

**IN THE MATTER OF JAMES SANDERS, JR.
COIB CASE NO. 2017-110
OATH INDEX NO. 0747/19
DECEMBER 8, 2020**

SUMMARY: While he was a Council Member, a now-former Council Member accepted 18 valuable gifts from a not-for-profit organization that was doing business with the City, including by receiving \$841,000 in discretionary funding sponsored by the Council Member. The now-former Council Member accepted the following valuable gifts: free accommodations at an all-inclusive resort in the Pocono Mountains for himself on five occasions, for his wife on four occasions, for his son on two occasions, and for his sister and nephew on one occasion; free tickets to a dinner cruise for family members (his sister, niece, and two nephews); and free flowers for his wife on another dinner cruise. After a full trial, an Administrative Law Judge (“ALJ”) at the New York City Office of Administrative Trials and Hearings (“OATH”) determined that the now-former Council Member violated City Charter § 2604(b)(5) by accepting each of those gifts, and recommended a \$15,000 fine. The Board issued an order adopting the ALJ’s findings of fact, conclusions of law, and recommended penalty.

**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”), including the annexed Report and Recommendation (the “Report”) of OATH Administrative Law Judge (“ALJ”) Kara J. Miller dated December 17, 2019, in the above-captioned matter, and upon consideration of the comments to the Report submitted by the Petitioner and the Respondent, 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 that the Board impose a fine of \$15,000, which recommendation the Board adopts.

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

Respondent is a former member of the New York City Council. The Report finds that while a Council Member, Respondent accepted valuable gifts on 18 occasions from Margert Community Corporation while Margert had business dealings with the City. Specifically, as described in detail in the Report, Respondent accepted gifts of free accommodation at Woodloch Pines, an all-inclusive resort in the Pocono Mountains for himself on five occasions, for his wife on four occasions, for his son on two occasions, and for his sister and nephew on one occasion,

all in violation of Charter Section 2604(b)(5).¹ Report at 18. Respondent also accepted gifts of free tickets to a September 2011 dinner cruise for family members (his sister, niece, and two nephews) in violation of Charter Section 2604(b)(5). Report at 19. Finally, Respondent accepted a gift of free flowers for his wife on a September 2010 dinner cruise in violation of Charter Section 2604(b)(5). Report at 19.

Petitioner also charged Respondent with violating Charter Section 2604(b)(5) on three other occasions for accepting free accommodation for his father at Woodloch Pines in December 2011, and a free ticket to a dinner cruise for his father in September 2011 and for accepting items from the Woodloch Pines gift shop in December 2011. The Report finds that Petitioner failed to prove these charges, and the Board adopts the Report's findings. Report at 18-19.

Respondent's comment to the Report, submitted by his attorney, made no new arguments to challenge the findings of the ALJ, which are supported by documentary and testimonial evidence. Instead, Respondent repeated his closing argument that his acceptance of free accommodation at Woodloch for himself, his wife, his son, his sister, and his nephew and the free tickets to the September 2011 dinner cruise for his sister, niece, and two nephews did not constitute valuable gifts because the recipients of this free accommodation and attendance were serving as volunteers at events for seniors and, therefore, their attendance served a government purpose. These arguments were specifically considered and rejected by the ALJ.

Petitioner's comment to the Report argues that ALJ Miller used an incorrect method of calculating the value of the prohibited gifts when recommending a \$15,000 penalty. ALJ Miller calculated that Respondent received \$4,327.58 in gifts from Margert, the discounted price that Margert paid for the accommodations at Woodloch Pines, instead of the publically listed price of those accommodations, which Petitioner calculates to be \$14,725.93. Report at 20. Petitioner's comment that the Board consider the market value of those gifts cites three cases: *COIB v. Bourne*, COIB Case No. 2015-099 (fining an employee of the New York City Department of Design and Construction \$1,000 for, among other violations, using her position to obtain and attempt to obtain free tickets to museums with which she dealt in her City job); *COIB v. Strauss*, COIB Case No. 2013-096 (issuing an employee of the New York City Department of Education a public warning letter for accepting free accommodations for himself, his son, and his granddaughter with a market value of \$164); and *COIB v. Markowitz*, COIB Case No. 2009-181, OATH Index No. 1400/11 (fining the Brooklyn Borough President \$20,000 for accepting gifts of free travel to Turkey and the Netherlands for his spouse). Petitioner contends that, in light of those cases, the appropriate penalty is \$25,000. In his comment, Respondent did not address the argument set forth in Petitioner's comment.

¹ City Charter § 2604(b)(5) states, in relevant part: "No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city."

Board Rules § 1-01(a) defines a valuable gift to include "any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form."

Petitioner is correct that the value of gifts of free accommodations at Woodloch Pines is the market value of those accommodations. Nevertheless, it is commonplace that a volume discount is offered where a large number of rooms are rented together. Under circumstances where there is no reason to believe that the discount offered is anything more than the standard volume discount, and that the discount is not being offered because of the public servant's City position, such a discounted price may in fact be the market value. That is, anyone who rented such a large number of rooms might have received the same volume discount. Thus, the Board finds the Report's calculation of the market value of the gifts of accommodations at Woodloch Pines to be reasonable given the facts found in the Report.

Having found the above-stated violations of the City Charter, and having consulted with the head of the agency formerly served by Respondent as required by Charter Section 2603(h)(3), the Board determines that the penalty shall be a fine of \$15,000.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Charter Section 2606(b), that Respondent be assessed a civil penalty of \$15,000 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: Jeffrey D. Friedlander, Chair

Nisha Agarwal
Fernando A. Bohorquez, Jr.
Anthony W. Crowell
Wayne G. Hawley

Dated: December 8, 2020

Attachment

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