

IN THE MATTER OF SIDNEY GELLINEAU,

MTA Chief Information Officer.

"JCOPE" Rec'd

JAN - 6 2017

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. 16-118

WHEREAS, the Joint Commission on Public Ethics ("Commission") is authorized by Executive Law § 94 to conduct an investigation to determine whether a substantial basis exists to conclude that any violations of the Public Officers Law have occurred, to issue a report of its findings of fact and conclusions of law, and to impose penalties for any violation;

WHEREAS, Sidney Gellineau ("Respondent") has been employed as the Chief Information Officer of the Metropolitan Transportation Authority ("MTA") since August 2013;

WHEREAS, the MTA Office of the Inspector General ("MTA OIG") referred this matter to the Commission for its consideration;

WHEREAS, on August 22, 2016, a letter was sent to Respondent alleging violations of Public Officers Law § 74(3)(d), (f), and (h), which afforded Respondent fifteen (15) days to respond;

WHEREAS, on September 27, 2016, the Commission voted to commence an investigation into this matter;

WHEREAS, Respondent and the Commission, the parties to this Settlement Agreement ("Agreement"), have agreed to resolve this matter in a manner that avoids additional administrative and/or adjudicatory proceedings;

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

1. Respondent admits that in or around 2012, while employed as Vice President of Technology and Information Services at MTA New York City Transit ("NYCT"), he asked a subordinate if he knew of any available jobs for his son ("Son"). The subordinate contacted an NYCT vendor, whom the subordinate at times oversaw, about hiring the Son. The vendor ultimately hired the Son in or around November 2012, and Respondent recused himself from procurement matters involving the vendor in or around December 2012.
2. Respondent admits that, by his conduct described in Paragraph 1, he violated Public Officers Law § 74(3)(d), which provides that no state employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.

3. Respondent agrees to pay to the Commission the amount of three thousand dollars (\$3,000.00) in settlement of said violation, with one hundred dollars (\$100.00) to be paid upon execution of this Agreement and the balance of two thousand nine hundred dollars (\$2,900.00) to be paid within thirty (30) days of the execution of this Agreement. Respondent shall send the payment to the Commission at 540 Broadway, Albany, New York 12207.
4. 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 by the Commission to be materially incomplete or inaccurate, Respondent shall be in breach of this Agreement.
5. If the Respondent fails to timely perform any conditions set forth in the Agreement, Respondent shall be in breach of this Agreement.
6. 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.
7. Upon a breach of this Agreement, the Commission shall have sole discretion to deem the Agreement null and void in its entirety, issue a Notice of Substantial Investigation and Notice of Hearing and 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; and (2) Respondent expressly acknowledges and agrees that the Commission may use any statements herein, or any other statements, documents or materials produced or provided by Respondent prior to or after the date of this Agreement, including, but not limited to, any statements, documents, or materials, if any, provided for the purposes of settlement negotiations or in submissions by Respondent or by counsel on behalf of Respondent, in any proceeding against Respondent relating to the allegations herein.
8. Respondent shall upon request by the Commission provide all documentation and information reasonably necessary for the Commission to verify compliance with this Agreement.
9. Respondent understands and acknowledges that the Commission may investigate any other conduct not covered by this Agreement by Respondent and take any appropriate action.
10. Respondent waives the right to assert any defenses or any challenges to this Agreement, as well as any right to appeal or challenge the determination or conduct of the Commission relating to this matter in any forum.

11. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
12. Respondent consents to the jurisdiction of the Commission in any proceeding to enforce this Agreement.
13. It is understood that this Agreement is not confidential and will be made public within forty-five (45) days of its execution in accordance with Executive Law § 94(14) & (19).
14. 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.
15. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
16. This Agreement shall become effective upon execution by the Commission or its designee.
17. 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.
18. 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. The Respondent is represented by Charles Capetanakis, Esq. and Andrew K. Rafalaf, Esq. of Davidoff Hutcher & Citron, LLP.

Dated: 9th day of January, 2017



Seth H. Agata
Executive Director
New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO
THIS 4 DAY OF JAN, 2017

Respondent

By: 

Name: Sidney Gellineau

Approved:

Marvin E. Jacob
Seymour Knox, IV
Hon. Eileen Koretz
Gary J. Lavine
J. Gerard McAuliffe, Jr.
David A. Renzi
Hon. Renee R. Roth
Dawn L. Smalls
George H. Weissman

Absent:

Michael K. Rozen

Members