
IN THE MATTER OF CARLOS ORTIZ,
A former employee of the New York State
Department of Public Service

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SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. 12-114

WHEREAS, the Public Integrity Reform Act of 2011 ("PIRA") created the Joint Commission on Public Ethics ("Commission") to replace the Commission on Public Integrity ("CPI") and expressly provided that the Commission shall continue the authority of CPI;

WHEREAS, Part A, Section 16, of PIRA provides in relevant part: "any business or other matter undertaken or commenced by the state commission on public integrity or the legislative ethics commission pertaining to or connected with the functions, powers, obligations and duties hereby transferred and assigned to the joint commission on public ethics, and pending on the effective date of this act may be conducted and completed by the joint commission on public ethics in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the former state commission on public integrity or the legislative ethics commission";

WHEREAS, this Settlement Agreement ("Agreement") is entered into by and between the Commission and Respondent and Respondent has agreed to proceed under Executive Law §94 as amended by PIRA;

WHEREAS, the Commission has authority pursuant to Executive Law §94 to conduct an investigation to determine whether a substantial basis exists to conclude that a violation of the Public Officers Law has occurred, to issue a report of its finding of a substantial basis to conclude that a violation has occurred, and to impose penalties for such violation as provided for in Executive Law §94(14);

WHEREAS, the Respondent was employed by the Department of Public Service ("DPS"), the administrative arm of the Public Service Commission ("PSC"), from March 25, 1993 to March 25, 2012;

WHEREAS, on March 29, 2011, and on February 5, 2013, CPI and the Commission, respectively, issued letters to Respondent alleging violations of the Public Officers Law ("the Allegations");

WHEREAS, on March 25, 2012, Respondent resigned from his position at DPS during the PSC investigation;

WHEREAS, instead of appearing in an adjudicatory proceeding that could result in the assessment of a civil penalty against Respondent, the parties to this Agreement have agreed to resolve their dispute in a manner that avoids further administrative proceedings;

NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of the Allegations set forth herein, the parties stipulate and agree that:

- I. Respondent admits that, while employed by DPS, he accepted, over a period of several years, rounds of golf and meals, ranging in value from approximately \$8 to \$88 dollars, totaling less than \$900.00, from an employee of National Grid, a regulated utility and client of a registered lobbyist. Such conduct violated Public Officers Law §73(5)(a).
- II. Respondent agrees to pay to the Commission the amount of \$1000 in settlement of said violations within 30 days of the execution of this Agreement.
- III. If Respondent fails to timely perform the conditions set forth in Paragraphs II of this Agreement, Respondent will be in breach of this Agreement, and it shall be in the Commission's sole discretion to deem the Agreement null and void in its entirety, issue a new Substantial Basis Investigation Report, which may include additional charges against Respondent, and proceed with an enforcement action. As to any new Substantial Basis Investigation Report or enforcement action by the Commission pursuant to this paragraph: (i) Respondent waives any claim that such action is time-barred by a statute of limitations or any other time-related defenses, provided that such action would not have been time-barred if brought on or before the date of this Agreement; and (ii) Respondent expressly acknowledges and agrees that the Commission may use any statements herein, or any other statements, documents or other materials produced or provided by Respondent prior to or after the date of this Agreement, including, but not limited to, any statements, documents, or other materials, if any, provided for the purposes of settlement negotiations or in submissions by Respondent or by counsel on behalf of Respondent, in any enforcement proceeding against Respondent relating to the allegations herein.
- IV. Notwithstanding the provisions of this Agreement, Respondent understands and acknowledges that the Commission may investigate other alleged violations of the Public Officers Law, if any, by Respondent and take any appropriate action. Respondent reserves any and all defenses to any such action.
- V. Respondent waives any statute of limitations or other time-related defenses applicable to the Allegations and any claims arising from or relating thereto, as well as any right to appeal or challenge the determination or conduct of the Commission relating to this matter in an article 78 proceeding or by any other means.
- VI. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
- VII. Respondent consents to the jurisdiction of the Commission in any proceeding or action to enforce this Agreement.
- VIII. It is understood that this Agreement is not confidential and will be made public within 45 days of its execution in accordance with Executive Law §§94(14) & (19).

- IX. Respondent agrees not to take any action or to make, permit to be made, authorize, or agree to, any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Respondent's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Commission is not a party. A violation of this Paragraph constitutes a breach of this Agreement by Respondent under Paragraph III herein.
- X. This Agreement constitutes the entire agreement between the parties and supersedes any prior communication, understanding, or agreement, whether oral or written, concerning the subject matter of this Agreement. No representation, inducement, promise, understanding, condition or warranty not set forth in this Agreement has been relied upon by any party to this Agreement.
- XI. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
- XII. This Agreement shall become effective upon execution by the Commission or its designee.
- XIII. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
- XIV. By signing below, Respondent acknowledges reading this Agreement in its entirety, understanding all terms and conditions of this Agreement, and having done so, knowingly, voluntarily, and freely enters into this Agreement.

Dated:

8/14/13

Leticia Tafra

New York State

Joint Commission on Public Ethics

ACCEPTED AND AGREED TO

THIS 16 DAY OF July, 2013

Respondent

By:

Carlos Ortiz

Name:

CARLOS ORTIZ

Title:

Approved: Daniel J. Horwitz
Chair

Patrick J. Bulgaro
Hon. Joseph Covello
LaShann M. DeArcy
Hon. Vincent A. DeIorio
Marvin E. Jacob
Seymour Knox, IV
Hon. Mary Lou Rath
David A. Renzi
George H. Weissman
Members

Absent: David Arroyo
Mitra Hormozi
Gary J. Lavine
Ellen Yaroshefsky
Members