

STATE OF NEW YORK
JOINT COMMISSION ON PUBLIC ETHICS

540 Broadway
Albany, New York 12207

IN THE MATTER OF SHERRY HERRINGTON,
Former Assistant Vice-President of Operation Services
of the Metropolitan Transportation Authority.

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. 13-123

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, Sherry Herrington ("Respondent") was employed by the Metropolitan Transportation Authority (the "MTA") as an Assistant Vice-President of Operation Services and other titles, from 1978 to her retirement in late 2013 after the conclusion of the MTA Inspector General's ("MTA IG") investigation;

WHEREAS, in August 2013, the MTA IG issued a report which found that Respondent violated the Public Officer's Law when she recommended and made the final decision to hire her domestic partner into the On-Board Services Unit, which was within Respondent's chain of command. The MTA IG found that Respondent's domestic partner did not appear to be the best qualified for the position and that the Respondent failed to notify her agency's ethics committee regarding her potential conflict of interest. The MTA IG referred its findings to the Commission for its consideration;

WHEREAS, on September 25, 2013, a letter was sent to Respondent alleging violations of Public Officers Law §§73(14)(a) and 74(3)(d), (f), and (h), which afforded Respondent fifteen (15) days to respond; and on October 10, 2013, Respondent responded to the letter;

WHEREAS, on May 2, 2014, a Notice of Substantial Basis Investigation was issued;

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 the Summer of 2008, she actively participated in the hiring of her domestic partner for the position of On-Board Manager, in a unit under Respondent's chain of command. Respondent recommended her domestic

partner to the human resources department and initiated discussions regarding her domestic partner's qualifications to the same department. Respondent gave the final approval to hire her domestic partner. Respondent did not recuse herself from the hiring process.

2. Respondent admits that, by her conduct described paragraph 1, she violated Public Officers Law §73(14)(a), which provides that no statewide employee may participate in any decision to hire a relative, which includes a domestic partner, for any compensated position at, for or within any state agency.
3. Respondent agrees to pay to the Commission the amount of three thousand five hundred dollars (\$3,500.00) in settlement of said violation. The Respondent shall pay one thousand dollars (\$1,000.00) at signing of this agreement and the remaining two thousand five hundred (\$2,500.00) within ninety (90) days of the execution of this Agreement.
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 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 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. Respondent was represented by counsel, David Fish.

Dated: August 26, 2014
Letizia Tagliaferro
Letizia Tagliaferro
Executive Director

New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO
THIS 19 DAY OF AUGUST, 2014

Respondent

By: 

Name: Sherry Herrington

Approved: Daniel J. Horwitz
Chair

David Arroyo
Paul Casteleiro
Joseph Covello
Mittra Hormozi
Marvin Jacob
Gary J. Lavine
Hon. Mary Lou Rath
David A. Renzi
Michael A. Romeo, Sr.
Renee R. Roth
George Weissman

Absent: Seymour Knox, IV

Members