

Item #7 - Staff Memo



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TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
Simon Russell, Investigator
DATE: January 25, 2020
RE: Case No. 20-03(b) ; In the matter of Norma Thompson prepared for the April 5, 2021, Commission meeting

I. INTRODUCTION:

On or about January 7, 2020, this matter was referred to the PEC by the City of Oakland's Assistant City Administrator Marakiesha Smith. Smith had received a letter from the Oakland City Attorney that informed her that two City of Oakland Housing Community Development (HDC) staff members violated conflicts of interest ordinances when they decided or participated in deciding the award of funds by HCD to a nonprofit housing developer under the 2019 "Notice of Funding Availability" (NOFA) program.

One of the HCD staff members identified in the City Attorney's letter was Norma Thompson. (Everette Cleveland was also named in the report and the PEC prepared a separate Case Analysis and Recommendation) The allegation is that Thompson was working as a paid consultant for Community Housing Development Corporation (CHDC) at the time that she took part in the decision-making process regarding CHDC's 2019 NOFA applications. The PEC also proactively inquired into whether Thompson may have violated any of the revolving-door provisions of GEA through her consulting work with CHDC.

The investigation also found that Thompson failed to file a Form 700 when she rejoined the City in 2019 and that she failed to file a Form 700 upon leaving office.

Staff recommends that the Commission allow Thompson to enter into a Diversion Agreement. If Thompson pays the fees associated with the Diversion Agreement and successfully completes the specified provisions of his agreement, in a timely manner, the Commission will dismiss and close the allegations against Thompson.

II. SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

O.M.C. 2.25.040(A), Financial Conflicts of interest: A public servant is prohibited from participating in making or influencing a decision in which he or she has a financial interest, as defined by the CA Political Reform Act. (CA PRA)

O.M.C. 2.25.040(B), Form 700 Disclosure: Elected officials and designated public servants are required to file a Form 700 Statement of Economic Interest pursuant to the CA PRA.

O.M.C. 2.25.060(A)(2), Misuse of City Position: A Public Servant is prohibited from using his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

O.M.C. 2.25.050(D), Leaving public service "revolving door" restrictions; Employment by a Party to a City Contract on Which the Public Servant Worked: No current or former Public Servant shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding one year where the Public Servant personally and substantially participated in the award of the contract.

III. SUMMARY OF EVIDENCE:

For an overview of the NOFA process please review the Case Summary in the Matter of Everett Cleveland Case No. 20-03(a).

Norma Thompson worked for the City of Oakland on-and-off beginning in 1989, always in the housing field (though not always with HCD). She also worked for the cities of San Francisco and Richmond. In 2010, she joined HCD and worked on several NOFAs during her time there. Thompson retired from HCD in 2017; her title at that time was Housing Development Manager.

During periods where Thompson was not working in the public sector, she worked for affordable housing non-profits. This included some periods where she worked for CHDC, the first of which began in 2004 and lasted (according to Thompson) “for a couple of years.” She later became a volunteer board member of CHDC from 2008-2010 and resigned from that position after joining HCD in 2010. After retiring from the City, she worked for CHDC as a consultant on some projects it was developing in Richmond. She was also an unpaid board member of CHDC during that time.

Thompson twice came out of retirement in 2019 to work at HCD as a temporary annuitant. First, she came back from April to September, where she oversaw the development of the 2019 NOFA guidelines. She was Cleveland’s supervisor during that time. After the NOFA was published, she was asked to come back again and assist in the scoring phase of the NOFA – sometimes around November-December 2019. At that time, she and Cleveland were supervised by Christia Katz Mulvey.

When Thompson first returned to HCD 2019, she was hired by Michele Byrd, who was then the Director of HCD. (Byrd left the City in April 2019 and was replaced by Maraskeshia Smith).¹ Leshin and Katz Mulvey were not involved in re-hiring Thompson. Byrd asked Thompson to come back because Thompson’s position had not been filled and staff was under workload pressure, particularly

¹ On Byrd’s departure from the City, see: <https://www.nbcbayarea.com/news/local/michele-byrd-no-longer-oakland-housing-chief/158263/>. Byrd’s departure appears to have been unrelated to the NOFA.

considering the upcoming NOFA. Byrd formally offered Thompson the position via an offer letter dated March 11, 2019.

According to Thompson's lawyer, Thompson consulted for CHDC from January 1- April 2, 2019, and again from November 1 - December 12, 2019.² According to City HR, Thompson's "start date with the city as an ELDE (TCSE) was 4/6/2019 and her end date was 1/4/2020." Thompson's offer letter (dated March 11, 2019) and Temporary Employment Agreement both state that the term of her employment would end on October 8, 2019. Based on a review of City emails, Thompson worked on the NOFA at least through November 28, 2019. In an interview with the PEC, she said that she was no longer actively involved with HCD by the Christmas holiday, though she did attend a holiday party.

Maryann Leshin recalled that Thompson was a temporary contract employee from April 8, 2019 to October 8, 2019, with an extension from November 11, 2019 to January 3, 2020. Christia Mulvey Katz took over as Unit Manager (overseeing Cleveland, among others) on September 30, 2019.

Thompson told the PEC that she did not perform any work for CHDC or receive any payments from them during her time at HCD in 2019. Before returning to HCD, Thompson also resigned her unpaid board position at CHDC so as not to create the appearance of a conflict of interest. For the same reason, she also told her supervisor that she would not "sign off" on anything regarding CHDC (as Thompson later described it to the PEC during an interview). Instead, her supervisor signed off on things regarding CHDC. When asked by the PEC if that arrangement just included "signing off" on CHDC matters, or if it meant that Thompson would not weigh in on CHDC matters at all, Thompson said that there were rarely discussions about CHDC matters and "if there were" then she would refer the staff person to someone else, especially if it involved making a decision. Thompson also communicated this to staff members who tried to bring CHDC matters to her attention. Thompson told the PEC that she would never make a decision regarding CHDC funding or be in a situation that involved exercising judgment over a CHDC matter, just to avoid the perception of a conflict.

When asked by the PEC if she had a similar agreement with CHDC to not discuss the content or status of their NOFA applications, Thompson said she did not, because no one at CHDC ever asked her about it in the first place. She also told the PEC that she did not offer any such information to CHDC without them asking. The PEC requested that Thompson and Gilmore provide all of their correspondence concerning CHDC's NOFA applications; both said they did not have any responsive

² Thompson's lawyer also provided the following detail:

Between January 1 and April 2, 2019, Norma consulted with CHDC on proposed affordable housing projects in both Oakland and Richmond. From November 1 to December 12, 2019, she only consulted on affordable housing developments in the City of Richmond. As we stated in our interview with you, both Norma and CHDC believed that they took the proper steps to avoid even the appearance of conflict of interest and fully disclosed to the City of Oakland the nature of her work with CHDC. Neither Norma nor CHDC (nor, apparently, the Housing Department of the City) was aware of the conflict of interest regulations or restrictions in effect for staff or consultants to the City. Each has had a longstanding relationship with the City, and neither would have deliberately done anything to damage that relationship.

records, which would seem to corroborate Thompson's claim that she did not discuss their NOFA applications with them.³

None of the HCD staffers interviewed by the PEC (Cleveland, Leshin, Mulvey Katz, or Smith) were under the impression that Thompson was working for CHDC while she was working for the City.

Thompson's role upon her return to HCD was to assist in the launching of the NOFA, and to lead the staff meetings in the development of the NOFA. In terms of what that specifically entailed, Thompson told the PEC that HCD staff gave input on how applications would be scored, as well as what funding priorities would be (i.e. type of projects to prioritize). If the discussion concerned something that Thompson felt was "political or above my head" then she would refer it to the Housing Director. She told the PEC that she did not discuss the NOFA guideline revisions with CHDC, and that CHDC is not one of the nonprofit housing developers that tends to get involved in the revision process.

Thompson left HCD (initially) in mid-September 2019, just after NOFA applications began to come in. Thompson told the PEC that she was not involved in assigning Cleveland to perform the threshold review of the Harp Plaza application because she was not "there" at the time that such assignments were being made.

Thompson did return to HCD a few weeks later to take part in the scoring phase of the NOFA. Of the applications that she scored, none of them were from CHDC. It was around this time that Leshin and Mulvey Katz met to review who would be assigned to score each NOFA application, and decided to remove Cleveland from any CHDC applications. At the same time, Mulvey Katz suggested that Thompson also not be assigned to any CHDC applications due to her past association with CHDC, and Leshin agreed. Christia Mulvey Katz says Leshin had been aware of Cleveland's relationship with Gilmore; she does not know if Leshin raised this issue with anyone else before this discussion between the two of them (Mulvey Katz and Leshin). Christia Mulvey Katz pro-actively raised the issue re: Cleveland's potential conflict during that conversation. She also raised the issue re: Thompson, but only because she knew that Thompson had done consulting work for CHDC at some point after retiring from the City; she was not sure if Thompson was still consulting for CHDC after re-joining the City as an annuitant, but she felt it was best to keep Thompson from reviewing any CHDC applications because of her past association with the company. She was not concerned about Thompson's objectivity, but she did not want to put her in that role regardless given that they had other staff available. She did not discuss the matter with Thompson at that time; she does not know if anyone else (e.g. Leshin) discussed it with Thompson.

However, Thompson did attend the staff meetings to discuss the scores of other applications besides those she personally scored. She recalled about two such meetings taking place. She also recalled weighing in on a discussion of a CHDC application, when Janet Howley (a consultant brought on by HCD, who was scoring some of CHDC's applications) was concerned that CHDC lacked the in-house staff capacity to take on more projects in addition to those it was already working on. At that meeting, Thompson argued in response that CHDC could overcome that problem by hiring consultants and pointed out that this was a common practice among nonprofit housing developers. Other people at the meeting agreed with Thompson. Thompson does not believe that Howley had given CHDC a

³ It should be noted that these were voluntary requests for documents, not subpoenas, so Thompson and Gilmore's responses were not sworn.

score on its application at that point. She told the PEC that this conversation was not contentious, and that she does not recall anyone else getting involved in the conversation. Other than that incident, she does not recall discussing a CHDC application with anyone. She also does not recall discussing any NOFA applications at all outside of those meetings.

According to Thompson, she left the City in December 2019 and began doing consulting work for CHDC and on some of their Richmond projects. The PEC asked Thompson to describe when she began communicating with CHDC about the possibility of going back to work for them. She could not recall exactly but said because she had a “relationship” with them for many years and did not consult for anyone else. Thompson’s attorney and fellow CHDC board member, Kit Hoover, who was also present at the PEC interview, stated it was “always the thought” that Thompson would return to work for CHDC when she was no longer working at the City. She said Thompson is “one of the consultants who does regular work for CHDC” so it was not necessary to have formal discussions about her returning to that role. Thompson did not dispute this characterization during the interview. Hoover also said CHDC had a law firm-style “Chinese wall” with Thompson while she was working with the City.⁴

In her interview with the PEC, Thompson said she was unfamiliar with the revolving door provisions of GEA. Thompson and her lawyer pointed out that the “housing community” in the Bay Area is very small, and they believe the revolving-door provisions are commonly violated. The only ethics training Thompson recalled receiving was one about sexual harassment. Thompson did not have an exit interview with the City.

Thompson did not fill out a Form 700 when she came back to the City to work on the NOFA. According to Thompson, no one in HCD ever told her to complete one.

IV. ANALYSIS

Oakland City Ordinance provides that it is a misuse of position for a Public Servant to use his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person. O.M.C. 2.25.060 (A)(2). During the time that Thompson participated in the processing of the NOFA applicants, on at least two occasions, she attended staff meetings to discuss the scores of other applications besides those she personally scored. She weighed in on a discussion of a CHDC application, when Janet Howley (a consultant brought on by HCD, who was scoring some of CHDC’s applications) was concerned that CHDC lacked the in-house staff capacity to take on more projects in addition to those it was already working on. At that meeting, Thompson advocated on CHDC’s behalf, knowing that she was also working as a consultant with CHDC. Thompson’s participation in the evaluation process of the NOFA applicants, while she was consulting for CHDC, establishes that she misused her position to induce City staff to provide a benefit or advantage to CHDC in violation of the Government Ethics Act.

The Oakland Municipal Code restricts public servants from engaging in “revolving door” practices. The Code provides that no current or former Public Servant shall be employed by or otherwise receive compensation from a person or entity that entered into a contract with the City within the preceding one year where the Public Servant personally and substantially

⁴ Thompson and her attorney Hoover did not have anything in writing regarding that firewall; Hoover characterized the situation as more informal and said CHDC just calls people when it needs consultants.

participated in the award of the contract. A City employee who engages in this conduct violates O.M.C. 2.25.050. Here, Thompson while employed by the City in the Housing Department, entered into a consulting contract with CDHC, an entity, which was in the process of entering a contract with the City and had entered into contracts with the City in previous years.

All designated City employees are required to file a Form 700 Statement of Economic Interest pursuant to the CA PRA. Although Thompson has worked with the City of Oakland multiple times, for more than 20-years, she failed to file a Form 700 when she was hired in 2019 by the City and upon her departure from the City in January of 2020.

The City also prohibits an employee from participating in making or influencing a decision in which he or she has a financial interest, as defined by the CA Political Reform Act. (CA PRA). This investigation did not confirm that Thompson received any payment or thing of value in exchange for her participation in the recommendation of the NOFA funding. Although she was a consultant for CHDC at the time she was participating in the evaluation of NOFA applicants, there is no evidence that she was a paid consultant receiving compensation or reimbursement from CHDC. In the absence of evidence to the contrary, there is insufficient evidence to establish that Thompson had a financial interest that influenced her decision making.

V. VIOLATIONS:

Count 1: Misuse of City Position

A City employee violates the Government Ethics Act when he or she uses his or her position or prospective position, or the power or authority of his or her office or position, in any manner intended to induce or coerce any person to provide any private advantage, benefit, or economic gain to the City Public Servant or candidate or any other person.

Between January 2019 and December 2019, the Respondent Norma Thompson, violated O.M.C. 2.25.060 (A)(2), by using her position in a manner intended to induce a private advantage or economic gain to Don Gilmore and CDHC.

Count 2: Revolving Door Restrictions

A City employee violates the Government Ethics Act when she is employed by or otherwise receives compensation from a person or entity that entered into a contract with the City within the preceding one year where the Public Servant personally and substantially participated in the award of the contract.

Between January 2019 and December 2019, the Respondent, Norma Thompson, violated Section O.M.C. 2.25.050 – when she was employed by CDHC as a consultant, when CDHC had a contract with the City within the preceding one year where the Public Servant personally and substantially participated in the award of the contract.

Count 3: Failure to File Financial Interest Form (F700)

A designated City employee violates the Government Ethics Act when he or she fails to file a Form 700 Statement of Economic Interest.

The Respondent, Norma Thompson failed to file a Financial Interest Form 700 for the year 2019, pursuant to the CA PRA and in violation of O.M.C. 2.25.040 (B).

VI. PROPOSED PENALTY

This matter consists of three violations of the Government Ethics Act (GEA), which carries a maximum administrative penalty of \$5,000 per violation or up to three (3) times the amount the person failed to report properly, or expended, gave, or received, whichever is greater.

The PEC considers several factors to determine the appropriate penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The Public Ethics Commission has an independent obligation to determine the penalty merited by the Respondent's violation of the GEA. And, although the Commission has often concluded that the guideline penalty is sufficient to vindicate the Commission's interests in regulating violations of GEA, the Commission is free to impose a different sanction if that is appropriate. In this case, Staff recommends that the Commission impose a different sanction, a Diversion Agreement.

Aggravating Factors

1. The Respondent did not recuse herself from the application review process.
2. The Respondent was a long-standing employee with the City and should have been aware of City policy and ordinances.
3. The Respondent was working both for the City and an applicant CDHC at the time she participated in the NOFA application review process.

Mitigating Factors:

1. The Respondent cooperated with Enforcement Staff's investigation into this matter.
2. The Department failed to provide Thompson training on conflicts of interests.
3. The Department did not have a written policy, nor did it inform Thompson on recusal due to conflicts of interest.
4. The Respondent made an effort to not directly review or approve the CDHC application.

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The purpose of administrative penalties like those provided in the Government Ethics Act is to promote transparency, gain compliance with the City Ordinance requirements and protect the public from Public Servants who have not discharged, will not discharge or are unlikely to properly discharge their professional duties. In this case, lack of knowledge of the law is not a defense to a Government Ethics Act violation. In fact, the facts establish Thompson was aware of the potential conflict of interest and eventually attempted to mitigate the conflict by not directly reviewing CDHC's application. Not until later in the application review process did the Respondent's Supervisors recognize the potential conflict of interest.

This is a case where the failure of the department to provide sufficient training and oversight informed the choices that Thompson made. As a result of the department's failure to provide training, staff recommends that Thompson enter a Diversion Agreement with the Commission pay an imposed fee and agree to successfully complete trainings on conflicts of interest and related policies.

V. CONCLUSION AND RECOMMENDATION

There is probable cause that the Respondent violated count 1 Misuse of Position, Count 2 Violation of Revolving Door Restrictions and Count 3 Failure to File Form 700 when she participated in the decision to recommend a grant of NOFA funding to CDHC, knowing that she was employed as a consultant for CDHC, a candidate in the NOFA applicant pool.

To resolve this case, Staff recommends that the Commission approve a Diversion Agreement to counts 1, 2 and 3. A diversion program will provide the Respondent with the essential training and services that can address the underlying cause that contributed to her violations of the Government Ethics Act. By targeting the underlying issue of lack of training and department process and policies to prevent ethics violations, a diversion program can improve long-term compliance with City ordinances and ensure effective execution of City policies and laws.