
IN THE MATTER OF Larry Selan, Civil Engineer,
New York State Department of Transportation

Respondent

RECEIVED JAN 27 2014

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT

Case No. JCOPE 12-99

WHEREAS, the Joint Commission on Public Ethics (the "Commission") has authority pursuant to Executive Law §94(14) 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 Larry Selan ("Respondent");

WHEREAS, the Respondent is employed by the Department of Transportation ("DOT"), as a Civil Engineer, from March 19, 1984 to the present;

WHEREAS, the Office of the Inspector General ("IG") issued a report in July 2012 in which it found that Respondent improperly used his position as an Engineer-in-Charge on two construction projects in Cortland County to secure benefits for himself;

WHEREAS, the IG referred its findings to the Commission for its consideration;

WHEREAS, on July 30, 2012 the Commission issued a letter to Respondent alleging violations of Public Officers Law §§73(5)(a) and 74(3)(d),(f), and (h), that afforded Respondent 15 days in which to respond to the allegations in writing;

WHEREAS, on June 19, 2013 Respondent entered into a Settlement agreement with DOT - as a result of a disciplinary proceeding relating to the IG's findings - wherein Respondent agreed to a thirty (30) day suspension without pay and an irrevocable resignation from DOT to occur on February 1, 2014;

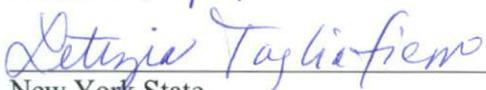
WHEREAS, instead of appearing in an adjudicatory proceeding that could result in the assessment of a civil penalty against Respondent, the parties to this Agreement have agreed to resolve their dispute in a manner that avoids further administrative proceedings;

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, between August 2005 and July 2009, while in his capacity as the Engineer-in-Charge of two projects in Cortland County: the Hoxie Gorge Bridge project; and the State Route 221 project; he used, or attempted to use, his official position to secure unwarranted privileges or exemptions for himself in violation of Public Officers Law §74(3)(d).
- II. Respondent 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 Paragraph 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 that 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 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.
- 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) and (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: 2/4/14



New York State

Joint Commission on Public Ethics

ACCEPTED AND AGREED TO
THIS 27 DAY OF January, 2014

Respondent

By: 

Name: LARRY SELAN

Title: CE-1

Approved: Daniel J. Horwitz
Chair

David Arroyo
Hon. Joseph Covello
Marvin E. Jacob
Seymour Knox, IV
Hon. Mary Lou Rath
David A. Renzi
George H. Weissman
Members

Absent: LaShann M. DeArcy
Mitra Hormozi
Gary J. Lavine
Hon. Renee R. Roth
Members