includes names and addresses . . . information contained in applications and correspondence; reports of investigations").

benefits, and that it was unlikely that respondent would be involved officially with the client's case (Pet. Ex. 8).

Respondent acknowledged that he spoke to a case manager at the Coney Island Center, where he worked from 2012 through 2017, to let the case manager know that he had an apartment to rent if any of the case manager's public assistance clients were interested in renting from him (Tr. 85, 101-02). Norian P. became his tenant as a result of a recommendation from the case manager (Tr. 94). Respondent denied accessing any confidential information (Tr. 101). He asserts that he followed the protocols established in Procedure 2015-08-OPA and violated neither HRA rules nor the Conflicts of Interest Law (Tr. 102).

Petitioner based much of its proof upon the testimony of Supervising Investigator Hernandez and Investigator Chan. Supervising Investigator Hernandez testified that she interviewed Norian P. by telephone, who said that she learned of the apartment through her social worker at the shelter in which she was living, as well as her case manager at the Coney Island Center (Tr. 13). Investigator Chan testified about telephone interviews that he conducted on February 22, 2021 with two caseworkers at the Coney Island Center – Ms. Stolshteyn and Ms. De La Cruz. He recalled that both caseworkers said that respondent told them that he had an apartment to rent and asked if they knew of any public assistance clients who needed an apartment (Tr. 40-42, 44).

Although Investigator Chan did not recall details about the interviews, he took notes during the interviews (Tr. 45). The typed interview notes relating to Ms. Stolshteyn indicate that she said that respondent gave her his telephone number and that she gave his phone number to two public assistance clients, but neither wanted the apartment because of its location (Pet. Ex. 5). Similarly, Investigator Chan's typed notes of Ms. De La Cruz's interview indicate that she said respondent visited her at the Coney Island Center around September 2018, said he had just bought a house, and asked if she had any clients in need of housing. She told respondent that he had to register with the City before renting to public assistance clients, which respondent acknowledged. She also told him that her clients wanted to remain in Brooklyn. Several months later, according to the notes, respondent called Ms. De La Cruz and left a message indicating that she probably did not remember his voice; when she called back, he told her not to be a stranger. That was the extent of their conversation (Pet. Ex 6). That same day, Investigator Chan e-mailed Ms. Stolshteyn a

written warning that she should refrain from referring agency clients to agency employees as it constituted a conflict of interest (Pet. Ex. 9).

In addition, both investigators testified that they interviewed respondent on February 21, 2019, after Investigator Chan learned in a telephone call with respondent that a caseworker at the Coney Island HASA Center “helped him” get Norian P. as a tenant (Tr. 35-36). During the in-person interview, respondent related that he asked three former coworkers who were caseworkers at the Coney Island HASA Center to let him know if they knew of public assistance clients who needed an apartment in the Bronx, and to refer such clients to him. One of his former coworkers gave Norian P. respondent’s phone number (Tr. 12). After the interview, respondent e-mailed with the names of two of the former coworkers as he did not remember the third person’s name (Tr. 11-12, 38). Investigator Chan took notes during his interview, which indicate that respondent said that he asked three managers to “send” public assistance clients to him if they were in need of housing (Tr. 37-38; Pet. Ex. 1).

Ms. De La Cruz also testified about her conversations with respondent. She explained that respondent contacted her, said that he had a house in the Bronx, and asked if she had any clients that would be interested in renting from him. She told respondent that her clients did not want to move to the Bronx and also that he needed to inform the Agency if he wanted to rent to clients. Ms. De La Cruz was not sure when this conversation took place, other than some time after respondent transferred to the Bronx (Tr. 68-70).

Respondent explained that he understands that HRA employees are permitted to rent to public assistance recipients under the three conditions set forth in 2015-08-OPA (Tr. 87). He highlighted that he has previously rented apartments to public assistance clients after submitting the required questionnaires to SID for approval (Tr. 87-92; Resp. Exs. A, C, D). According to respondent, it took a long time for Investigator Chan to review his application relating to Norian P. He did not understand the delay, as previous requests took much a shorter time for approval (Tr. 95). He sent e-mails to Investigator Chan to urge him to expedite the process, because his house was vacant and he needed the income. Investigator Chan yelled at him in follow-up telephone calls. Because there continued to be delay, respondent visited SID’s office to file a complaint (Tr. 96). Soon after, Investigator Chan told respondent to come into the office the next day with his lawyer for an interview (Tr. 97-99). Respondent met with Investigator Chan and the investigator’s supervisor, without counsel present (Tr. 99, 114). At the end of the meeting, he told

Investigator Chan to deny his request to rent to Norian P. if he had done anything wrong (Tr. 100). However, a few days after the meeting, the rental request was approved (Tr. 100; Resp. Ex. B).

Respondent adamantly denied accessing or using agency information for personal financial gain (Tr. 101). He stressed that he was following HRA procedures for renting living space to clients. Moreover, he explained that as a case manager, he deals regularly with landlords. He calls landlords to see if they have any vacancies for the public assistance clients whose cases he handles. Landlords also call him to see if any of the public assistance clients need housing (Tr. 102-03; 114-15). Respondent maintained that even if he did not work for HRA, but owned rental housing, he would be able to call an HRA case manager with whom he had dealt previously to ask if the case manager had any clients in need of housing. Thus, he asserted that he acted in the same manner as other landlords interacting with HRA case managers, did not access confidential information, and did not violate HRA policy (Tr. 101-03; 114-15).

As an initial matter, although respondent admitted that Norian P. became his tenant as a result of a recommendation from a caseworker at the Coney Island Center, he did not admit speaking to three different HASA caseworkers to ask if they had clients in need of housing. Respondent initially testified that he “contacted some case managers” to see if they had clients in need of a place to stay (Tr. 101). But he also testified that although he initially told an investigator that he spoke to two caseworkers, he called the investigator back and clarified that he contacted only one caseworker regarding a client. He contacted the second caseworker about something else (Tr. 102).

I did not credit respondent’s testimony that he only spoke to one caseworker regarding potential tenants. The credible evidence, consisting of Ms. De La Cruz’s testimony and Investigator Chan’s detailed interview notes, established that respondent asked at least two caseworkers at his former center in Brooklyn, Ms. De La Cruz and Ms. Stolshteyn, if they had any public assistance clients who might be interested in renting from him. Ms. Stolshteyn gave respondent’s telephone number to two of her clients. In addition, both investigators testified – and Investigator Chan’s notes reflect – that respondent acknowledged contacting three caseworkers to ask if they could refer public assistance clients who were looking for an apartment to him. According to both Norian P. and respondent, one of the caseworkers at the Coney Island Center told Norian P. that respondent was looking for tenants.

The issue is whether, by asking his former colleagues to pass along his telephone number to any public assistance clients who might want to rent from him, respondent used his agency position and access to agency information otherwise unavailable to the public for attempted personal or financial gain, in violation of HRA rules relating to (1) an unauthorized and abusive exercise of the employee's official functions; (2) safeguarding confidential information of public assistance recipients; (3) permitting City property or premises to be used by unauthorized persons or for unauthorized purposes; (4) engaging in non-agency activity during work hours or using agency premises to conduct non-agency matters; and (5) engaging in conduct which is prejudicial to good order and discipline, or which is detrimental to the agency or would undermine the effectiveness of the employee in the performance of her duties, or would undermine the agency-participant relationship. Petitioner also alleges various violations of section 2604(b)(2), 2604(b)(3), and 2604(b)(4) of the City Charter, as well as two COIB rules interpreting section 2604(b)(2).

Respondent contends that he did not violate any HRA rules because he followed the applicable procedure governing rentals to public assistance recipients. Petitioner does not dispute that respondent complied with Procedure 2015-08-OPA; indeed, petitioner granted respondent's request to rent to Norian P. because he met the conditions permitted for such rentals.

Procedure 2015-08-OPA is silent as to the manner in which employees may discover the names of public assistance recipients to whom they want to rent. It is entirely focused on preventing conflicts of interest by ensuring that HRA employees do not rent to public assistance clients whose cases they handle or might become involved with. In re-affirming these guidelines, initially enunciated in Opinion No. 666 of the former Board of Ethics, COIB noted that if an employee did not work at the center handling a public assistance recipient's case, the employee would "not ordinarily" be "in a position to influence decisions concerning the type or amount of public assistance offered to the recipient, including payments for housing." Advisory Opinion 95-29 at 4 (Dec. 4, 1995). COIB concluded that HRA employees may "consistent with Chapter 68, rent property that they own or manage to recipients of public assistance, provided that they comply with the guidelines set out in Opinion 666 . . . and provided further that there is no evidence suggesting that these transactions would give rise to an actual or potential conflict of interest." The Board specified that HRA employees should not use their City positions to assure that they

receive rental payments from public assistance recipients and stressed that HRA should keep “careful records” of any such rentals. *Id.*

Thus, respondent asserts, by following Procedure 2015-08-OPA, he complied with HRA rules as well as provisions of the Charter relating to conflicts of interest. There is no evidence, and petitioner does not contend, that by soliciting the names of potential tenants from former caseworkers, respondent put himself in a position to influence decisions concerning the type or amount of public assistance to be offered to HRA clients, or used his position to assure that he received rental payments from public assistance recipients. Nor is there any evidence, or any claim, that respondent did anything wrong, either under HRA rules, or the Charter, in renting to public assistance recipients.

In addition, there is no evidence that HRA has some other rule, regulation, or policy which in any way addresses the manner in which caseworkers who seek to rent to public assistance recipients may obtain their names. Supervising Investigator Hernandez testified that she has reviewed about 100 requests by caseworkers to rent to public assistance recipients and this is the first instance in which an employee asked a case manager for the names of potential tenants (Tr. 19). She testified that typically, HRA employees who want to rent to public assistance recipients go through brokers or post a notice in a public place such as a laundromat (Tr. 10, 19). She acknowledged, however, that Procedure 2015-08-A does not impose a requirement to rent through a broker, nor prohibit employees from speaking to other case managers. Supervising Investigator Hernandez also acknowledged that respondent spoke to caseworkers from a center other than his own work location (Tr. 19). In addition, Investigator Chan noted that neither Ms. Stoeshsteyn nor Ms. De La Cruz knew that they should not be giving respondent’s name to public assistance recipients who were looking for housing (Tr. 56-57). This suggests, at the least, a lack of clear direction from HRA as to what employees are or are not permitted to do in order to find public assistance clients to whom to rent.

There is also unrefuted evidence that respondent could have contacted a caseworker to ask if they had public assistance clients who might need housing even if he were not employed by HRA. Respondent testified – as noted above – that landlords and case managers often speak about whether there are available apartments, with landlords calling caseworkers to see if they have any clients in need of such housing. Petitioner did not rebut respondent’s testimony. Although neither witness addressed whether a landlord could call a caseworker directly to ask about potential

tenants, Supervising Investigator Hernandez testified that as a case manager, respondent would have contact with other landlords, and Ms. De La Cruz explained that she might contact a landlord if a public assistance recipient fell behind in rent (Tr. 21, 67). It is plausible, given the contacts between caseworkers and landlords, that a landlord who previously had dealt with an HRA caseworker might call that caseworker to see if he or she had any clients in need of housing. Petitioner did not establish that respondent did anything other than to ask several caseworkers to recommend him to public assistance clients who were looking for housing.

In sum, respondent used contacts he made through his job as a city employee to try to find public assistance recipients who might be potential tenants. Respondent is explicitly permitted by established HPD procedure, approved by COIB, to rent to such public assistance recipients. Respondent followed the requirements of this detailed procedure by submitting the requisite questionnaire. He also asked caseworkers to pass along his contact information to any public assistance recipients who might be interested. Nothing in Procedure 2019-08-OPA states that respondent was prohibited from doing so. Moreover, respondent offered plausible testimony that landlords who have had previous contacts with HRA caseworkers would be able to contact them to see if they had public assistance clients in need of housing.

This case is different than cases in which employees abused their official position for their own benefit, with the end result that they received a benefit which in itself constituted a conflict of interest. *See, e.g., Human Resources Admin. v. Bonner*, OATH Index No. 472/17 (Dec. 5, 2016), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2017-0031 (Mar. 30, 2017) (eligibility specialist violated HRA rules prohibiting conduct that is an abuse of official function, as well as section 2604(b)(3) of the Charter, when she used her position to coerce a client into using her supplemental benefits to buy groceries for her); *Conflicts of Interest Bd. v. Smart*, OATH Index No. 2588/09 (June 30, 2009), *adopted*, COIB Case No. 2008-861 (Nov. 23, 2009) (former HRA employee violated sections 2605(b)(2),(b)(3), and (b)(4) of the Charter by using her position as an eligibility specialist to obtain personal information about a public assistance recipient from a secure website in an attempt to steal the client's identity to open a cellular account and credit card account in the client's name); *Conflicts of Interest Bd. v. Okanome*, OATH Index No. 110/08 (Nov. 9, 2007), *adopted*, COIB Case No. 2005-132 (Mar. 10, 2008) (child protective specialist violated sections 2604(b)(2), (3) by entering into an agreement with a public assistance client to perform repair work on his home).

Cases cited by petitioner in support of its position that respondent abused his official position are also inapposite. *See Matter of Garcia*, COIB Case No. 2016-216 (July 12, 2018) (Administrative Education Officer for the Department of Education promoted her outside job as a tax preparer to coworkers and subordinates during DOE work hours, which led to her obtaining two coworkers and the subordinate as paying clients); *Matter of Das*, COIB Case No. 2014-134 (Apr. 21, 2015), (HASA case manager violated Charter section 2604(b)(3) by soliciting at least 10 HASA clients, for whom he served as a case manager, to purchase gas and electric services from his secondary employer); *Conflicts of Interest Bd. v. Enright*, OATH Index No. 1293/13 (Apr. 23, 2013), *adopted*, COIB Case No. 2012-469 (Aug. 7, 2013) (construction project manager for the Department of Housing Preservation and Development violated Charter section 2604(b)(3) by entering into a financial arrangement with an architect whose work he was overseeing on a city project to perform work on his daughter's home, and who additionally solicited construction laborers from the site of a City project that he was overseeing to perform carpentry work on his vacation home).

Under these narrow circumstances of this case, I find that petitioner has failed to establish that respondent used his official position for an unauthorized purpose, or used city property or premises for unauthorized purposes, as alleged. Similarly, petitioner did not prove that respondent failed to safeguard confidential information, or engaged in non-agency activity during working hours, as also alleged. Although Investigator Chan's notes indicated that respondent visited Ms. De La Cruz at the Coney Island Center, there is no evidence in the record that the visit occurred during respondent's regularly scheduled working hours or that respondent was even working on that particular day. The record does not indicate whether respondent spoke to Ms. Stolshteyn in-person or over the telephone, and at what time or times, and is completely silent as to respondent's contact with the third caseworker. The related disciplinary charges are duplicative, and thus are also not sustained.

Petitioner's remaining charges alleges that respondent violated sections 2604(b)(2), 2604(b)(3), and 2604(b)(4) of the Conflicts of Interest Law and related COIB rules. Section 2604(b)(2) prohibits a public servant from engaging in a business, transaction, or private employment, or having a financial or other private interest, in conflict with the proper discharge of his or her official duties. Section 2604(b)(3), similarly, prohibits a public servant from using or attempting to use his position as a public servant to obtain a financial gain or private or personal

advantage. Section 2604(b)(4) prohibits a public servant from disclosing any confidential information which is obtained in the course of his or her official duties, or to use such information to advance any direct or indirect financial or other private interest. The two Board rules which petitioner cites prohibit a public servant from pursuing personal and private activities during work hours or from using city letterhead, personnel, equipment, resources, or supplies for a non-City purpose. *See* 53 RCNY § 1-13(a),(b).

The charge that respondent violated section 2604(b)(2) must be dismissed as the “business” or “transaction” in which respondent ultimately engaged – renting to public assistance recipients – was not in violation of the Charter. Petitioner approved the rental upon respondent’s submission of his questionnaire, in accordance Procedure 2015-08-OPA, which codified guidance from the former Board of Ethics.

The charges that respondent violated 2604(b)(3) and 2604(b)(4) of the City Charter, and related COIB rules, should also be dismissed. These charges are duplicative of charges – already discussed – which allege that respondent violated various agency rules by abusing his official position for personal or financial gain and disclosed or improperly used confidential information. Petitioner failed to prove these charges.

RECOMMENDATION

I recommend that the charges be dismissed.

Faye Lewis
Administrative Law Judge

April 14, 2021

SUBMITTED TO:

STEVEN BANKS
Commissioner

APPEARANCES:

BRIANNA WILSON, ESQ.
Attorney for Petitioner

KREISBERG & MAITLAND, LLP
Attorneys for respondent
By: **JILL MENDELBERG, ESQ.**