IN THE MATTER OF CHARITY GUERRA
COIB CASE NO. 2016-932
FEBRUARY 28, 2019

SUMMARY: A Chief Deputy Counsel for the New York City Department of Education ("DOE") was sued for legal malpractice by a former client she represented prior to her DOE employment. While serving as Acting General Counsel, the Chief Deputy Counsel misused her City position by asking a DOE subordinate to provide her with claim documents the client had previously filed with the City when having no City purpose for asking the subordinate for official assistance, and bypassing the process for requesting documents from the City. Thereafter, the Chief Deputy Counsel disclosed two confidential City documents by including them as part of an exhibit to a filing in the lawsuit. The Chief Deputy Counsel paid a $3,500 fine to the Board.

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 ("Chapter 68"), the City's conflicts of interest law, against Charity Guerra ("Respondent"); and

WHEREAS, the Board and Respondent wish to resolve this matter on the following terms; and

WHEREAS, Respondent wishes to make her employer, the New York City Department of Education ("DOE"), a party to this resolution; and

WHEREAS, DOE agrees to be a party to this resolution,

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. Since December 1, 2014, I have been employed by the New York City Department of Education ("DOE"). During this time, I have been a "public servant" within the meaning of and subject to Chapter 68.

   b. Prior to working for DOE, I was employed as Counsel at the Council of School Supervisors and Administrators ("CSA"), where, among other things, I represented DOE employees accused in Board enforcement actions of violating Chapter 68. As a result, I was and am familiar with the substance of Chapter 68.

c. From August 13, 2013, to November 4, 2014, in my role as CSA Counsel, I represented a DOE employee in a disciplinary action brought by DOE (the "Client").

d. I was hired by DOE as Chief Deputy Counsel on December 1, 2014.

e. I served as DOE's Acting General Counsel from March 2016, when the prior General Counsel left DOE, until July 5, 2016, when DOE's current General Counsel began working in that position.

f. When I served as DOE's Acting General Counsel, DOE's Executive Deputy Counsel for Risk Management and Litigation was my subordinate.

g. On March 24, 2016, the Client filed suit against me in my personal capacity alleging negligence, legal malpractice, and violations of Judiciary Law § 487 related to my representation of her while I was at CSA (the "Lawsuit").

h. After work hours on June 29, 2016, two work days before my service as Acting General Counsel was to conclude, I asked the Executive Deputy Counsel for Risk Management and Litigation, who was leaving for vacation the following day, to provide me with notices of claim previously filed by the Client against DOE (one of which had also been filed against me in my official DOE capacity). I intended to use these Notices of Claim as part of my defense to the Lawsuit. I had previously received these Notices from the DOE General Counsel, who gave them to me for my possible interest.

i. The Executive Deputy Counsel for Risk Management and Litigation complied with my request by sending an email after work hours on June 29, 2016, to the Deputy Chief of the New York City Law Department's Labor and Employment Law Division, requesting that he provide me with "copies of the legal papers" associated with the Client's prior notices of claim against DOE. I was copied on this email.

j. On June 30, 2016, I exchanged several emails with the Law Department Deputy Chief in which I assisted him in locating the requested records by providing him with the correct spelling of the Client's name and the claim numbers for two of her prior notices of claim.

k. On June 30, 2016, the Law Department provided me with thirty-three pages of documents related to the Client's prior claims against DOE.

l. On June 30, 2016, I sent an email to my private attorney attaching the thirty-three pages of documents related to the Client's prior claims against DOE. I did not review the documents before sending them.

m. On September 19, 2016, my private attorney, on my behalf, filed a response to the Lawsuit to which were attached, as an exhibit, all thirty-three pages of documents that had been provided to me by the Law Department. I did not review the exhibit before it was filed but acknowledge that I should have done so. These documents became public records as filings in the Lawsuit.

n. Two of the pages in the exhibit contained confidential interagency communications.

o. I acknowledge that, by having the Executive Deputy Counsel for Risk Management and Litigation, who was my subordinate, perform a personal task for me related to the Lawsuit, I used my City position to obtain a private advantage in violation of 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.

p. I acknowledge that, by using internal City government channels to obtain documents for the Lawsuit rather than requesting these documents through the FOIL process, I used my City position to obtain a personal advantage in violation of City Charter § 2604(b)(3), cited above.

q. I acknowledge that, by including two documents containing interagency communications in public court filings, I disclosed confidential City information in violation of City Charter § 2604(b)(4), which states in relevant part:

> No public servant shall disclose any confidential information concerning the property, affairs or government of the city which is obtained as a result of the official duties of such public servant and which is not otherwise available to the public, or use any such information to advance any direct or indirect financial or other private interest of the public servant or of any other person or firm associated with the public servant.

2. In assessing the appropriate penalty for Respondent's conduct, the Board balanced the aggravating factors of Respondent's high level position at DOE and her prior experience dealing with the Board and Chapter 68 against the mitigating factors that the personal task she asked her subordinate to perform was relatively small and that the confidential information she obtained and disclosed was of limited value and sensitivity. Based on these factors, the Board has concluded that the appropriate penalty in this case is a fine of Three Thousand Five Hundred Dollars ($3,500.00).

3. Respondent agrees to the following:

a. I agree to pay a fine of Three Thousand Five Hundred Dollars ($3,500.00) to the Board by money order or by cashier check, bank check, or certified check, made payable to the "New York City Conflicts of Interest Board" as follows: One Thousand Seven Hundred Fifty Dollars ($1,750.00) on or before December 1, 2018; and One Thousand Seven Hundred Fifty Dollars ($1,750.00) on or before January 1, 2019.

b. I agree that this Disposition is a public and final resolution of the Board's action 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 or DOE 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 DOE, 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 been represented by the 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 or DOE; and that I fully understand all the terms of this Disposition.

e. I agree that any material misstatement of the facts of this Chapter 68 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.

4. The Board and DOE accept this Disposition and the terms contained herein as a final Disposition of the above-captioned matter only, and affirmatively state that other than as recited herein, no further action will be taken by the Board or DOE against Respondent based upon the facts and circumstances set forth herein, except that the Board and DOE shall be entitled to take any and all actions necessary to enforce the terms of this Disposition.

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

Dated: January 8, 2019

/s/
Charity Guerra
Respondent

Dated: January 14, 2019

/s/
Deborah Scalise
Scalise & Hamilton LLP
Attorney for Respondent

Dated: January 30, 2019

/s/
Howard Friedman
General Counsel
NYC Department of Education

Dated: February 28, 2019

/s/
Richard Briffault
Chair
NYC Conflicts of Interest Board