

## ***Conflicts of Interest Bd. v. Carter***

OATH Index No. 2895/23 (Mar. 8, 2024), *adopted*, COIB Case No. 2021-174 (Apr. 23, 2024),  
**appended**

Assistant Deputy Warden violated the City Charter by accepting donations from subordinates through a GoFundMe account created for his benefit and by entering into a financial relationship with a subordinate. ALJ recommends a \$10,000 fine.

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### **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**CONFLICTS OF INTEREST BOARD**  
*Petitioner*  
*- against -*  
**CHARLES CARTER**  
*Respondent*

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### **REPORT AND RECOMMENDATION**

**SEON JEONG LEE**, *Administrative Law Judge*

Petitioner, the Conflicts of Interest Board (“the Board”), brought this civil penalty proceeding against respondent, Charles Carter, former Assistant Deputy Warden at the Department of Correction (“DOC”), under Chapter 68 of the New York City Charter (“Charter”) and Title 53 of the Rules of the City of New York. The petition alleges that, while employed by DOC, respondent violated section 2604(b)(3) of the Charter by accepting money that his subordinates donated to a GoFundMe account established for his benefit. The petition also alleges that respondent entered into a financial relationship with a subordinate in violation of section 2604(b)(14) of the Charter by purchasing sneakers for \$860 from the subordinate (ALJ Ex. 1). Respondent did not file an answer.

The trial was scheduled to be held by videoconference on October 4, 2023. Respondent did not appear for trial. Petitioner represented that it made multiple attempts at service of the notice (Tr. 7). Petitioner also attempted to make contact with respondent by e-mail (Tr. 7-9). When respondent did not respond to its attempts, the Department of Investigation conducted a search in a law enforcement database using respondent’s Social Security number and date of birth to identify his last known address (Pet. Ex. 2; Tr. 8). Petitioner submitted proof of service of the notice of

hearing and petition with the date, time, and instructions for accessing the remote trial, served on respondent by first-class mail and certified mail, return receipt requested, at his last known address in accordance with the Board's Rules (Pet. Exs. 1, 2; Tr. 7-9). *See* 53 RCNY § 2-03(b) (Lexis 2024). I found that service was made in a manner reasonably calculated to achieve actual notice, and the trial proceeded as an inquest (Tr. 9-10). *See* 48 RCNY § 1-23(b) (Lexis 2024).

At trial, petitioner relied on documentary evidence and the testimony of Lead Investigator Anthony Palmer, a 17-year DOC veteran who was working with the Department of Investigation (Tr. 16-17).

For the reasons below, I find that petitioner proved the charges and recommend that respondent be fined \$10,000.

### ANALYSIS

Respondent was employed by DOC from June 2001 until his retirement in January 2022 (Pet. Ex. 3; Tr. 19-20). Respondent most recently worked at the Robert N. Davoren Center ("RNDC") as Assistant Deputy Warden, a position he held since 2019, and served as Tour Commander with supervision over captains and correction officers (Tr. 19-20). As Assistant Deputy Warden, respondent was authorized to discipline captains and correction officers, who were subordinate members of service (Tr. 20, 26-27).

#### **Charter section 2604(b)(3) - GoFundMe Account**

"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." Charter § 2604(b)(3) (Lexis 2024). Except under limited circumstances, superiors are prohibited from accepting a gift from a subordinate. *See* COIB Advisory Opinion 2013-1 at 8 (Nov. 7, 2013) ("[I]t will violate the conflicts of interest law for a superior to accept a gift from a subordinate, except on special occasions . . . such as a wedding or the birth or adoption of a child"). The prohibition applies even where there is no evidence that the gift was solicited. *See, e.g., Conflicts of Interest Bd. v. Brosi*, COIB Case No. 2015-061a (Dec. 22, 2015) (accepting unsolicited gift of free Super Bowl tickets from subordinate violated section 2604(b)(3) of the Charter); *Conflicts of Interest Bd. v. Mooney*, COIB Case No. 2012-201 (Apr. 23, 2012) (public warning letter of a section 2604(b)(3)

violation issued to superior who accepted (but later returned) \$800 in unsolicited funds collected by and from subordinates to help repair her scratched car). Mindful of the “potential for coercion and favoritism,” the Board has clearly stated that superiors who “receive” solicited and unsolicited gifts alike from a subordinate “have used their City positions for their own personal benefit, in violation of Section 2604(b)(3).” COIB Advisory Opinion 2013-1 at 4-6 (“The evils against which these cases guard include the inappropriate pressure that one City employee may feel to make a gift to another, as well as the loss of necessary impartiality that the gift receiver may experience in his or her dealings with the gift giver.”).

Respondent was under investigation by DOC for an improper use of force incident and was suspended without pay, from December 20, 2020, until January 16, 2021 (Pet. Ex. 5; Tr. 17, 21). To offset the financial impact of respondent’s unpaid suspension, a former DOC captain created for respondent’s benefit an account on GoFundMe<sup>1</sup>—an online fundraising platform that collects donations (Pet. Ex. 6 at COIB 000021; Tr. 23). On the homepage, respondent’s photograph and this message was posted under the heading “Looking Out for Blue Family”:

On Friday December 18 2020 our Brother Jermaine Carter preserved his safety and ensured He went home the way He came in. His reward for not being another casualty or victim was to be suspended. It is the holiday season and any help or support We can show to the family will be greatly appreciated. Thank you in advance for your support

(Pet. Ex. 6 at COIB 000020). There is no evidence that respondent asked for the GoFundMe account to be created, or that respondent solicited donations to the account.

The GoFundMe account shows that donations reached \$27,085 in five days and documents the names of the donors, the date and time of the donation, and the amount donated (*Id.* at COIB 000020, 000026-000040; Tr. 23). According to Investigator Palmer, 59 of respondent’s subordinates—captains, correction officers, and one principal administrative associate—donated \$4,463 to the GoFundMe account (Pet. Exs. 6a, 7; Tr. 23, 25). As part of the investigation, Investigator Palmer searched the donors’ names using an “employee lookup system” to generate reports with “employee detail,” which included employees’ job titles and facility assignments (Pet. Ex. 7; Tr. 24-25). He also reviewed the RNDC facility schedules from December 13 to December

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<sup>1</sup> The GoFundMe page indicates that it was organized “on behalf of Jermaine Carter” (Pet. Ex. 6 at COIB 000020). Using a law enforcement database, Investigator Palmer searched respondent’s Social Security number to confirm that the person named in the GoFundMe page and respondent are the same person (Pet. Ex. 2; Tr. 17-18).

19, 2020, and from December 20 to December 26, 2020 (Pet. Exs. 8a, 8b; Tr. 26-27). Petitioner established with credible and unrefuted evidence that 59<sup>2</sup> of respondent's subordinates donated \$4,463<sup>3</sup> to a GoFundMe account created for respondent's benefit.

Petitioner also established that respondent transferred the money donated by his subordinates and others to his personal bank account. The GoFundMe account payment process was verified using respondent's name, date of birth, Social Security number, and address (Pet. Ex. 6 at COIB 000022-000023; Tr. 24). Respondent is named as the account's "beneficiary," and documentary evidence confirms that \$26,195.96 was transferred from the GoFundMe account to respondent's bank account on March 1, 2021 (Pet. Ex. 6 at COIB 000022-000023; Tr. 23-24). By receiving money donated by his subordinates to a GoFundMe account, respondent accepted money from his subordinates in violation of Charter section 2604(b)(3). Although the GoFundMe platform served as the intermediary for the exchange, these donations were "effectively monetary gifts" to respondent (Tr. 12). For all practical purposes, respondent accepted monetary gifts from his subordinates as if they had handed him cash or checks.

Donations by subordinates made to GoFundMe accounts to benefit a supervisor violate the conflicts of interest laws. Recently, a DOC captain admitted to violating Charter section 2604(b)(3) by accepting donations from his subordinates made to a GoFundMe account established for the benefit of him and four other suspended colleagues. *See Conflicts of Interest Bd. v. Alexis*, COIB Case No. 2021-174a (Nov. 17, 2022) (16 subordinates donated \$6,250, and respondent received \$8,015.41, his share of the money raised). Here, as in *Alexis*, there is no evidence that respondent solicited donations from his subordinates and only some of the money respondent received came from subordinates; nonetheless, respondent received a financial gain because of his City position, in violation of the Charter. *Id.*

In sum, petitioner established that respondent used his City position to benefit himself by accepting money donated by subordinates to a GoFundMe account, in violation of section 2604(b)(3) of the Charter.

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<sup>2</sup> This tribunal was unable to find eight of the donors' names on the RNDC facility schedules: A. Darbouze, W. Espanol, S. Bernard, S. Miller, L. Meachem, E. Howard, S. Toner, and S. Smith. Nevertheless, the credible testimony of Investigator Palmer and other documentary evidence provided sufficient proof to establish that these eight donors were respondent's subordinates when they donated to the GoFundMe account in December 2020 (Pet. Ex. 7; Tr. 25).

<sup>3</sup> According to Pet. Ex. 6a, the total donation by subordinate members of service is \$4,563. Captain Mumin made two \$100 donations on the same day, but it appears that petitioner did not count one of the donations in their calculation.

### **Charter section 2604(b)(14) - Purchasing Sneakers**

The Charter provides that “[n]o public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.” Charter § 2604(b)(14). The Board defines “business or financial relationship” to include “a purchase or sale of any property valued at \$25.00 or more.” 53 RCNY § 1-10(a)(2).

As part of the investigation, on March 3, 2022, Investigator Palmer interviewed Correction Officer Fulford, who was assigned to RNDC (Pet. Ex. 12; Tr. 29). Facility schedules confirm that Officer Fulford and respondent both worked at RNDC in December 2020, and Officer Fulford was respondent’s subordinate (Pet. Exs. 8a, 8b). Officer Fulford testified, under oath, that he operates a side business buying and reselling sneakers under the corporate name “Sayless Kicks,” and he sold respondent about 15 pairs of sneakers for \$3,250 (Pet. Ex. 11 at 15:34-16:38, 16:40-16:53, 19:33-20:00; Pet. Ex. 12 at COIB 000234-000235). He further testified that while he did not keep a record of these transactions, respondent mostly paid through Zelle or CashApp (Pet. Ex. 11 at 16:56-17:23; Pet. Ex. 12 at COIB 000234-000235). Subpoenaed records from Zelle showed that respondent sent \$600 to Officer Fulford on December 16, 2020, and \$260 on December 27, 2020, and Officer Fulford confirmed receipt of these funds (Pet. Ex. 10 at COIB 000223; Pet. Ex. 11 at 13:21-15:13; Pet. Ex. 12 at COIB 000234; Tr. 30-31).

Petitioner established with credible and unrefuted evidence that respondent purchased sneakers from Officer Fulford for \$860 in December 2020, thereby entering into a financial relationship with a subordinate. As in analogous cases, respondent’s conduct violated section 2604(b)(14) of the Charter. *See Conflicts of Interest Bd. v. Cook*, COIB Case No. 2016-388 (Nov. 22, 2016) (violating section 2604(b)(14) by purchasing a car from subordinate for \$25,000); *Conflicts of Interest Bd. v. Jordan*, COIB Case No. 2010-842 (Apr. 29, 2011) (violating section 2604(b)(14) by purchasing a laptop for \$300 from subordinate); *cf. Conflicts of Interest Bd. v. Lugo*, OATH Index No. 2013/11 (Sept. 1, 2011), *adopted*, COIB Case No. 2010-842 (Jan. 30, 2012) (subordinate violated section 2604(b)(14) by selling a laptop to superior for \$300).

### **FINDINGS AND CONCLUSIONS**

1. Respondent violated section 2604(b)(3) of the Charter by accepting money donated by his subordinates to a GoFundMe account created for his benefit.
2. Respondent entered into a financial relationship with a subordinate in violation of Charter section 2604(b)(14) by purchasing sneakers for \$860 from the subordinate.

### **RECOMMENDATION**

Under the Charter, the maximum fine for a violation of a conflicts of interest law is \$25,000. Charter § 2606(b). Petitioner seeks a fine of \$10,000 (Tr. 36). This is appropriate.

Respondent violated two different provisions of the conflicts of interest law, the more serious being the violation of section 2604(b)(3), for receiving \$4,463 from 59 subordinates who donated to a GoFundMe account created for his benefit while he was suspended without pay (Pet. Ex. 5; Tr. 17, 23). In *Alexis*, COIB Case No. 2021-174a, the Board considered a comparable situation: a DOC captain's subordinates created a GoFundMe fundraiser account for the benefit of the captain and four other employees who were suspended. In *Alexis*, 16 subordinates donated a total of \$6,250, and the Board imposed a fine in the donated amount of \$6,250 against the captain who accepted a stipulation. *Id.* at 1. In setting the penalty, the Board noted "the large number of Respondent's subordinates who donated to it; the significant amount of money they collectively donated; and that the GoFundMe campaign's purpose was to mitigate the impact of DOC-imposed disciplinary suspensions on the fund's beneficiaries." *Id.* at 2.

Although the total amount donated by subordinates in this case was less than in *Alexis*, it was still a significant amount and many more of respondent's subordinates donated to the account. Petitioner proved that respondent's subordinates made contributions and respondent received the donations, but respondent offered no mitigation and there is no indication that he accepted responsibility or expressed regret for his actions because he failed to appear at trial. *See Conflicts of Interest Bd. v. Martinez*, OATH Index No. 1354/18 at 4 (Feb. 23, 2018), *adopted*, COIB Case No. 2016-162 (May 14, 2018) (ALJ noting respondent's failure to appear at trial and no evidence in mitigation to recommend a \$10,000 fine). Respondent's acceptance of funds from subordinates that purposed to undermine internal agency disciplinary procedure is a serious allegation that respondent chose to ignore.

Respondent was also found in violation of section 2604(b)(14) for entering into an impermissible financial relationship with a subordinate during the same period, several days before his suspension and during the suspension period (Tr. 30-31), which further supports an imposition of a significant penalty. *See, e.g., Jordan*, COIB Case No. 2010-842 at 3-4 (accepting a stipulation of demotion, a \$15,000 salary reduction, for violating conflicts of interest law, including for entering into a financial relationship with subordinate); *Lugo*, OATH 2013/11 at 9 (fining \$2,500 for selling a laptop to superior for \$300).

Because respondent committed two separate acts that violated the conflicts of interest laws and there is no evidence in mitigation, I recommend that respondent be fined \$10,000.

Seon Jeong Lee  
Administrative Law Judge

March 8, 2024

SUBMITTED TO:

**MILTON L. WILLIAMS JR.**  
*Chair*

APPEARANCES:

**KATHERINE WEALL, ESQ.**  
**JEFFREY TREMBLAY, ESQ.**  
*Attorneys for Petitioner*

*No appearance by or for Respondent*

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

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In the Matter of

**CHARLES CARTER**

**COIB Case No. 2021-174**

**OATH Index No. 2895/23**

Respondent.

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

Upon consideration of all the evidence presented in this matter, the full record, and all papers submitted to, and rulings of, the Office of Administrative Trials and Hearings (“OATH”), including the annexed Report and Recommendation (the “Report”) of OATH Administrative Law Judge (“ALJ”) Seon Jeong Lee dated March 8, 2024, in the above-captioned matter, the Conflicts of Interest Board (the “Board”) hereby adopts in full the findings of fact and conclusions of law contained in the Report. The Report recommends the Board impose a fine of \$10,000 for Respondent’s violations of Charter Sections 2604(b)(3) and 2604(b)(14), which recommendation the Board adopts.

Without limiting the foregoing, and in summary of its findings and conclusions, the Board notes the following:

Respondent did not appear at trial, and the Report finds that Petitioner’s proof of service satisfied the requirements for finding Respondent in default and proceeding with the trial.

The Report finds that, in December 2020, while Respondent was suspended by the Department of Correction (“DOC”) without pay from his position as Assistant Deputy Warden at the Robert N. Davoren Center (“RNDC”), 59 of his subordinate RNDC Captains and Correction Officers donated a total of \$4,463 to an online fundraising account established for his benefit, which donations Respondent deposited into his bank account. By accepting donations from his subordinates, Respondent violated Charter



Section 2604(b)(3).<sup>1</sup> The Report further finds that Respondent purchased sneakers from a subordinate Correction Officer at RNDC on two occasions in December 2020, paying his subordinate Correction Officer a total of \$860 through a mobile payment service. The Report concludes that, by entering into a business or financial relationship with a subordinate, Respondent violated Charter Section 2604(b)(14).<sup>2</sup>

Having found the above-stated violations of the City Charter and having consulted with the agency head of Respondent's former agency served as required by Charter Section 2603(h)(3), the Board adopts the Report's recommended penalty 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



By: Milton L. Williams Jr., Chair

Wayne G. Hawley  
Ifeoma Ike  
Amy E. Millard  
Georgia M. Pestana

Dated: April 23, 2024

Attachment

cc: Administrative Law Judge Seon Jeong Lee  
Office of Administrative Trials and Hearings  
100 Church Street  
New York, New York 10007

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<sup>1</sup> Charter § 2604(b)(3) 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."

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