

Deputy Superintendent at the Central Electronic Shop of the  
New York City Transit Division, Metropolitan Transit Authority.

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SUBSTANTIAL BASIS INVESTIGATION REPORT  
AND SETTLEMENT AGREEMENT

Case No. 17-044

WHEREAS, Executive Law § 94 authorizes the Joint Commission on Public Ethics (“Commission”) 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, Gustavo Espinal (“Respondent”) is employed as a Deputy Superintendent at the Central Electronic Shop of the New York City Transit Division at the Metropolitan Transportation Authority (“MTA”) from April 7, 2008 to present;

WHEREAS, on April 29, 2019, a letter was sent to Respondent alleging violations of Public Officers Law §§ 73-a (4), 74 (3) (d) and (h), in that it was alleged that the Respondent conducted personal business for his company called Megatronics and/or Mega Repair (collectively “Mega”) during MTA work hours and Respondent failed to disclose his outside activity or income on his Annual Statements of Financial Disclosure (“FDS”) for the years 2015, 2016, 2017, and 2018. Respondent responded on May 28, 2019;

WHEREAS, on June 17, 2019 the MTA and Respondent agreed to resolve disciplinary charges arising out of the above allegations against Respondent, by requiring Respondent to accept a thirty-day suspension without pay and to divest his interest in Mega;

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 from 2015 through 2018, while employed by the MTA, he owned Mega. During this period, Respondent conducted Mega business on State time by regularly answering phone calls on his private cell phone line relating to Mega business.
2. Respondent admits that he failed to disclose his outside employment and income on his FDS for the years 2015, 2016, and 2017 and failed to disclose his outside employment on his FDS for 2018.
3. Respondent admits that his conduct described in Paragraph 1 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, herself, or others.

4. Respondent admits that his conduct described in Paragraph 2 violated Public Officers Law § 73-a (4) which provides that a reporting individual who knowingly and willfully fails to file an annual statement of financial disclosure or who knowingly and willfully with intent to deceive makes a false statement or gives information which such individual knows to be false on such statement of financial disclosure shall be subject to a civil penalty in an amount not to exceed forty thousand dollars.
5. The Commission accepts the resolution between the MTA and the Respondent, whereby the Respondent forfeited approximately \$8,500 as a result of a thirty-day suspension without pay and divested his interest in Mega, as sufficient penalty for the Public Officers Law violations and imposes no additional penalties. In addition, Respondent agrees to not appeal/challenge the MTA discipline matter.
6. Respondent also agrees to amend his FDSs for the years 2015, 2016, 2017, and 2018 to accurately reflect his outside employment and compensation within thirty (30) days of execution of this Agreement.
7. 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.
8. If the Respondent fails to timely perform any conditions set forth in the Agreement, Respondent shall be in breach of this Agreement.
9. 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.
10. 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 Notice of Substantial Investigation and Hearing which may include additional charges against Respondent, proceed with an enforcement action, and then issue a new Substantial Investigation Report; or to deem the Respondent in breach of this Agreement and pursue, in court, any other remedy to which the Commission is entitled at law or in equity, including, but not limited to, specific performance or injunction. 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.

11. Respondent shall, upon request by the Commission, provide all documentation and information reasonably necessary for the Commission to verify compliance with this Agreement.
12. Respondent understands and acknowledges that the Commission may investigate any other conduct not covered by this Agreement by Respondent and take any appropriate action.
13. 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.
14. 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.
15. Respondent consents to the jurisdiction of the Commission in any proceeding to enforce this Agreement.
16. 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).
17. 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.
18. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
19. This Agreement shall become effective upon execution by the Commission or its designee.
20. 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.
21. 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. Electronic signatures shall be deemed original for this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which

together shall constitute one and the same instrument. Respondent was represented by Howard Wien, of Koehler & Isaacs, LLP.

Dated: 7/2/19

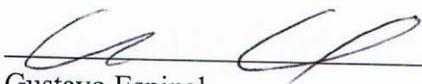


~~Seth Agata~~ Monica Stamm, General Counsel  
~~Executive Director~~  
New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO  
THIS 26 DAY OF JUNE, 2019

Respondent

By:

Name:   
Gustavo Espinal

Approved:

Michael K. Rozen  
Chair

Colleen C. DiPirro  
William P. Fisher  
Julie A. Garcia  
Daniel J. Horwitz  
Marvin E. Jacob  
Gary J. Lavine  
James W. McCarthy  
George H. Weissman  
James Yates  
Members

Robert Cohen  
James E. Dering  
David J. McNamara  
Absent