

STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS

540 Broadway
Albany, New York 12207

RECEIVED FEB 27 2014

IN THE MATTER OF ANTONIO CABRERA,
Assistant Chief Officer – Track Engineering
Metropolitan Transportation Authority (MTA)

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. 13-153

WHEREAS, the Joint Commission on Public Ethics (“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 the Executive Law;

WHEREAS, this Settlement Agreement (“Agreement”) is entered into by and between the Commission and Antonio Cabrera (“Respondent”);

WHEREAS, Respondent has been employed by the Metropolitan Transit Authority (the “MTA”) as an Assistant Chief Officer, Track Engineering and in various other titles of the MTA, from 1984 to the present;

WHEREAS, in or about June 2012, after a disciplinary hearing before the MTA, Respondent agreed to a demotion and a substantial reduction in his annual salary for fifteen months;

WHEREAS, on January 15, 2014, a letter was sent to Respondent alleging violations of Public Officers Law §§73(5)(a) and 74(3)(c), (f), and (h) which afforded Respondent 15 days in which to respond to the allegations in writing;

WHEREAS, in lieu of responding to the allegation and 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 fact that Respondent agreed to a demotion and a reduction in his salary, and the mutual covenants made herein, as the final settlement of the violation set forth herein, the parties stipulate and agree that:


- I. Respondent admits that on several occasions between in or about June 2011 to in or about September 2011, Respondent provided confidential MTA information to Construction Polymers Company, a supplier of the MTA that was participating in a pending Request for Information for solid cast polymer compound for railroad ties.

The confidential information included the identity of a potential competitor that responded to the same pending Request for Information.

- II. Respondent admits that by such conduct in I above, he violated Public Officers Law §74(3)(c) and agrees to pay to the Commission the amount of two thousand dollars (\$2,000) 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 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: (1) 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 (2) 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. Respondent shall, upon request by the Commission, provide all documentation and information reasonably necessary for the Commission to verify compliance with this Agreement.
- V. The Commission has agreed to the terms of this Agreement based on, among other things, the representations made to the Commission by Respondent. To the extent that representations made by Respondent are later found to be materially incomplete or inaccurate by the Commission, Respondent shall be in breach of this Agreement.
- VI. Notwithstanding the provisions of this Agreement, Respondent understands and acknowledges that the Commission may investigate other knowing and intentional violations of the Public Officers Law, if any, by Respondent and take any appropriate action.
- VII. Respondent waives any statute of limitations or other time-related defenses applicable to the subject of the Agreement 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.
- VIII. 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.

- IX. Respondent consents to the jurisdiction of the Commission in any proceeding or action to enforce this Agreement.
- X. 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).
- XI. 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.
- XII. 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.
- XIII. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
- XIV. This Agreement shall become effective upon execution by the Commission or its designee.
- XV. 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.
- XVI. 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: 3/13/2014



Letizia Tagliaferro
Executive Director
New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO
THIS 24 DAY OF February, 2014

Respondent

By: 

Name: Antonio Cabrera

Approved: Daniel J. Horwitz
Chair

David Arroyo
Paul Casteleiro
Hon. Joseph Covello
LaShann DeArcy
Marvin E. Jacob
Seymour Knox, IV
Gary J. Lavine
David A. Renzi
Hon. Renee R. Roth
George H. Weissman
Members

Absent: Mitra Hormozi
Hon. Mary Lou Rath
Members