

Former Assistant Director for New York State
Innovation Venture Capital Fund at Empire State
Development.

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT
Case No. 18-213

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, Sonia Gulati (“Respondent”), was employed as the Assistant Director for New York State Innovation Venture Capital Fund at the Empire State Development (“ESD”) from December 19, 2016 until October 16, 2018;

WHEREAS, on February 21, 2019, the Commission sent Respondent a fifteen-day letter alleging violations of Public Officers Law §§ 74(3)(d), (f), and (h);

WHEREAS, Respondent waived the notification requirements of Executive Law § 94(13)(a);

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 on or about October 2017 to August 2018, at the request of her superiors, she participated, as an ESD employee, in an ESD search for a project vendor. In January 2018, after a Request for Qualifications and Request for Proposals process, a vendor was conditionally selected by ESD and entered into contract negotiations with ESD. In approximately February 2018, Respondent had initial communications with the vendor to inquire about potential future employment. Respondent did not recuse herself from her role on this project at ESD during the contract negotiation phase. Although Respondent’s supervisor knew of Respondent’s job offer (in August 2018) prior to her accepting, Respondent did not properly notify ESD’s ethics officer until after her acceptance of employment (in September 2018) with the vendor. Ultimately, Respondent did not become employed by the vendor.

2. Respondent admits that her conduct described in Paragraph 1 above 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.

3. The Respondent agrees to pay the Commission the three thousand (\$3,000.00) in settlement of the said violation within thirty (30) days of execution of this Agreement.

4. The Commission has agreed to the terms of this Agreement based on, among other things, the representations made by the Respondent. To the extent that such representations made by the Respondent are later found by the Commission to be materially incomplete or inaccurate, the 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 Notice of Substantial Investigation and Hearing, which may include additional charges against Respondent and 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 Notice of Substantial Investigation and Hearing 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 attempt to 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, but Respondent reserves the right to challenge any such usage.

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. Electronic and facsimile signatures shall be deemed originals for the purpose of 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 Michael Koenig of Hinckley Allen.

Dated: July 8, 2019



Monica Stamm, General Counsel

New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO
THIS 3rd DAY OF July, 2019

Respondent

By: _____  _____

Name: Sonia Gulati

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