

ADVICE



EDUCATION



DISCLOSURE



ENFORCEMENT

# 2012 Advisory Opinions Enforcement Actions

**MASSACHUSETTS STATE ETHICS COMMISSION**  
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Included in this publication are:

**State Ethics Commission Formal Advisory Opinions issued in 2012**

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Cite Financial Disclosure Law Formal Advisory Opinions as follows: *EC-FD-12-(number)*.

**State Ethics Commission Advisories issued in 2012**

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**State Ethics Commission**  
**Advisory Opinions and Advisory**  
**2012**

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EC-COI-12-1 ..... 900

## **Summary of Advisory Opinion Calendar Year 2012**

**EC-COI-12-1** – Section 4 of the conflict of interest law, G. L. c. 268A, does not prohibit a state Division of Professional Licensure investigator/inspector, who is not involved in creating, evaluating, or administering examinations by the Board and has no role in the Board’s policies, approvals or audits of education programs, from, on his time off from his DPL position and in his private capacity, engaging in private or other non-state teaching activities for private or other non-state compensation, provided that those teaching activities are limited exclusively to actual teaching of course subject matter and do not include curriculum development, student evaluation, testing, grading, attendance keeping or reporting, or any other activity relating to the process of initial or ongoing state licensing.

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**CONFLICT OF INTEREST OPINION  
EC-COI-12-1**

**FACTS:**

A municipality seeks guidance with respect to whether municipal employees may fundraise for a tax-exempt municipal trust fund. In general, persons and entities solicited to make donations to the fund do not have business dealings with the department of the particular municipal employee principally responsible for soliciting such donations, but in some instances they may have such dealings. In addition, the solicited persons and entities are likely to have business dealings with some other municipal department or agency.

**QUESTION:**

May a municipal employee, consistent with G.L. c. 268A, the conflict of interest law, solicit donations to a municipal trust fund from persons and entities with whom he, or other municipal employees, has or expects to have official dealings?

**ANSWER:**

Yes, provided that (1) the solicitation is carried out in accordance with G.L. c. 44, § 53A, which authorizes acceptance of gifts by municipal employees on behalf of the municipality and, by implication, solicitation of gifts; (2) the solicitation is not made in circumstances that are inherently coercive because the person or entity solicited may be directly and significantly affected by a pending or anticipated decision of the same municipality; (3) no overt pressure is exerted in connection with any such solicitation; (4) the municipality and its employees apply objective standards in all dealings with persons and entities who are solicited, and do not favor those who give or disfavor those who do not; and (5) the municipal employee principally responsible for making such solicitations discloses the names of all those solicited in any manner (oral, written, electronic, or other), by himself or other municipal employees; these disclosures must be made publicly and in writing pursuant to G.L. c. 268A, § 23(b)(3).

1. Statutory Authorization for Solicitation

Sections 3 and 23(b)(2) of the conflict of interest law generally prohibit public employees from soliciting anything of substantial value. Section 3(b), in pertinent part, prohibits a public employee from

asking for or soliciting anything of substantial value for himself, for or because of any official act, or to influence or attempt to influence him in an official act, “otherwise than as provided by law for the proper discharge of official duty.” Sections 23(b)(2)(i) and (ii), respectively, prohibit public employees from “solicit[ing] or receiv[ing] anything of substantial value for [themselves], which is not otherwise authorized by statute or regulation, for or because of [their] official position;” and from using their official positions to “secure for [themselves] or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.” “Substantial value” is \$50 or more.<sup>1</sup>

Most of our opinions applying these statutes to public employee solicitations have involved solicitations for non-governmental purposes.<sup>2</sup> In that context, we have consistently stated that public employees may not use their titles, public work time, or public resources to solicit for non-governmental purposes.<sup>3</sup> We have explained that such solicitations are problematic for numerous reasons, including because they raise questions about the soliciting public employee’s objectivity and impartiality and may cause persons solicited by the public employee to feel compelled to comply.<sup>4</sup>

In two prior opinions we have concluded that proposed solicitations by public employees for specific governmental purposes did not violate the conflict of interest law.<sup>5</sup> In both cases, the state agencies seeking to carry out the solicitations had provisions in their enabling acts that authorized them to accept gifts, and therefore, by implication, to solicit gifts. The proposed solicitations were for specific purposes that bore some relation to the interests of the entities to be solicited, or might even benefit them.<sup>6</sup> The solicitations were made to entire industries or groups of businesses, and were not targeted to individuals or specific entities. While employees of the soliciting public agencies anticipated having future dealings with the entities to be solicited, the solicited entities did not have specific, significant matters pending before the soliciting agencies at the time of the solicitations.<sup>7</sup> In those circumstances, we permitted the proposed solicitations because the agencies’ enabling acts implicitly authorized them to solicit gifts, but advised the agencies to use objective standards in their future dealings with the entities solicited, and not reward or penalize them based on whether or not they contributed. In the later decision we also concluded that the requirement of § 23(b)(3), that public employees not engage in conduct which gives a

reasonable basis for the impression that they can be improperly influenced, was satisfied by public disclosures identifying all the contributing companies.

The present opinion request by a municipality that wishes to solicit donations to a municipal trust fund is less specific than the opinion requests we have previously considered, with respect to both the purposes of the proposed solicitations and the intended targets. The municipality does not state that the purpose of its solicitations will be to raise funds for specified municipal actions that may benefit the targets of those solicitations; instead, the municipality apparently wishes to be able to solicit donations for any of the broadly defined purposes for which the municipal trust fund may be used.<sup>8</sup> In addition, the proposed targets of solicitation are not limited to those who may at some point have official dealings with the municipality, but include persons and entities with matters pending before municipal employees, including matters of significance to those persons and entities.

Our two prior opinions in the area of public employee solicitation for governmental purposes did not explicitly address whether such a solicitation may occur only when there is statutory or regulatory authority for the solicitation. The requesting municipality argues that statutory authorization should not be required for fundraising that serves a governmental purpose. While there is statutory authority for a municipality to accept gifts in some circumstances,<sup>9</sup> the requesting municipality does not rely upon those statutes, but instead argues that no statutory authorization should be required because of the public purposes for which its trust fund will be used.

We disagree. The conflict of interest law requires that there be express statutory or regulatory authority for public employee solicitations for governmental purposes. Section 3 prohibits public employee solicitation of gifts “otherwise than as provided by law for the proper discharge of official duty.” Sections 23(b)(2)(i) prohibits solicitations “not otherwise authorized by statute or regulation,” and Section 23(b)(2)(ii) prohibits the use of one’s official position to obtain “unwarranted” privileges. In determining whether a privilege is “unwarranted,” we have stated that conduct explicitly authorized by statute or regulation is not “unwarranted,”<sup>10</sup> while conduct prohibited by statute is “unwarranted.”<sup>11</sup> In sum, §§ 3 and 23 prohibit solicitations by public employees for governmental purposes absent

statutory or regulatory authorization. This conclusion is consistent with our two prior opinions in this area.

G.L. c. 44, § 53A authorizes acceptance of gifts by municipal employees on behalf of their municipality, and, by implication, solicitation of gifts to be used for municipal purposes. The municipal employee who is the subject of the present request may solicit donations from persons and entities that have business before him and other municipal employees in accordance with G.L. c. 44, § 53A, subject to the further limitations on such solicitations set forth below.

## 2. Inherently Coercive Solicitations

The Commission has consistently interpreted § 23(b)(2) to prohibit public employees from soliciting private business relationships from individuals over whom the public employee has authority or a regulatory relationship. We have repeatedly expressed concern that a solicitation made by a public employee to someone under his authority or regulatory control is inherently coercive, stating, for example, “In these circumstances, one may never know whether the private party is objectively responding to the solicitation or whether his decision is influenced by a pressure to maintain good relationships with the public employee, or whether any official dealings are affected by the private dealing.”<sup>12</sup> Similarly, we have stated, “Regardless of the purpose of a solicitation, the dangers of compromising a public employee’s impartiality and objectivity and of creating an atmosphere where potential vendors feel compelled to contribute to foster the agency’s or the public employee’s good will remain.”<sup>13</sup> We have repeatedly applied that principle in our enforcement actions, and have found violations of § 23(b)(2) when a public employee asked for something from someone at a time when a matter of significance to the person receiving the request was pending before the public employee.<sup>14</sup>

Solicitations for governmental purposes by public employees from those under their authority or regulation raise the same concern: a solicitation made at the time when the person solicited may be directly and significantly affected by the authority of the soliciting public employee, or by his public employer, is inherently coercive. Indeed, the purpose of a solicitation -- whether it is for governmental or non-governmental purposes -- is irrelevant to whether the person who receives it will feel pressured to comply because of the possibility of adverse governmental action if he declines.

We therefore take this occasion to state explicitly that we will find a violation of § 23(b)(2) when a municipal employee uses his official position to make a solicitation for municipal purposes under inherently coercive circumstances, i.e., when the solicitation is made by the municipal employee, knowingly or with reason to know, to a person or entity who may be directly and significantly affected by a pending or anticipated decision of the same municipality. A municipal employee soliciting for a municipal purpose has a duty to make reasonable inquiry into whether the person or entity whom he intends to solicit has a matter pending or anticipated before his employing municipality such that a solicitation would be inherently coercive.<sup>15</sup> If a solicitation would be inherently coercive in the circumstances, it may not be made. Any doubt as to whether a pending or anticipated matter will have a direct and significant effect on a potential target of a solicitation should be resolved against making the solicitation.

### 3. Solicitations Accompanied by Overt Pressure

Of course, § 23(b)(2) prohibits not just inherently coercive solicitations, as discussed above, but also solicitations accompanied by overt pressure.<sup>16</sup> Just as a municipal employee's solicitation for municipal purposes may not be made in inherently coercive circumstances, such a solicitation may not be accompanied by overt pressure.

### 4. Objective Standards in Dealing with Those Solicited

Our prior opinions in the area of public employee solicitations for government purposes have emphasized that persons or entities who receive such solicitations cannot be rewarded for donating to a governmental purpose or penalized for declining to do so.<sup>17</sup> This principle applies to all municipal employees who have official dealings with persons or entities solicited to contribute to the municipal trust fund. That is, municipal employees who have dealings with persons or entities who have been solicited to contribute to the municipal fund must apply objective standards in those dealings, and may not give preferential treatment for donating, or adverse treatment for declining to donate.

### 5. Written Disclosures

Section 23(b)(3) of the conflict of interest law prohibits a public employee from engaging in conduct which gives a reasonable basis for the impression that any person or entity can improperly influence him or unduly enjoy his favor in the

performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, or the position of any person. In one of our earlier opinions concerning solicitations by public employees for governmental purposes, we approved the agency's proposal to comply with this requirement by publicly disclosing the names of all donors to the Secretary of the Executive Office that included the soliciting agency, and to the Commission.<sup>18</sup> The purpose of the disclosure was to dispel any appearance of favoritism towards the donors.

The requesting municipality should follow the disclosure procedure set forth in our earlier opinion, and require the municipal employee principally responsible for soliciting donations to the municipal trust fund to disclose the names of all those solicited in any manner, whether the solicitation was oral, written, electronic, or by some other means, by himself or other municipal employees. The disclosures should be made publicly and in writing pursuant to § 23(b)(3). These written disclosures should be updated at appropriate intervals and filed with the municipal clerk, who will maintain them as public records. This will dispel any appearance that donors, or those who do not donate, will influence the discretion or decisions of municipal employees in any way.

### **CONCLUSION:**

A municipal employee may, consistent with the conflict of interest law, solicit donations to a municipal trust fund from persons and entities with whom he, or other municipal employees, has or expects to have official dealings, provided that (1) the solicitation is carried out in accordance with G.L. c. 44, § 53A; (2) the solicitation is not made in circumstances that are inherently coercive because the person or entity solicited may be directly and significantly affected by a pending or anticipated decision of the same municipality; (3) no overt pressure is exerted in connection with any such solicitation; (4) the municipality and its employees apply objective standards in all dealings with persons and entities solicited, and do not favor those who give or disfavor those who do not; and (5) the municipal employee principally responsible for making such solicitations discloses the names of all those solicited in any manner (oral, written, electronic, or other), by himself or other municipal employees; these disclosures must be made publicly and in writing pursuant to G.L. c. 268A, § 23(b)(3).

**DATE AUTHORIZED:** July 20, 2012

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<sup>1</sup> 930 CMR 5.05.

<sup>2</sup> EC-COI-95-9; 93-23; 93-11; 93-6; 92-28; 92-12; 92-7. These citations reference Commission conflict of interest opinions available on our website, [www.mass.gov/ethics](http://www.mass.gov/ethics).

<sup>3</sup> *Id.*

<sup>4</sup> EC-COI-92-28.

<sup>5</sup> EC-COI-92-38; 84-128.

<sup>6</sup> In EC-COI-84-128, the Secretary of the Executive Office of Public Safety wished to solicit donations for a public education campaign concerning the use and sale of drugs and alcohol in high schools from drug and liquor companies, distributors, and private drug and alcohol treatment centers, all entities with an interest in responsible drug and alcohol use. In EC-COI-92-38, employees of the Mass. Office of Business Development wished to solicit donations from representatives of the biotechnology and telecommunications industries to fund two agency positions that would assist those industries.

<sup>7</sup> In EC-COI-84-128, the solicited entities were under the Secretary's enforcement authority. In EC-COI-92-38, the agency employees who would carry out the solicitation anticipated future dealings with the biotechnology and telecommunications industries.

<sup>8</sup> The purposes recognized as tax-exempt under Internal Revenue Code § 501(c)(3) are charitable, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The IRS uses the term "charitable" "in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency."

<sup>9</sup> G.L. c. 44 § 53A authorizes municipalities to accept gifts, but requires that the city council authorize their expenditure, and also that such funds be deposited with the city treasurer. G.L. c. 44 § 53A½ authorizes city councils to accept and use gifts of tangible personal property without specific appropriation.

<sup>10</sup> EC-COI-02-3; 98-2; 95-5; 92-38 n. 2; 92-37; 92-28; 92-23.

<sup>11</sup> *Advisory 11-1*; EC-COI-98-2.

<sup>12</sup> EC-COI-93-23 and opinions cited therein.

<sup>13</sup> EC-COI-92-28.

<sup>14</sup> See, for example, *Craven v. State Ethics Commission*, 390 Mass. 191, 202 (1983), affirming *In Re Craven*, 1980 SEC 17 (state representative asked agency to award grant at a time when agency's budget request was pending before representative's committee); *In Re Piatelli*, 2010 SEC 2296, 2301-2 (college president asked subordinate to consider hiring her brother when subordinate's employment contract was about to be up for renewal); *In Re Smith*, 2008 SEC 2152 (City Council employee requested special consideration by parking company in dealing with damage to car when parking-related matters were before City Council); *In Re Hamilton*, 2006 SEC 2043 (public employee sought to sell product to person who had building permit pending before his board); *In Re Travis*, 2001 SEC 1014 (state representative sought contribution from bank that had or would have issues before his committee); *In Re Mazzilli*, 1996 SEC 814 (public employee asked landfill operator to continue accepting old tires while company's contract pending before landfill committee); *In Re Galewski*, 1991 SEC 504 (building inspector, while conducting permit inspection, asked developer to build him a house he could afford).

<sup>15</sup> Public employees have a duty of reasonable inquiry to determine whether their actions will violate the conflict of interest law. EC-COI-02-2.

<sup>16</sup> *In Re Singleton*, 1990 SEC 476 (fire chief violated § 23(b)(2) by telling a developer that "it could take forever" to obtain a Fire Department inspection in the context of seeking private work from the developer).

<sup>17</sup> EC-COI-92-38; 84-128.

<sup>18</sup> EC-COI-92-38.



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## Summaries of Enforcement Actions Calendar Year 2012

### **In the Matter of Marjorie Malone**

The Commission approved a Disposition Agreement in which former Town of Avon Assistant Assessor Marjorie Malone admitted to violating the conflict of interest law by improperly raising the assessments on property owned by two Town officials after she was informed that she was facing disciplinary action by the Town. Pursuant to the Agreement, Malone paid a \$5,000 civil penalty. On the morning of August 4, 2010, Malone was informed that she faced disciplinary action in connection with a matter involving a personal expense report she had submitted. Later that day, without authorization, Malone increased the property valuations of two properties, each of which was separately owned by two Town officials. The effect of the changes increased the annual property taxes for each property by \$1,452 and \$835, respectively. Later that same day, the Town terminated Malone's employment for the personal expense report matter. Town officials discovered the increased property assessments in December 2010, and restored the prior assessments. The affected Town officials had not yet paid the increased taxes by the time the improper assessments were discovered and corrected. Malone violated section 23(b)(2)(ii) by using her official position to retaliate against two officials from the town that was taking employment-related actions against her by improperly increasing their property assessments.

### **In the Matter of Daniel Lahiff**

The Commission approved a Disposition Agreement in which Lowell Regional Water Utility Executive Director Daniel Lahiff admitted to violating the conflict of interest law by using an LRWU generator in his home, by soliciting an LRWU subordinate to transport and connect an LRWU generator to his home furnace during power outages, and by using another LRWU subordinate to perform private contracting work. Lahiff paid a \$5,000 civil penalty for the violations. In December 2008, when ice storms caused widespread power outages in the region, Lahiff transported an LRWU generator to and from his home and solicited an LRWU employee to connect the generator to supply electricity to Lahiff's residence. The generator remained at Lahiff's home for approximately 24 hours. In 2009, during another power outage that occurred when Lahiff was out of state, Lahiff solicited the same LRWU employee to transport the LRWU generator to and from Lahiff's home and connect it so to restore power for a

member of Lahiff's family who was in the home. Connecting the generator to the furnace involved electrical work to create a bypass in the circuit board. The employee transported the generator and performed the electrical work on his own private time. Lahiff paid the employee approximately \$100 in each instance. The Agreement states that in each instance, Lahiff received a discount of at least \$300 from what he would typically have had to pay to rent a generator and to hire someone to perform the electrical work. In 2009, Lahiff solicited another LRWU employee to install a wood floor in Lahiff's residence. The employee charged Lahiff a discounted rate of \$150 for four hours of labor, less than the fair market value for the labor of at least \$375. Lahiff violated section 23(b)(2) by securing the LRWU generator for his own personal use, by soliciting an LRWU subordinate to transport and connect the generator, and by securing the services of a subordinate to install a wood floor at a discount.

### **In the Matter of Richard Pierce**

The Commission approved a Disposition Agreement in which former Attleboro Police Department Chief Richard Pierce admitted to violating the conflict of interest law by participating in an internal investigation involving Pierce's police officer son and by improperly giving his son a copy of an internal investigation report. Pierce paid a \$3,500 civil penalty. Pierce's son was involved in an arrest in February 2010 during which he used an APD Taser on the arrestee. In July 2010, the arrestee's attorney sent a letter to Pierce, the Mayor and the City Council President informing them of his intent to file suit against the city because excessive force was used by the arresting officers. The letter named Pierce's son as one of the arresting officers. After receiving the letter, Pierce failed to file a disclosure with the Mayor, his appointing authority, nor did he notify the Personnel Director, in accordance with a protocol that had been established for such situations. Pierce then took the following actions:

- He compiled the arrest reports, noticed that no Taser Use Report had been filed in connection with the arrest, as required by APD policy, and asked an APD Lieutenant to ascertain whether an APD Taser had been used during the arrest;
- After learning from the Lieutenant that his son had used a Taser on the date of the arrest,

Pierce directed the Lieutenant to search for the Taser Use Report, since his son claimed to have filled one out. Pierce told the Lieutenant that if the report could not be found, the Lieutenant should have Pierce's son complete and submit a new report, even though it would be submitted 5 months after the arrest. A month later, Pierce asked the Shift Commander whether he had seen a Taser Use Report submitted by his son at the time of the arrest. The Shift Commander said he had not, but would look into it; and

- On September 27, 2010, after receiving an internal investigation report prepared by the Shift Commander on his own initiative, which concluded that Pierce's son violated APD policies and should be disciplined, Pierce met with his son. Pierce provided his son with a copy of the Shift Commander's report, even though an official Internal Affairs investigation had not yet commenced, and recommended that his son contact his union representative. At that time, Pierce also informed his son that he (Pierce) would have no further involvement in the matter due to conflict of interest concerns.

On September 28, 2010, Pierce was contacted by the Mayor and directed to have no further involvement in the investigation. That same day, Pierce met with the Mayor and Personnel Director and, after being directed to do so, turned over all reports in his possession concerning the arrest and internal investigation. Pierce's son's employment with the APD was subsequently terminated as a result of the son's conduct in connection with the arrest. Pierce retired in December 2010. Pierce violated section 19 by directing the Lieutenant to download Taser information in connection with the arrest made by his son, directing the Lieutenant and Shift Commander to look for missing reports, and giving his son the opportunity to submit late reports if the originals could not be found. Pierce violated section 23(b)(2)(ii) by giving his son the opportunity to submit reports late regarding the arrest, and by improperly providing his son with a copy of the Shift Commander's report while the APD Internal Affairs investigation into the arrest was pending.

#### **In the Matter of John Laurenza**

The Commission approved a Disposition Agreement in which former Lawrence Public School Department Graphic Designer John Laurenza admitted to violating the conflict of interest law by accepting bribes from a vendor, Wellington House Publishing

to rig bids on two LPS contracts so that Wellington could be awarded the contracts. Laurenza paid a \$4,000 civil penalty for accepting bribes from Wellington and a \$536 civil forfeiture to the City of Lawrence for the money paid to him by Wellington. In 2008, Laurenza was assigned to procure 10,000 pocket folders for the LPS. Wellington offered to pay Laurenza in exchange for Laurenza arranging for Wellington to be awarded the contract. Wellington did not have the equipment to manufacture pocket folders. Laurenza obtained a bid of \$4,347.60 from a vendor to produce the pocket folders. Laurenza then falsely reported to the LPS that Wellington had provided the lowest bid of \$4,788 and caused the LPS to issue a purchase order to Wellington for that amount. The pocket folders were ordered for \$4,347.60 from the vendor identified by Laurenza. The vendor invoiced Wellington and shipped the pocket folders to the LPS. On June 3, 2008, Wellington submitted an invoice in the amount of \$4,950.40 to the LPS for the pocket folders, reflecting the amount reported by Laurenza as the low bid plus a purported shipping charge. On July 17, 2008, the City of Lawrence issued a check in the amount of \$4,950.40 to Wellington, which, in turn, paid a \$245.84 kickback to Laurenza for arranging for Wellington to be awarded the pocket folders contract. Also in 2008, Laurenza was assigned to update and procure 15,000 copies of a bi-weekly timesheet used by the LPS Payroll Department. Wellington offered to pay Laurenza in exchange for Laurenza arranging for Wellington to be awarded the contract. Wellington did not have the equipment to produce the timesheets. Laurenza obtained a bid from another vendor to print the timesheets for an amount substantially less than \$1,194. Laurenza then reported to the LPS that Wellington had submitted the lowest bid of \$1,194. The timesheets were ordered from the vendor identified by Laurenza and delivered to the LPS. On August 26, 2008, Wellington submitted an invoice to the LPS in the amount of \$1,347.92 for the timesheets, with the increased amount representing a purported shipping charge. On September 29, 2008, the City of Lawrence issued a check in the amount of \$1,347.92 to Wellington as payment for the timesheets. On October 20, 2008, Wellington paid a \$290.28 kickback to Laurenza for arranging for Wellington to obtain the timesheets contract. Laurenza's arrangement with Wellington was corrupt because it involved an agreement to rig the contract bid process in exchange for payments. Laurenza violated section 2(b) by falsely certifying that Wellington was the low bidder on each of the two contracts, by arranging for the LPS to issue purchase orders to Wellington, and by accepting payments in the total amount of \$536.12

from Wellington in exchange for arranging for the LPS to award the contracts to Wellington.

#### **In the Matter of Gang Sun**

The Commission approved a Disposition Agreement in which University of Massachusetts at Boston Physics Professor Gang Sun admitted to violating the conflict of interest law by hiring his wife on numerous occasions to work as his paid research assistant and paid teaching assistant at UMass-Boston. Sun paid a \$25,000 civil penalty. From 2003 to 2011, Sun repeatedly hired his wife, Fen-Yen Chang, to work for him under various UMass-Boston contracts as Sun's research assistant and as his teaching assistant. Chang was paid a total of \$455,000 for her work under those contracts. In 11 instances, Sun hired Chang as his research assistant to perform work that was funded by the Air Force Research Laboratory at Hanscom Air Force Base. In 3 instances, Sun hired Chang as his teaching assistant to perform work that was directly funded by UMass-Boston. Sun served as the sole supervisor of his wife's work. When Sun was hired by UMass-Boston in 1993, he signed a contract in which he agreed to comply with UMass-Boston's Academic Personnel Policy, which prohibits faculty members from participating in the appointment or reappointment of any family member, including a spouse, unless a waiver is obtained from the President of UMass-Boston. Sun never obtained such a waiver. Sun never filed a disclosure with his appointing authority, the Dean of the College of Science and Mathematics, prior to hiring his spouse. Over the course of 8 years, Sun violated section 6 of the conflict law each time that he appointed his spouse to serve as his compensated research assistant or teaching assistant.

#### **In the Matter of John Dunnet**

The Commission approved a Disposition Agreement in which former CBE Holdings, LLC salesman John Dunnet admitted to violating the conflict of interest law by providing illegal gratuities to the Director of Information Technology Operations for the Executive Office of Transportation, now the Department of Transportation. Dunnet will pay a \$35,000 civil penalty. In 2006 and 2007, Dunnet met the IT Director for lunch about twice a month. On 32 occasions between October 2006 and December 2007, Dunnet wrote separate checks of approximately \$4,500 from his personal checking account to the IT Director, who cashed the checks. In total, Dunnet gave \$142,500 to the IT Director. During this time, Dunnet was seeking to have EOT award two contracts to CBE: a statewide telephony systems contract worth approximately \$2 million; and a so-called "thin client project" contract worth

approximately \$384,000. The Agreement states that neither CBE nor EOT was aware of the payments from Dunnet to the IT Director. (The IT Director is now deceased.) The statewide telephony contract systems contract was never awarded by EOT, but CBE and a hardware vendor were awarded the thin client project contract. Dunnet violated section 3(a) each time he made a payment to the IT Director in an effort to obtain favorable treatment regarding the two EOT contracts CBE was seeking to be awarded.

#### **In the Matter of Charles Fisher**

The Commission approved a Disposition Agreement in which Somerset Board of Water and Sewer Commission member Charles F. Fisher, II admitted to violating the conflict of interest law by being paid for performing private work in Somerset pursuant to permits issued by the Board. Fisher paid a \$25,000 civil penalty. Between 2006 and 2011, Fisher, as a paid employee of Charles F. Fisher & Sons, Inc., performed at least 60 sewer tie-ins and/or repairs in Somerset, which required permits from the Board. Fisher was a Board member during this time. In 2001, Fisher had contacted the Commission's Legal Division for advice about whether his company could perform this work in Somerset while he served on the Board. Fisher was told that the conflict of interest law prohibited him from doing so. Fisher violated section 17(a) each time he was privately compensated for sewer tie-in and/or repair work that required a permit from the Board.

#### **In the Matter of Charles Famolare**

The Commission issued a Decision and Order finding that Winthrop Harbormaster Charles Famolare, III violated the conflict of interest law in 2007 by receiving at no charge two finger piers (small walkways attached to a larger dock), plus free installation, from Boston Towing and Transportation, the contractor building the approximately \$2 million town pier. The Commission ordered Famolare to pay a \$2,000 civil penalty. The Commission determined that the allegation that Famolare violated the conflict of interest law by receiving free cleaning of his jet-ski float from Boston Towing was not proven. In 2006, the Town hired Boston Towing as the general contractor for the Pier Project. The project was completed in 2008. As Harbormaster, Famolare was substantially involved in the project. Famolare also owns a private pier and float at his residence along Winthrop Harbor. One of several boats regularly docked at Famolare's pier was a 24-foot Grady White, which Famolare co-owned with several friends, including Gary Ward. Ward is the owner of Ward Marine, a supplier of marine equipment to Boston Towing. Sometime prior to July 17, 2007,

Famolare gave Ward the go-ahead to arrange to have a finger pier attached to Famolare's dock to allow Ward easier access to the Grady White. Ward then asked Boston Towing owner Geoffrey Lake to install a finger pier at Famolare's pier. On or about July 17, 2007, at Lake's direction, personnel from Boston Forging and Welding attached two float brackets to Famolare's pier's main float for which Boston Towing paid \$500. Boston Towing personnel then attached two finger piers to Famolare's main float. Famolare was present at his pier while this work was performed. The finger piers substantially increased the size of Famolare's dock area. The estimated cost for the finger piers and labor was between \$3,500 and \$10,425, but neither Famolare nor Ward was billed for the finger piers, nor did either one of them pay for the finger piers. The Commission found that Famolare had no private relationship with Boston Towing or with Boston Forging and Welding that would explain why Famolare did not pay for the work or the finger piers. Famolare allowed the work on his private pier to proceed without inquiring about, or discussing payment for, the cost of the work with anyone from Boston Towing. The Commission also found that Lake and Boston Towing installed the finger piers substantially for Famolare's benefit, and did not charge for doing so because Famolare was Harbormaster. The Commission further found that Famolare knew, or had reason to know, that, at the time of the installation of the finger piers, they were being provided to him at no charge by Lake and Boston Towing because, as Harbormaster, Famolare had input and influence concerning Boston Towing's work on the Pier Project and had law enforcement authority over Boston Towing's on-the-water activities in Winthrop Harbor. The Commission stated that a public employee does not have to take official action in order to use his official position, and accepting what one knows or has reason to know is being given to one because of one's official position is in itself the use of one's official position. The Commission concluded that, by accepting the free provision and installation of the finger piers from Town contractor Boston Towing, Famolare knowingly, or with reason to know, used his official position to secure unwarranted privileges of substantial value not properly available to similarly situated individuals in violation of section 23(b)(2). According to the Decision, "[w]here Famolare created a situation rife with potential conflicts of interest by allowing a major Town contractor with whom he had official dealings to perform work at his residence, his failure to ask about payment for the piers or confirm payment by Ward was at best willful blindness to the conflict of interest risk inherent in his situation." The Decision further states, "[a]n

unwarranted privilege of substantial value, given for or because of a public employee's official position and actions, does not cease to be such because the recipient accepts it without asking any questions."

#### **In the Matter of Norman Rankow**

The Commission approved a Disposition Agreement in which former Edgartown Dredge Advisory Committee Chairman Norman Rankow admitted to violating the conflict of interest law by, as Committee Chairman, directing that Town employees use Town equipment to dredge the area around his private clients' dock without first obtaining the required town, state and federal permits. Rankow paid a \$5,000 civil penalty. Rankow is president of Colonial Reproductions Inc., a general contractor based in the Town. Rankow, through Colonial Reproductions, had been building a summer home for private clients at a three-acre waterfront site in the Town. The clients separately retained an engineering firm for the dock design, dredging plans, and permitting work. It typically takes about a year to obtain the necessary permits. Dredging work requires permits from the Town Conservation Commission, the Massachusetts Department of Environmental Protection and the United States Army Corps of Engineers. The Town has its own dredging equipment and crew. A Town bylaw allows for the dredging equipment and crew to be used on privately owned waterfront property in exchange for a donation to the Town's dredge gift account. The Board of Selectmen must vote on whether to accept such a donation. After all required permits are obtained and a donation has been accepted by the Board of Selectmen, the Committee can approve the use of the Town equipment and crew. On January 6, 2012, Rankow's clients applied to the Town Conservation Commission for a permit to dredge around their dock. On January 11, 2012, Rankow's clients notified the Committee by letter of their intention to make a \$5,000 contribution to the Town's dredge gift account. As of January 13, 2012, none of the required permits had been issued for the dredging work, nor had the Committee approved the use of the Town's dredge equipment and personnel to do the work. Nevertheless, on January 13, 2012, pursuant to Committee Chairman Rankow's instructions, the dredge crew conducted the dredging work for Rankow's clients. The Town paid the crew approximately \$2,000 for the work. The Board of Selectmen voted at its February 3, 2012 meeting to accept the \$5,000 donation to the dredge gift account from Rankow's clients. The Massachusetts Department of Environmental Protection subsequently fined the Town \$8,160 for the

unauthorized and unpermitted dredging. Rankow reimbursed the Town for this fine and for the Town's legal fees incurred to date, and he resigned from the Dredge Committee on February 2, 2012. By directing the Town dredge crew to conduct dredging work at his client's dock area before the required permits were obtained, Rankow violated section 23(b)(2)(ii).

#### **In the Matter of John O'Brien**

The Commission approved a Disposition Agreement in which former Melrose Fire Chief John O'Brien admitted to violating the conflict of interest law by accepting tickets to Boston Bruins hockey games from Cataldo Ambulance Service, Inc., the emergency medical services provider in both Melrose. O'Brien paid a \$1,500 civil penalty for accepting two tickets to one game from Cataldo. In September 2010, the City of Melrose awarded a three year EMS contract to Cataldo. O'Brien, as fire chief, was a member of the committee which reviewed the EMS contract bid proposals. In November 2010, Cataldo gave O'Brien two Boston Bruin premium club tickets, which O'Brien used to attend the November 17, 2010 game. The tickets had an approximate value of \$350. By accepting Boston Bruins tickets from Cataldo, O'Brien violated section 23(b)(2)(i).

#### **In the Matter of Eugene Doherty**

The Commission approved a Disposition Agreement in which Revere Fire Chief Eugene Doherty admitted to violating the conflict of interest law by accepting tickets to Boston Bruins hockey games from Cataldo Ambulance Service, Inc., the emergency medical services provider in Revere. Doherty paid a \$3,000 civil penalty for accepting two tickets each to two games. In June 2010, Doherty, as fire chief, signed, along with the Revere Mayor, Purchasing Agent, and Auditor, a three year EMS services contract with Cataldo. Sometime in November 2010, Cataldo gave Doherty two Boston Bruin premium club tickets, which Doherty then gave to his son and his son's friend to attend the game. The tickets had an approximate value of \$350. In May 2011, Cataldo gave to Doherty two Boston Bruins premium club tickets to attend the May 23, 2011 playoff game. The tickets had an approximate value of \$600. By accepting Boston Bruins tickets from Cataldo, Doherty violated section 23(b)(2)(i).

#### **In the Matter of Mark Joseph**

The Commission approved a Disposition Agreement in which former Norwood School Committee Chairman Mark Joseph admitted to violating the conflict of interest law by having school employees

transport surplus cafeteria equipment to his privately owned restaurant. Joseph paid a \$5,000 civil penalty and also reimbursed the Town of Norwood \$511.76 for the costs of using public school custodians and vehicles to move the equipment. The Town's high school was scheduled to be demolished to make way for a new building in 2011. School employees were advised to use color-coded labels to mark equipment that would be moved to other district schools or Town agencies. On or about June 23, 2011, Joseph contacted school administrators to ask if he could take some of the cafeteria equipment and donate it to the Norwood Food Pantry, a local charity. Joseph was directed to contact the management company overseeing the construction project, and to speak with the high school principal's secretary for assistance. On June 24, 2011, Joseph went to the high school principal's office and spoke with the secretary about his plans. He also left a voicemail message for the management company contact person about the equipment. The secretary gave Joseph labels to write his name and "food pantry" on any items he wished to have donated. The secretary stated that she would not have provided the labels if Joseph had not been a School Committee member. Joseph never spoke to the management company contact person, nor did he receive permission from the project manager, the Norwood Public Schools Superintendent or the School Committee, to take the equipment for non-school purposes. Joseph marked warming tables, cold serving tables, steel tables, 16-crate capacity milk coolers, a folding transition table, a fire extinguisher and 40-gallon trash barrels with labels reading "Mark Joseph – Food Pantry." That same day, Joseph obtained the assistance of six NPS custodians to transport the equipment during their regular work hours to The Take Away, a Norwood restaurant owned by Joseph. Two or three of the items were placed inside the restaurant, and the rest were put in a storage closet in the basement of the building. None of the equipment was ever brought to the Norwood Food Pantry, which had no use for the equipment, since it distributes only canned goods and does not serve warm or chilled foods. Joseph claimed that he planned to give any equipment the food pantry did not want to The Abundant Table, another local charity, but admitted that he had not contacted either charity prior to removing the items from the high school. The NPS Superintendent learned about the equipment move and instructed Joseph to return all the items to the school the next day, a job that required two NPS custodians working overtime as well as a school-owned truck. The equipment was then turned over to a salvage company. The NPS Superintendent valued the equipment at \$2,950, and the costs incurred by the

Town for the custodians to transport the equipment to be \$511.76. Joseph resigned from the School Committee approximately one week after the incident. By using his position as School Committee Chairman to acquire the school kitchen equipment for his own private use and to use Town resources to transport the equipment, Joseph violated section 23(b)(2)(ii) of the conflict of interest law.

#### **In the Matter of Dean Mazzearella**

The Commission approved a Disposition Agreement in which Leominster Mayor Dean Mazzearella admitted to violating the conflict of interest law by directing a subordinate to rehabilitate the property of Mazzearella's elderly friend using community development block grant funds without following standard procedure, and by failing to disclose his personal relationship with the property owner. Mazzearella paid a \$4,000 civil penalty. In 2007, Mazzearella contacted his subordinate, the City's Housing Rehabilitation Program Coordinator, about the home of his 81 year old friend, Mario Cavaioli. Mazzearella told the Coordinator that Cavaioli was in a rehabilitation center recovering from an injury, and he needed his home repaired as soon as possible using community development block grant funds, so that Cavaioli could continue to live in his home upon his return. Mazzearella told the Coordinator they had a limited amount of time to get the property ready for Cavaioli's return. The CDBG program is designed to bring substandard housing into compliance with applicable housing codes. As a result of receiving this directive from Mazzearella, and before inspecting the property, the Coordinator moved the project to the top of the waiting list. The estimated total cost of the project was \$19,850. The City's renovation work program manual states that applicants for CBDG funding must have clear title to the property, so that if the property is sold, transferred or refinanced, the total amount of CDBG funds can be repaid to the City. The City enforces this requirement by placing a lien on the property to secure the repayment. The Coordinator did a title search on Cavaioli's property and could not determine who actually owned the property. The Coordinator discussed the title issue with Mazzearella, and Mazzearella told the Coordinator to continue with the project, and that he (Mazzearella) would worry about the paperwork. No lien was ever placed on the property by the City. Due to additional work on the project, the total project cost increased to \$25,119. Cavaioli moved back into the home after the project was completed, and resided there until he passed away in June 2010. Cavaioli was survived by three nieces. Two of the nieces agreed to transfer at no cost whatever interest they had in the property to Mazzearella. The third niece refused Mazzearella's

offer to purchase her interest in the property for \$2,000. On March 2, 2011, a deed was recorded at the Registry of Deeds evidencing that two of the nieces transferred their ownership in the property to Mazzearella for less than \$100. In January 2012, the City initiated a tax-taking on the property for non-payment of property taxes. Mazzearella violated section 23(b)(2) by using his position as mayor to have Cavaioli's home renovated using CDBG funds ahead of other waiting applicants, and by allowing the project to move forward despite no clear title to the property, and without the City having first placed a lien on the property to protect the City's interests. Mazzearella violated section 23(b)(3) by, as mayor, directing his subordinate to renovate Cavaioli's property using CDBG funds without first filing a written public disclosure of his significant personal relationship with Cavaioli.





13. These unwarranted privileges were not properly available to similarly situated individuals (i.e., other town employees).

### **Resolution**

14. Therefore, by, in the manner described above, using her official position as Assistant Assessor to retaliate against two town officials by improperly increasing their property assessments, Malone knowingly or with reason to know used her official position to obtain for herself unwarranted privileges of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2)(ii).

In view of the foregoing violations of G.L. c. 268A by Malone, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, based on the following terms and conditions agreed to by Malone:

- (1) that Malone pay to the Commonwealth of Massachusetts, with such payment delivered to the Commission, the sum of \$5,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2)(ii); and
- (2) that Malone waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

**DATE:** January 4, 2012

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 12-0003**

**IN THE MATTER OF  
DANIEL LAHIFF**

### **DISPOSITION AGREEMENT**

The State Ethics Commission (“Commission”) and Daniel Lahiff (“Lahiff”) enter into this Disposition Agreement pursuant to Section 5 of the Commission’s Enforcement Procedures. This

Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On June 16, 2011, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Lahiff. The Commission amended the preliminary inquiry on September 16, 2011. On October 14, 2011, the Commission concluded its inquiry and found reasonable cause to believe that Lahiff violated G.L. c. 268A, § 23.

The Commission and Lahiff now agree to the following findings of fact and conclusions of law:

### **Unauthorized Use of Utility Generator and Solicitation of a Subordinate to Connect and Disconnect the Generator in December 2008**

#### **Findings of Fact**

1. Lahiff has been employed as the Lowell Regional Water Utility (“Utility”) executive director since 2003.
2. In December 2008, Lahiff had a power outage at his home due to an ice storm.
3. Lahiff transported the Utility’s 3,500-watt generator from the Utility to his home to power his furnace and sump pump.
4. Lahiff did not have authorization to borrow the Utility’s generator.
5. The cost to rent such a generator was at least \$50.
6. Lahiff kept the Utility’s generator at his home for approximately 24 hours.
7. Lahiff asked his subordinate Doug Collupy (“Collupy”), who was a Utility maintenance plant electrician, to connect the Utility’s generator to Lahiff’s furnace.
8. During his private time, Collupy connected the generator and created a bypass in the circuit board to connect the furnace.
9. The fair market value of the labor associated with the electrical work was at least \$400.
10. Lahiff did not negotiate a price with his subordinate Collupy to perform the electrical work. Instead, he gave Collupy approximately \$100.

11. Collupy returned that same day or the following day during his private time to disconnect the generator.

12. Lahiff transported the generator back to the Utility during his private time.

#### Use of Utility Generator in December 2008

##### **Conclusions of Law**

13. Section 23(b)(2)<sup>1</sup> of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

14. The use of the Utility's generator was a privilege.

15. The privilege was unwarranted because it was the unauthorized use of a public resource for a private purpose.

16. This privilege was of substantial value because it cost \$50 or more to rent a generator.<sup>2</sup>

17. This privilege was not properly available to similarly situated individuals who had power outages.

18. By taking the Utility's generator home without authorization, Lahiff used his official position as the Utility's executive director to secure this unwarranted privilege for himself.

19. Thus, by using his official position as the Utility's executive director to take the Utility's generator home to power his furnace and sump pump, Lahiff knowingly used his executive director position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2).

#### Solicitation of a Private Commercial Relationship with a Subordinate to Connect a Generator in December 2008

##### **Conclusions of Law**

20. By having Collupy connect the Utility's generator to power Lahiff's furnace and sump pump, Lahiff secured a privilege.

21. The privilege was unwarranted because Lahiff secured it by soliciting a subordinate – someone in an inherently exploitable situation<sup>3</sup> – and because Lahiff thereby obtained a discount.

22. This privilege was of substantial value, i.e., \$50 or more, because Lahiff obtained a discount of at least \$300 for Collupy's labor.

23. This privilege was not properly available to similarly situated individuals who needed electrical work performed.

24. By soliciting and securing this service at a discount from his subordinate Collupy, Lahiff used his official position as the Utility's executive director to secure this unwarranted privilege for himself.

25. Thus, by using his official position as the Utility's executive director to have his subordinate Collupy connect the Utility's generator to power Lahiff's furnace and sump pump, Lahiff knowingly used his executive director position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2).

#### Unauthorized Use of Utility Generator and Solicitation of a Subordinate to Transport, Connect and Disconnect the Generator in February 2009

##### **Findings of Fact**

26. In February 2009, Lahiff received a call from his mother-in-law, who resided with Lahiff, advising that there was a power outage at Lahiff's home due to an ice storm.

27. Lahiff was out of state at the time of the power outage.

28. Lahiff called Collupy to transport the Utility's 3,500-watt generator from the Utility to Lahiff's home and to connect the generator in order to power Lahiff's home.

29. Lahiff did not have authorization to borrow the Utility's generator.

30. The cost to rent such a generator was at least \$50.

31. During his private time, Collupy transported the Utility's 3,500-watt generator from the Utility to Lahiff's home and connected the generator in order to power Lahiff's home.

32. According to Lahiff, he paid Collupy \$100 for this service.

33. Collupy did not specifically recall whether he was paid by Lahiff.

34. The power outage lasted a couple of hours.

35. During his private time, Collupy returned that same day or the following day and disconnected the generator.

36. Lahiff transported the generator back to the Utility.

#### Use of Utility Generator in February 2009

##### **Conclusions of Law**

37. The use of the Utility's generator was a privilege.

38. The privilege was unwarranted because it was the unauthorized use of a public resource for a private purpose.

39. This privilege was of substantial value because the cost to rent a generator was worth \$50 or more.

40. This privilege was not properly available to similarly situated individuals who had suffered power outages.

41. By asking his subordinate Collupy to transport and connect the Utility's generator to Lahiff's home, Lahiff used his official position as the Utility's executive director to secure this unwarranted privilege for his family member.

42. Thus, by using his official position as the Utility's executive director to cause the Utility's generator to be transported and connected to his home, Lahiff knowingly used his executive director position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2).

#### Solicitation of a Private Commercial Relationship with a Subordinate to Transport, Connect and Disconnect a Generator in February 2009

##### **Conclusions of Law**

43. Lahiff's solicitation of a private commercial relationship with his subordinate Collupy to transport

the Utility's generator to his home and to connect the generator was a privilege.

44. The privilege was unwarranted because Lahiff secured it by soliciting a subordinate – someone in an inherently exploitable situation.

45. It was worth at least \$50 or more to have on-call pick-up and delivery of a generator, and to have such a generator connected at one's home, all during an ice storm.

46. This privilege was not properly available to similarly situated individuals.

47. By soliciting a commercial relationship with his subordinate Collupy, Lahiff used his official position as the Utility's executive director to secure this unwarranted privilege for himself and for his family member.

48. Thus, by using his official position as the Utility's executive director to have his subordinate Collupy transport and connect the Utility's generator to his home, Lahiff knowingly used his executive director position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2).

#### Solicitation of a Private Commercial Relationship with a Subordinate to Install a Wood Floor

##### **Findings of Fact**

49. In or about 2009, Lahiff asked his subordinate Roger Hebert ("Hebert") to install a wood floor in Lahiff's living room.

50. Lahiff purchased the materials.

51. Hebert installed the floor.

52. The work took approximately four hours to perform.

53. Hebert charged Lahiff \$150 for the labor.

54. The fair market value for the labor was at least \$375.

##### **Conclusions of Law**

55. By having Hebert install a wood floor in Lahiff's living room, Lahiff secured a privilege.

56. The privilege was unwarranted because Lahiff secured it by soliciting a subordinate – someone in an inherently exploitable situation – and because Lahiff thereby obtained a discount.

57. This privilege was of substantial value, i.e., \$50 or more, because Lahiff obtained a discount of at least \$225 for Hebert’s labor.

58. This privilege was not properly available to similarly situated individuals who needed wood floors installed.

59. By soliciting and securing this service at a discount from his subordinate Hebert, Lahiff used his official position as the Utility’s executive director to secure this unwarranted privilege for himself.

60. Thus, by using his official position as the Utility’s executive director to have his subordinate Hebert install a wood floor in Lahiff’s living room, Lahiff knowingly used his executive director position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2).

**Resolution**

In view of the foregoing violations of G.L. c. 268A by Lahiff, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Lahiff:

- (1) that Daniel Lahiff pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$5,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2); and
- (2) that Daniel Lahiff waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

**DATE:** March 1, 2012

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<sup>1</sup> G.L. c. 268A was amended by c. 28 of the Acts of 2009. The language of § 23(b)(2) now appears in § 23(b)(2)(ii) of G.L. c. 268A, as amended.

<sup>2</sup> The Commission has established a \$50.00 threshold to determine “substantial value.” 930 CMR 5.05.

<sup>3</sup> In *EC-COI-92-7*, the Commission determined that a public employee’s private business relationship with a subordinate employee violates § 23, unless (1) the relationship is entirely voluntary; (2) it was initiated by the person under the supervisory employee’s jurisdiction; and (3) the supervisory employee’s public written disclosure under § 23(b)(3) states facts clearly showing elements (1) and (2). Thus, failure to meet elements (1) or (2) will violate § 23(b)(2); failure to make the disclosure required by (3) will violate § 23(b)(3).

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 12-0004**

**IN THE MATTER OF  
RICHARD PIERCE**

**DISPOSITION AGREEMENT**

The State Ethics Commission (“Commission”) and former Attleboro Police Chief Richard Pierce (“Chief Pierce”) enter into this Disposition Agreement pursuant to Section 5 of the Commission’s Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On March 18, 2011, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On September 16, 2011, the Commission concluded its inquiry and found reasonable cause to believe that Pierce violated G.L. c. 268A, §§ 19 and 23(b)(2).

The Commission and Pierce now agree to the following findings of fact and conclusions of law:

**Findings of Fact**

1. Chief Pierce was a member of the Attleboro Police Department (“APD”) for over 30 years, eight years of which he served as police chief, and retired from the APD in December 2010. As an APD

employee, Chief Pierce was a municipal employee as that term is defined in G.L. c. 268A, § 1.

2. Chief Pierce's son, Richard Pierce, Jr. ("Pierce, Jr."), became an APD patrol officer in 2005. During Pierce, Jr.'s interview process, Chief Pierce filed a disclosure with Attleboro Mayor Kevin Dumas ("the Mayor") stating, "If my son is selected for a position with the [APD], and if assignments and/or disciplinary matters have to be addressed, or any other issues arise that may give the appearance of a conflict of interest, I would consult with and defer the matter to the mayor and be guided by his decision[s]." According to Chief Pierce, the protocol in such situations was for the Chief to first go to the Personnel Director with a potential issue. The Personnel Director would advise the Chief as to whether the Mayor needed to be notified, and whether action needed to be taken.

3. The APD has the following written policies in place regarding use of force and use of taser weapons:

Officers are permitted to use the level of force on the job that is necessary to protect their safety and the safety of the public; When officers use a weapon, or cause an injury to another while on the job, they are required to notify their commanding officer promptly, and to complete a detailed Use of Force Report to be submitted through their chain of command; APD Officers who receive taser training are allowed to use taser weapons in the field; If a taser is used, the officer who uses it is required to contact his shift commander as soon as possible after the taser is used. The officer is then required to complete a Taser Use Report, in addition to a Use of Force Report detailing the circumstances requiring the taser use; When a Taser Use Report is filled out, it is to be given, along with the Use of Force Report, to the shift commander for review and signature; The shift commander is then required to complete a separate Use of Force Report documenting what occurred; All three reports proceed through the chain of command, and ultimately to the chief.

4. On July 8, 2010, Chief Pierce, along with the Mayor and the Attleboro City Council President, were each sent a presentment letter by the attorney representing an individual who had been arrested by APD officers on February 26, 2010, for breaking and entering (the "Arrestee"). The letter alleged that the Arrestee's civil rights were violated during the February 2010 arrest (the "Arrest") because he was subjected to excessive force when unknown officer(s) fired a taser at him and caused other injuries. The letter named Pierce, Jr. as one of the arresting officers

at the scene. Chief Pierce received the letter on July 12, 2010.

5. On July 12, 2010, Chief Pierce contacted each officer named in the presentment letter, including Pierce, Jr., to tell them about the impending civil rights litigation, and that they would most likely be contacted by the City's insurance carrier.

6. Also on July 12, 2010, Chief Pierce compiled all the APD reports regarding the Arrest, and noticed that there had been no Taser Use Report filed in conjunction with the Arrest. Chief Pierce asked the lieutenant in charge of firearms (the "Firearms Lieutenant") to look into whether an APD taser had been used on the night of the Arrest.

7. Later on July 12, 2010, the Firearms Lieutenant downloaded the APD taser information for February 26, 2010, and determined that Pierce, Jr. had used a taser on the date and time in question, and that no Taser Use Report had been filed. The Firearms Lieutenant questioned Pierce, Jr., who admitted to using a taser during the Arrest, but stated that he had filled out a Taser Use Report and left it on the report table near another officer, who was completing the arrest paperwork.

8. Afterward, on July 12, 2010, the Firearms Lieutenant relayed to Chief Pierce that Pierce, Jr. used a taser on the date of the Arrest, and that a Taser Use Report had not been found.

9. On July 12, 2010, Chief Pierce, after being informed of Pierce, Jr.'s taser use, requested that the Firearms Lieutenant look for the missing reports. Chief Pierce told the Firearms Lieutenant that if the reports could not be located, that new reports would need to be submitted late, although that would not look good in this particular instance.

10. On July 14, 2010, at the request of the Firearms Lieutenant, Pierce, Jr. completed a Taser Use Report relating to the Arrest. Pierce, Jr.'s report indicated that Pierce, Jr. used the taser on the Arrestee twice on February 26, 2010, during a violent struggle that occurred during the Arrest. The July 14, 2010 Taser Use Report makes no mention of why it was submitted five months after the Arrest. According to Chief Pierce, he did not see the July 14, 2010 Taser Use Report until it was put in his APD mailbox on September 28, 2010.

11. The Firearms Lieutenant did not have Pierce, Jr. complete an accompanying Use of Force Report on

July 14, 2010, when Pierce, Jr. completed the Taser Use Report.

12. In August 2010, Chief Pierce spoke with the Shift Commander, and asked the Shift Commander if he recalled seeing a Taser Use Report and a Use of Force Report filled out by Pierce, Jr. at or around the time of the February 2010 Arrest. The Shift Commander said he had not seen these reports, but would look into it.

13. The Shift Commander was not given a copy of the July 14, 2010 Taser Use Report that Pierce, Jr. completed at the request of the Firearms Lieutenant.

14. In August 2010, The Shift Commander, without being requested to do so by Chief Pierce or any other APD superior officer, began his own internal investigation into the matter.

15. The Shift Commander completed an investigation report (the "Report"), which he gave to an APD Captain (the "Captain") on September 21, 2010. The Report concluded that, with regard to the Arrest, Pierce, Jr. violated APD professional standards involving electronic control devices and standards of conduct, and that Pierce, Jr. should be disciplined by the APD.

16. On the morning of September 27, 2010, the Captain verbally informed Chief Pierce that the Captain had received the Report from the Shift Commander. The Captain told the Chief that the Captain was preparing a synopsis of the Report, which he would give to the Chief, along with the Report, later that day.

17. According to Chief Pierce, later that morning, he attempted to contact the Personnel Director, as required by protocol, to seek her advice on the situation, but the Personnel Director was not at work that day.

18. On the afternoon of September 27, 2010, the Captain gave Chief Pierce the Report, as well as the Captain's synopsis. The Captain told Chief Pierce that this "did not look good."

19. On the evening of September 27, 2010, Chief Pierce went to see Pierce, Jr. at Pierce, Jr.'s home after work, and: advised Pierce, Jr. of the Report's findings and the seriousness of the matter; Pierce, Jr. about the discrepancy noted in the Report between Pierce, Jr. initially stating that another officer used the taser on the Arrestee in the ambulance, and later stating that Pierce, Jr. had twice used the taser on the

Arrestee at the scene of the Arrest; gave Pierce, Jr. a copy of the Report and told Pierce, Jr. to contact Pierce, Jr.'s union representative; and told Pierce, Jr. that he [Chief Pierce] would not be participating in the matter due to conflict of interest issues.

20. On September 28, 2010, Chief Pierce received, in his APD mailbox, documents related to the Arrest investigation. Among the documents was a copy of the Taser Use Report that the Firearms Lieutenant had Pierce, Jr. complete on July 14, 2010. Also included was an undated Use of Force Report signed by Pierce, Jr., stating that Pierce, Jr. used a taser during the Arrest. According to Chief Pierce, this was the first time he had seen either of these documents, and he did not know who put the documents in his mailbox.

21. Later on September 28, 2010, the Mayor, having learned from an outside source of the Shift Commander's investigation, called Chief Pierce, and told the Chief that the Chief was to have nothing further to do with the investigation into his son's involvement in the Arrest. The Chief, the Captain, the Personnel Director and the Mayor met in the Mayor's office that afternoon, at which time the Chief was directed to turn over any paperwork the Chief had involving the Arrest to the Personnel Director. Chief Pierce gave the Personnel Director all such documents, including the reports that had been placed in his APD mailbox that day.

22. As of September 28, 2010, Chief Pierce had made no disclosures to the Mayor regarding the Chief's involvement as Chief, after receiving the July 8, 2010 presentment letter, in the APD investigation into the Arrest and into whether documentation existed regarding Pierce, Jr.'s alleged use of a taser during the Arrest.

23. Although the APD has no written protocol regarding giving investigative reports or inquiries to the subject of an APD investigation, the APD practice is not to give a subject investigative reports before an investigation has been completed.

24. Ultimately, Pierce, Jr. was terminated as a result of his conduct regarding the Arrest.

25. Chief Pierce retired in December 2010.

## **Conclusions of Law**

### *Section 19*

26. Except as otherwise permitted,<sup>1</sup> § 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>2</sup> as such an employee in a particular matter<sup>3</sup> in which, to his knowledge, he or an immediate family member<sup>4</sup> has a financial interest.<sup>5</sup>

27. The particular matter was the APD's decision, after receiving the presentment letter, to investigate the Arrest and make sure proper procedures had been followed.

28. Chief Pierce participated in that particular matter as police chief by speaking to all officers involved, having the Firearms Lieutenant download taser information from the arrest data, asking the Firearms Lieutenant and the Shift Commander to look for missing reports, and allowing new reports to be submitted if the originals could not be located.

29. As Chief Pierce's son, Pierce, Jr. is a member of Chief Pierce's immediate family.

30. Pierce, Jr. had a financial interest in the investigation because it could result in a decision whether to suspend or terminate him.

31. Accordingly, by so participating as Chief in a particular matter in which he knew his son had a financial interest, Chief Pierce repeatedly violated § 19.

*Section 23(b)(2)*

32. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

33. The opportunity for Pierce, Jr. to (1) submit late reports regarding the Arrest, and (2) be given a copy of the Shift Commander's Report just prior to an official Internal Affairs investigation regarding the Arrest, were each a privilege because each conveyed a benefit to Pierce, Jr.

34. Chief Pierce used his official position to secure these privileges for Pierce, Jr. by exercising his authority as police chief.

35. These privileges were unwarranted because they were secured in non-compliance with APD protocol and standard practice.

36. These privileges were of substantial value because they afforded Pierce, Jr. an opportunity to attempt to prevent his potential suspension or termination.

37. These privileges were not properly available to similarly situated individuals.

38. Therefore, by securing these privileges for his son, Chief Pierce twice violated § 23(b)(2)(ii).

**Resolution**

In view of the foregoing violations of G.L. c. 268A by Chief Pierce, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Chief Pierce:

- (1) that Chief Pierce pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$3,500 as a civil penalty for repeatedly violating G.L. c. 268A, §§ 19 and 23(b)(2)(ii); and
- (2) that Chief Pierce waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

**DATE:** February 14, 2012

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<sup>1</sup> None of the exemptions applies.

<sup>2</sup> "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

<sup>3</sup> "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).



arranging to have Wellington Publishing obtain the pocket folders contract.

### **Conclusions of Law**

16. Section 2(b) of G.L. c. 268A, in relevant part, prohibits a municipal employee from corruptly receiving anything of value for himself in return for being influenced in the performance of any official act or act within his official responsibility.

17. Laurenza's certifying Wellington Publishing as the low bidder on the pocket folders contract and arranging for LPS to issue a purchase order to Wellington Publishing for the pocket folders contract were official acts.

18. As noted above, Laurenza received a \$245.84 check from Wellington Publishing for enabling Wellington Publishing to obtain the pocket folder contract.

19. The \$245.84 payment was an item of value.

20. At the time that Laurenza received the payment of \$245.84 from Wellington Publishing, he did so in return for arranging for Wellington Publishing to improperly charge a \$575.80 mark-up on the pocket folders.

21. The exchange was corrupt because it involved bid rigging. Laurenza participated in a sham bid process in which he misrepresented Wellington Publishing as the lowest bidder. Once Wellington Publishing obtained the pocket folders contract, Wellington Publishing kicked back \$245.84 as payment to Laurenza.

22. Thus, by corruptly receiving money in return for the performance of these official acts as an LPS Graphics Department graphic designer, Laurenza violated § 2(b).

### Timesheet Kickback

### **Findings of Fact**

23. During spring 2008, Laurenza received a request from the LPS Payroll Department to update and print 15,000 copies of its carbon bi-weekly timesheet.

24. According to Laurenza, Wellington Publishing agreed to give Laurenza money in exchange for Laurenza taking the necessary actions to ensure that Wellington Publishing obtained the contract for the 15,000 timesheets.

25. Wellington Publishing did not have the equipment to produce the timesheets.

26. According to Laurenza, in his LPS capacity, Laurenza handled the bid process for the timesheets contract by calling vendors for price quotes.

27. Laurenza located a vendor to produce the timesheets for substantially less than \$1,194.

28. In his LPS capacity, Laurenza falsely certified to LPS that Wellington Publishing provided the lowest bid, \$1,194, regarding the timesheets contract.

29. In his LPS capacity, Laurenza arranged for LPS to issue a purchase order dated April 4, 2008, to Wellington Publishing for \$1,194 for 15,000 timesheets.

30. Neither the Wellington Publishing principals, nor Laurenza, recall the vendor that produced the timesheets or the amount that the vendor charged Wellington Publishing to produce the timesheets.

31. In or about 2008, LPS received the timesheets.

32. On or about August 26, 2008, Wellington Publishing issued an invoice to LPS for \$1,347.92 for the timesheets. (The increase between the \$1,194 accepted bid and the \$1,347.92 invoice reflected a purported shipping charge.)

33. On or about September 29, 2008, the City of Lawrence issued a check to Wellington Publishing for \$1,347.92 in payment of the invoice.

34. On or about October 20, 2008, Wellington Publishing issued a \$290.28 check to Laurenza for arranging to have Wellington Publishing obtain the timesheets contract.

### **Conclusions of Law**

35. Section 2(b) of G.L. c. 268A, in relevant part, prohibits a municipal employee from corruptly receiving anything of value for himself in return for being influenced in the performance of any official act or act within his official responsibility.

36. Laurenza's certifying Wellington Publishing as being the low bidder on the timesheets contract and arranging for LPS to issue a purchase order to Wellington Publishing for the timesheets contract were official acts.

37. As noted above, Laurenza received a \$290.28 check from Wellington Publishing for enabling

Wellington Publishing to obtain the timesheets contract.

38. The \$290.28 payment was an item of value.

39. At the time that Laurenza received the payment of \$290.28 from Wellington Publishing, he did so in return for arranging for Wellington Publishing to improperly charge a mark-up on the timesheets contract, which according to Laurenza, resulted in a \$300-\$400 profit.

40. The exchange was corrupt because it involved bid rigging. Laurenza participated in a sham bid process in which he misrepresented Wellington Publishing as the lowest bidder. Once Wellington Publishing obtained the timesheets contract, Wellington Publishing kicked back \$290.28 as payment to Laurenza.

41. Thus, by corruptly receiving money in return for the performance of these official acts as the Graphics Dept. graphics designer, Laurenza violated § 2(b).

#### **Resolution**

In view of the foregoing violations of G.L. c. 268A by Laurenza, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Laurenza:

- (1) that Laurenza pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$4,000 as a civil penalty for violating G.L. c. 268A, § 2(b);
- (2) that Laurenza pay to the City of Lawrence, with such payment to be delivered to the Commission, the sum of \$536.12 as a civil forfeiture of the unjust enrichment that he received through these violations of G.L. c. 268A, § 2(b); and
- (3) that Laurenza waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

**DATE:** June 6, 2012

<sup>1</sup> A pocket folder is a folded sheet of light cardboard with openings, or pockets, inside for loose papers.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 12-0007**

**IN THE MATTER OF  
GANG SUN**

**DISPOSITION AGREEMENT**

The State Ethics Commission (“Commission”) and Gang Sun (“Sun”) enter into this Disposition Agreement pursuant to Section 5 of the Commission’s Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On October 14, 2011, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Sun. The Commission has concluded its inquiry and, on January 20, 2012, found reasonable cause to believe that Sun violated G.L. c. 268A.

The Commission and Sun now agree to the following findings of fact and conclusions of law:

**Findings of Fact**

1. Sun was originally hired by the University of Massachusetts Boston (“UMass Boston”) Department of Physics as an assistant professor in August 1993. Sun is currently a full professor at UMass Boston. Sun’s appointing authority is the Dean of the College of Science and Mathematics of UMass Boston.

2. In accepting UMass Boston’s offer of employment in 1993, Sun signed a contract, which stated, among other things, that he would comply with UMass Boston’s “Academic Personnel Policy.” Section 6.6 of that policy states that no faculty member may “participate directly in the appointment, reappointment, promotion, tender or other condition of employment at the University” of any family member, including a spouse, except with a waiver from the UMass Boston president.

3. Sun married Fen-Yen Chang (“Chang”) in 1999.
4. From 2003 to 2011, Sun, on 14 occasions, appointed Chang to work under various contracts as his research assistant (11 contracts) or teaching assistant (three contracts).<sup>1</sup>
5. UMass Boston received the funding for Chang’s research assistant contracts from the Air Force Research Laboratory at Hanscom Air Force Base. The research assistant contracts involved developing software for a computer modeling system for the Air Force.
6. Chang’s teaching assistant contracts were funded by UMass Boston.
7. Sun alone supervised Chang as his research assistant or teaching assistant.
8. Chang’s total compensation for the work she performed between 2003-2011 as Sun’s research assistant and teaching assistant was \$455,000.
9. The conflict of interest law contains a disclosure and exemption procedure that would have allowed Sun to participate in a matter in which his wife had a financial interest if he had first made a written disclosure of all the facts surrounding his wife’s financial interest in the matter to his appointing authority, and if his appointing authority had made a written determination allowing Sun to participate. Copies of the written disclosure and determination would have had to have been filed with the Commission. If Sun’s appointing authority did not make such a determination, then Sun was prohibited from participating in matters in which his wife had a financial interest.
10. Sun never disclosed to his appointing authority (the Dean of the College of Science and Mathematics of UMass Boston) or to the UMass Boston president that Sun was awarding research and teaching contracts to Sun’s wife worth in the aggregate \$455,000. Sun did not receive a waiver from the UMass Boston president to appoint his wife to the positions of research assistant and teaching assistant.
11. Sun states that he orally disclosed to the Air Force Research Laboratory contract monitor that his wife would be the research assistant on those research assistant contracts, that the contract monitor did not object and that the contract monitor was satisfied with Chang’s work.

### Conclusions of Law

12. As a UMass Boston professor, Sun is a state employee as defined by G.L. c. 268A, § 1.

13. Section 6 of G.L. c. 268A, provides in relevant part that, except as otherwise permitted by that section,<sup>2</sup> a state employee is prohibited from participating<sup>3</sup> as such an employee in a particular matter<sup>4</sup> in which he knows his immediate family<sup>5</sup> has a financial interest.<sup>6</sup>

14. Each of Sun’s decisions to appoint Chang as research assistant or teaching assistant was a particular matter.

15. Because Sun selected Chang for these appointments, he participated in these particular matters.

16. Sun knew that his wife had a financial interest in obtaining the research assistant or teaching assistant appointments because he knew on each occasion when he selected her that she would be compensated for her work as a research assistant or teaching assistant.

17. By participating in the appointments as described above, Sun participated in particular matters in which to his knowledge his wife had a financial interest, thereby violating G.L. c. 268A, § 6.

18. As noted above, Sun states that, as to the research assistant contracts, Sun had disclosed to the Air Force contract monitor that Sun’s wife would be performing that work. Even if true, such a disclosure does not comply with the conflict of interest law nor with Sun’s employment contract with UMass Boston. In addition, the Air Force was not involved in Sun’s teaching assistant contracts, and Sun made no disclosure whatsoever to his superiors at UMass Boston regarding the three teaching assistant contracts he gave to his wife.

### Resolution

In view of the foregoing violations of G.L. c. 268A by Sun, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, based on the following terms and conditions agreed to by Sun:

- (1) that Sun pay to the Commonwealth of Massachusetts, with such payment delivered to the Commission, the sum of \$25,000 as a civil penalty for repeatedly violating G.L. c. 268A, § 6; and

- (2) that Sun waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

**DATE:** June 21, 2012

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<sup>1</sup> Ms. Chang has a masters degree in computer science and previously worked as a software engineer.

<sup>2</sup> Section 6 provides that: “Any state employee whose duties would otherwise require him to participate in such a particular matter shall advise the official responsible for appointment to his position and the state ethics commission of the nature and circumstances of the particular matter and make full disclosure of such financial interest, and the appointing official shall thereupon either

(1) assign the particular matter to another employee; or

(2) assume responsibility for the particular matter; or

(3) make a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the commonwealth may expect from the employee, in which case it shall not be a violation for the employee to participate in the particular matter. Copies of such written determination shall be forwarded to the state employee and filed with the state ethics commission by the person who made the determination. Such copy shall be retained by the commission for a period of six years.”

<sup>3</sup> “Participate” means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

<sup>4</sup> “Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions

of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

<sup>5</sup> “Immediate family” means the employee and his spouse, and their parents, children, brothers and sisters.

<sup>6</sup> “Financial interest” means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct and immediate or at least reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *See EC-COI-84-96*.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 12-0009**

**IN THE MATTER OF  
JOHN DUNNET**

**DISPOSITION AGREEMENT**

The State Ethics Commission (“Commission”) and John Dunnet (“Dunnet”) enter into this Disposition Agreement pursuant to Section 5 of the Commission’s Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On November 19, 2010, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Dunnet. The Commission has concluded its inquiry and, on March 16, 2012, found reasonable cause to believe that Dunnet violated G.L. c. 268A.

The Commission and Dunnet now agree to the following findings of fact and conclusions of law:

**Findings of Fact**

1. Dunnet was a salesman for CBE Holdings, LLC (“CBE”) from January 1991 until August 2009.

2. CBE was a computer reseller that derived much of its income from sales to state and local governments.<sup>1</sup>

3. Dunnet's biggest clients included Massachusetts government agencies. Dunnet, like other CBE sales people, was paid on commission, earning between 18-25% of the gross profit on each sale.

4. One of Dunnet's state clients was the then-Executive Office of Transportation's ("EOT")<sup>2</sup> Information Technology Division ("ITD"). At the time, ITD had an annual budget of approximately \$20 million, approximately half of which was allocated to ITD's operations unit.

5. During the relevant period, Dunnet's contact at EOT was the Director of Information Technology Operations (the "IT Director").<sup>3</sup> The IT Director was responsible for soliciting bids, reviewing requests for proposals, and making purchasing recommendations to the ITD Chief Information Officer ("CIO"). The CIO relied heavily on the recommendations of the IT Director.

6. According to Dunnet, he and the IT Director had a business lunch together about twice a month. Dunnet and the IT Director did not have any significant social relationship.

7. From October 2006 through December 2007, on 32 occasions (about two times a month), Dunnet wrote a check from his personal bank account for approximately \$4,500 to the IT Director. The IT Director cashed each of these checks. In total, Dunnet gave the IT Director \$142,500.

8. During the period Dunnet issued the checks to the IT Director, Dunnet, in his capacity as a CBE salesman, was seeking to have two large EOT contracts awarded to CBE. The first was a statewide telephony systems contract, the first phase of which was worth approximately \$2 million. EOT began an internal review of its needs in the late summer 2006 and issued an initial request for bids in December 2006. EOT subsequently revised its requirements. CBE submitted its bid in October 2007.<sup>4</sup> The second contract, referred to as the "thin client project," was worth around \$384,000. On September 27, 2007, CBE, on behalf of itself and a hardware vendor, submitted a quote to EOT for the thin client contract. On December 19, 2007, the IT Director, on behalf of EOT, signed an "acceptance of quotes and notice to proceed" awarding the thin client project contract to CBE and the hardware vendor.

9. The IT Director was significantly involved in the award process for both the telephony systems and thin client project contracts, including making recommendations.

10. Dunnet gave the above-described payments to the IT Director in an effort to obtain favorable treatment for CBE regarding the two EOT contracts.

11. The IT Director has since died.

12. According to CBE senior managers and Dunnet, no one at CBE was aware that Dunnet had given the IT Director money until after the IT Director's death.

13. EOT was not aware that Dunnet had given the IT Director money.

### **Conclusions of Law**

14. General Laws chapter 268A, §3(a) prohibits anyone, otherwise than as provided by law for the proper discharge of official duty, from directly or indirectly giving anything of substantial value to any state employee for or because of any official act performed or to be performed by such an employee.

15. The IT Director was a state employee.

16. Dunnet gave the IT Director on 32 occasions checks in the amount of approximately \$4,500 each, which totaled \$142,500.

17. Dunnet's actions in giving \$142,500 to the IT Director were not as provided by law for the proper discharge of official duty.

18. Each check of approximately \$4,500 was of substantial value.<sup>5</sup>

19. On each occasion that Dunnet gave such a check to the IT Director, Dunnet gave the check to influence the IT Director regarding the contracts CBE was seeking to be awarded by EOT.

20. The IT Director's favorable treatment of CBE regarding EOT contracts would have involved official acts to be performed by the IT Director.

21. Therefore, Dunnet repeatedly violated § 3(a), by, as described above, otherwise than as provided by law for the proper discharge of official duty, on 32 occasions, giving something of substantial value to a state employee for or because of official acts performed or to be performed by such an employee.

In view of the foregoing violations of G.L. c. 268A by Dunnet, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, based on the following terms and conditions agreed to by Dunnet:

- (1) that Dunnet pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$35,000 as a civil penalty for repeatedly violating G.L. c. 268A, § 3; and
- (2) that Dunnet waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

**DATE:** August 1, 2012

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<sup>1</sup> During the relevant time period, Dunnet worked for CBE Holdings, LLC. In April 2008, the assets of the government contracting division of CBE Holdings, LLC were acquired by Gores Private Equity and renamed CBE Technologies, LLC.

<sup>2</sup> EOT is now the Department of Transportation.

<sup>3</sup> The IT Director is not being identified as he has since died.

<sup>4</sup> EOT notified vendors in February 2008 that it was cancelling the telephony systems procurement.

<sup>5</sup> The Commission has established a \$50 threshold to determine "substantial value." 930 CMR 5.05.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 12-0010**

**IN THE MATTER OF  
CHARLES F. FISHER, II**

**DISPOSITION AGREEMENT**

The State Ethics Commission ("Commission") and Charles F. Fisher, II ("Fisher") enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On October 14, 2011, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Fisher. On July 20, 2012, the Commission concluded its inquiry and found reasonable cause to believe that Fisher violated G.L. c. 268A, § 17.

The Commission and Fisher now agree to the following findings of fact and conclusions of law:

**Findings of Fact**

1. Fisher was, during the time relevant, an elected member of the Somerset Board of Water and Sewer Commissioners.

2. The Somerset Board of Water and Sewer Commissioners, directly and/or through its staff, approves applications for sewer tie-ins and repairs, and issues permits.

3. Fisher is licensed to perform sewer tie-ins, and is president of Charles F. Fisher and Sons, Inc., a family-owned company through which Fisher performs water and sewer tie-in work.

4. In or about July 2001, Fisher contacted the Legal Division of the State Ethics Commission to request advice as to whether he could perform water and sewer work for private individuals in Somerset while serving on the Somerset Board of Water and Sewer Commissioners.

5. A Legal Division attorney advised Fisher in or about July 2001 that G.L. c. 268A, § 17 prohibited Fisher from performing such private work while serving on the Somerset Board of Water and Sewer Commissioners.

6. Between 2006-2011, Fisher, as a paid employee of Charles F. Fisher and Sons, Inc., performed at least 60 sewer tie-ins and/or repairs for private individuals in relation to permits issued by the Somerset Board of Water and Sewer Commissioners.

7. Fisher was a 50% shareholder in Charles F. Fisher and Sons, Inc.

8. Charles F. Fisher and Sons, Inc., earned an estimated \$31,310 in profit from these sewer tie-ins and/or repairs.

9. During this period, Fisher earned an annual salary of approximately \$58,000 from Charles F. Fisher and Sons, Inc., which was, in part, in relation to the private sewer work he had performed in Somerset.

**Conclusions of Law**

10. Section 17(a) of G.L. c. 268A prohibits a municipal employee from, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receiving compensation from anyone other than the municipality in relation to a particular matter in which the municipality is a party or has a direct and substantial interest.

11. As a Somerset Board of Water and Sewer Commissioners member, Fisher was a municipal employee as that term is defined in G.L. c. 268A, § 1(g).

12. The decisions to issue sewer permits were particular matters.

13. Because the permits required approvals by the Somerset Board of Water and Sewer Commissioners, directly or through its staff, the Town of Somerset had a direct and substantial interest in these particular matters.

14. In addition, by receiving an annual salary of \$58,000 from his company, Charles F. Fisher and Sons, Inc., between 2006-2011, part of which was for the private sewer work he had performed in the Town of Somerset, Fisher received compensation from someone other than the Town of Somerset in relation to particular matters in which the town had a direct and substantial interest. By doing so, Fisher repeatedly violated § 17(a).

**Resolution**

In view of the foregoing violations of G.L. c. 268A by Fisher, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Fisher:

- (1) that Fisher pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of

\$25,000 as a civil penalty for violating G.L. c. 268A, § 17(a); and

- (2) that Fisher waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

**DATE:** August 2, 2012

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 11-0015**

**IN THE MATTER OF  
CHARLES FAMOLARE, III**

Appearances: Candies Pruitt-Doncaster, Esq.  
Counsel for Petitioner

Mark D. Smith, Esq.  
Marc C. Laredo, Esq.  
Trevor M. Findlen, Esq.  
Counsel for Respondent

Commissioners: Charles B. Swartwood, III, Ch.  
Patrick J. King  
Paula Finley Mangum  
Martin F. Murphy  
William B. J. Trach

Presiding Officer: Commissioner Paula Finley  
Mangum

**DECISION AND ORDER**

**I. Introduction**

This matter concerns Respondent Charles Famolare, III's alleged use of his official position as the Town of Winthrop ("Town" or "Winthrop") Harbormaster to secure for himself and/or his friend, Gary Ward ("Ward"), items and services of substantial value in alleged violation of G. L. c. 268A, § 23(b)(2). Specifically, the Commission's Enforcement Division ("Petitioner") alleges that Famolare used his Harbormaster position in mid-2007 to: (1) secure for

himself the free cleaning of barnacles and mussels from his jet-ski float; and (2) secure for himself and/or Ward, the free installation of finger piers at Famolare's dock by a contractor, Boston Towing and Transportation ("Boston Towing"). At the time, Boston Towing was working for the Town on the construction of a municipal pier (the "Pier Project"), and Famolare allegedly had a significant role as Harbormaster regarding the contractor's work on the Pier Project and authority over the contractor's activities in Winthrop Harbor generally. Famolare denies that he used his official position to secure any unwarranted privileges or anything of substantial value for himself or anyone else, denies that he had official authority over Boston Towing, and denies that he violated G. L. c. 268A, § 23(b)(2).<sup>1</sup>

## II. Procedural Background

This matter commenced on July 20, 2011, with Petitioner's issuance of an Order to Show Cause alleging that Famolare violated G. L. c. 268A, § 23(b)(2) in 2007 while serving as Winthrop Harbormaster. Famolare answered on August 8, 2011, denying most of the allegations and asserting affirmative defenses. Famolare's subsequent Motion and Renewed Motion for Summary Decision were each in turn denied, and an adjudicatory hearing was held on April 24 and 25, 2012. The parties submitted their final briefs on May 25, 2012, and made their closing arguments before the Commission on June 15, 2012.

In rendering this Decision and Order, each undersigned member of the Commission has considered the testimony of the witnesses at the adjudicatory hearing, the evidence in the public record and the arguments of the parties.

## III. Findings of Fact

1. In 2007, Famolare was the Winthrop Harbormaster and a full time Town employee. Famolare became the Winthrop Harbormaster in 2004, after serving as Deputy Harbormaster since 1997. As Harbormaster, Famolare reported directly to the Town Manager.

2. Famolare's duties as Harbormaster included the enforcement of G.L. c. 90B and acting as Winthrop's "chief of police on the water," patrolling the harbor, pumping out boats and assisting boaters in distress. As Harbormaster, Famolare had authority over vessels operating in Winthrop Harbor, including barges and boats operated by marine construction contractors, and could act to make certain that such

vessels were safe, had properly operating bilge pumps and heads and were operated by appropriate personnel.

3. In 2007, Boston Towing, a marine construction contractor, performed marine construction and transported construction materials and personnel in and about Winthrop Harbor by boat and barge. In doing so, Boston Towing was subject to Famolare's law enforcement authority as Harbormaster.

4. In 2007, the Town lacked a waterfront facility for the Harbormaster and municipal dockage for the general public. As a result, Famolare docked two of the three Town-owned boats used by him as Harbormaster and his staff at his own private pier at his residence on Winthrop Harbor and used his pier as the Harbormaster's headquarters.

5. In 2007, Famolare's pier included a 185 foot walkway leading to a 50 foot gangway down to a U-shaped main float which was 20 feet wide and 40 feet long. In July 2007, Famolare's pier was regularly used by five boats: two boats owned by Famolare, a 46 foot Silverton and a 16 foot Boston Whaler; two Town-owned Harbormaster boats, a 21 foot Mako and a 25 foot Parker; and a boat jointly owned by Famolare and his friends, a 24-foot Grady White. In 2007, until sometime in July of that year, the Grady White was tied to a 12 foot square jet-ski float, which was in turn tied to Famolare's main float. To board the Grady White it was necessary to first step onto the jet-ski float, which was less stable than the main float. Boarding the Grady White this way could be physically challenging and unsafe. Famolare occasionally used the Grady White.

6. One of the friends with whom Famolare owned the Grady White was Ward, the owner of Ward Marine, a marine equipment and boat supply store. As of 2007, Famolare and Ward had been friends for more than twenty years. In 2007, due to his height and weight, Ward had difficulty boarding the Grady White from the jet-ski float.

7. During the years 2006 to 2008, the Town was in the process of designing and constructing the Pier Project. In 2006, the Town hired the firm of Vine and Associates to design the Pier Project and to oversee its construction. In October 2006, the Town hired Boston Towing as the general contractor for the Pier Project. Construction began on the Pier Project in the spring of 2007 and was completed in 2008. The Pier Project involved the construction of a Town Pier capable of servicing commercial and recreational vessels, dockage and other facilities for the

Harbormaster, and a marina for Town residents. The cost of the Pier Project exceeded \$2 million. In 2007, Geoffrey Lake ("Lake") was the General Manager of Boston Towing's Marine Construction Division and was the company's project manager for the Pier Project.

8. Famolare was both professionally and personally interested in the Pier Project. First, as Harbormaster, he would be a major user of the Town Pier. Second, he had a personal reason to care about the Pier Project due to a proposal to name the Town Pier after his late father who had preceded him as Harbormaster.

9. Famolare actively participated in the Pier Project as part of the team that Town Manager Richard J. White ("White") put together to manage the project for the Town. White, in response to Famolare's pleas to be the Town's representative on the Pier Project, assigned Famolare to be the "major representative for the Town on the water" concerning the Pier Project. As such, Famolare was one of the Town's representatives at the construction meetings and, in White's words, a "daily presence on the water during construction and ... the town's eyes and ears for observation of construction." Famolare was also, as White put it, "the first contact that the contractor would have if the contractor experienced any difficulties" or there were any changes to the Pier Project plans, specifications or design. Famolare regularly met with White to report on and discuss the Pier Project's progress. To Pier Project engineer David Vine ("Vine"), Famolare was a "user-adviser" from whom Vine, who was only on the project site once a week, regularly sought and received advice, and with whom Vine consulted once or twice weekly on various aspects of the project. Boston Towing workers, including Foreman Walter Brenner ("Brenner"), saw Famolare almost daily while working on the Pier Project, and discussed with him the progress of the work. Famolare attended and actively participated in nearly every Pier Project construction meeting with Lake, Vine and others from January to October 2007. At these meetings, Famolare brought up things that he observed regarding the Pier Project that required revision, and provided input into changes to the project. Famolare, as Harbormaster, had expertise relevant to the Pier Project that caused his opinion to be sought and allowed him to provide suggestions and other feedback that resulted in changes to the Pier Project. Famolare was not a mere observer of the Pier Project.<sup>2</sup>

10. Between January and October 2007, Famolare and Lake were among the four to nine persons present at several Pier Project construction meetings, at which Famolare, among others, represented the Town and Lake represented Boston Towing. Lake and Famolare had no relationship prior to the Pier Project. Famolare and Lake were not personal friends and had no social or other private relationship; their relationship was entirely based on Famolare being Harbormaster and Lake's being Boston Towing's project manager, and their both being involved in the Pier Project. Famolare did not have any private relationship with Boston Towing or any of its employees.

11. In July 2007, in addition to the Pier Project, Boston Towing was doing a pier replacement project at the Atlantis Marina near Famolare's residence under Lake's direction.

12. On or about July 11, 2007, Lake directed Boston Towing Barge Foreman Kenneth Aptt, Jr. ("Aptt") to clean the mussels off of Famolare's jet-ski float. A number of years earlier Aptt had worked on Famolare's pier for another employer. As directed by Lake, Aptt and another Boston Towing employee moved a 30 foot by 85 foot barge carrying a 70 foot crane to Famolare's pier. Once there, they used the crane to remove Famolare's jet-ski float from the water, cleaned it of mussels and replaced it in the water. The work took a couple of hours to complete. The labor cost of the cleaning was about \$400-\$450 per hour. The value of the cleaning was at least \$800.<sup>3</sup>

13. Boston Towing did not charge Famolare for the cleaning of his jet-ski float, and Famolare did not pay the company anything for the work.

14. Lake had no reason to have Boston Towing employees clean Famolare's jet-ski float without charge other than that Famolare was Harbormaster and was involved in the Pier Project. Lake's relationship with Famolare was entirely based on Famolare being Harbormaster and their common involvement in the Pier Project, and they had no friendship or other private relationship to motivate Lake's generosity toward Famolare.

15. Sometime prior to July 17, 2007, Famolare gave the go-ahead to Ward to arrange to have a finger pier or float attached to Famolare's main float.<sup>4</sup> Ward, in turn, asked Lake, "if we can get a finger float or something" installed. Ward needed only one finger

pier for access to the Grady White. Ward did not ask Lake, and Lake did not tell Ward, what the installation would cost. Lake knew that the work requested by Ward would be done at Famolare's pier before he decided to have Boston Towing do the work.

16. As of 2007, Ward had an established business relationship with Boston Towing. Ward's company, Ward Marine, was a supplier of marine equipment to Boston Towing. In addition, Ward had hired Boston Towing to do marine construction work for him on one occasion several years prior to 2007. At that time, Ward hired Boston Towing to install the pilings for a new building to house Ward Marine after the old building was destroyed in a fire. Ward promptly paid Boston Towing for the pilings installation work. As of 2007, Ward had had, however, in Ward's words, "very, very limited" dealings with Lake.

17. On or about July 17, 2007, at Lake's direction, Boston Forging and Welding Corp. ("Boston Welding") owner Ronald Giovanni patched a spot on Famolare's main float and welded two float brackets to Famolare's main float, and a Boston Towing crew, including Barge Foreman Aptt, attached two finger floats or piers to the main float. The finger floats had been manufactured by Boston Towing or its subcontractor and had been brought by Boston Towing Foreman Brenner by barge from the company's East Boston facility on or about July 17, 2007, to the Atlantis Marina, where they were tied to Aptt's barge. Aptt then moved them to Famolare's neighboring pier by barge and tugboat.<sup>5</sup> Famolare and Lake were present at the work site, but Ward was not. Ward did not know that the work was being done and did not know it had been done until he came to Famolare's pier sometime later. Because Famolare was present for the installation of the finger piers and was familiar with Lake, he was aware that Boston Towing, who he knew to be a Town contractor, was doing the work, and he had the opportunity to stop the work from going forward. Nevertheless, Famolare permitted the work to proceed. Famolare was further specifically aware of and permitted Boston Towing's installation of more than one finger pier. At the time the work was performed, Famolare did not ask what the installation of the finger piers would cost or discuss with Lake or anyone from Boston Towing or Boston Welding payment for the work.

18. Boston Welding invoiced Boston Towing \$500 for the welding work and Boston Towing paid the invoice. The Boston Towing crew worked six and one half hours to attach the finger piers. At the rate

of \$400 to \$450 per hour, the crew's labor was worth \$2,600 to \$2,925. The two finger floats attached to Famolare's main float were in good to fairly new condition. One float was about five to six feet by twenty feet and the other was about five to six feet by twenty-three feet. If new, the finger piers would have been worth \$3,500 each. Even as scrap, the floats were worth \$200 to \$300 each. Thus, installed, the two finger piers had a combined value of between \$3,500 and \$10,425.

19. Boston Towing did not charge Ward or Famolare for supplying and installing the two finger piers, and Famolare and Ward did not pay anything for the two finger floats or their installation. Lake decided to have Boston Towing supply and install the finger floats in response to Ward's request and to not charge for them after he knew that they would be installed on Famolare's pier. Lake made this decision in whole or in substantial part because Famolare was Harbormaster and was involved in the Pier Project.<sup>6</sup> Lake and Famolare had no friendship or other private relationship to motivate Lake's generosity toward Famolare.

20. The installation of the finger piers provided Famolare with valuable benefits in the form of added safety, utility and convenience for him, his family, his friends and others using his pier. First, their installation eliminated a safety hazard on Famolare's property, which had the potential of causing serious bodily injury to persons attempting to board the Grady White from the jet-ski float. Second, their installation substantially increased the docking space at Famolare's pier, and the ease with which the boats docked there could be boarded.

21. Sometime after July 17, 2007, and before Town Manager White left office in January 2009, White raised with Famolare the issue of the free installation of the finger piers. Famolare was already aware of the free installation,<sup>7</sup> and now became aware that White knew of it. In response, Famolare did not raise the nonpayment issue with Ward, nor did he ask Ward to pay Boston Towing for the piers. Instead, Famolare went to Boston Towing, told the company's president, Vincent D. Tibbetts, Jr. ("Tibbetts"), that he [Famolare] owed the company for two finger piers and asked to have the company bill Ward Marine for them. Tibbetts did not do as requested by Famolare because, as far as Tibbetts was aware, Boston Towing had not done any work for Ward Marine apart from the pilings work for which Ward had paid years before.<sup>8</sup>

#### **IV. Decision**

The Petitioner must prove its case and each element of the alleged violations by a preponderance of the evidence. 930 CMR 1.01(10)(o). The weight to be attached to any evidence in the record, including evidence concerning the credibility of witnesses, rests within the sound discretion of the Commission. 930 CMR 1.01(10)(n)3.

Petitioner alleges that Respondent twice violated § 23(b)(2) by using his position as Winthrop Harbormaster to: (a) secure for himself the free cleaning of barnacles and mussels from his jet-ski float; and (b) secure for himself and/or Ward, the free installation of finger piers at Famolare's dock by Boston Towing. In order to have established that Famolare twice violated § 23(b)(2) in 2007, Petitioner must have proved, as to each alleged violation, each of the following elements by a preponderance of the evidence: that Famolare (1) was a municipal employee, (2) who knowingly, or with reason to know, used or attempted to use his official position, (3) to secure for himself or others unwarranted privileges or exemptions, (4) of substantial value, and (5) not properly available to similarly situated individuals. There is no dispute that Famolare was, at all relevant times, Winthrop Harbormaster and a full-time employee of the Town of Winthrop. As such, Famolare was, at all relevant times, a municipal employee as defined in G. L. c. 268A, § 1(g).

We will first discuss the allegations concerning the installation of the finger piers and then we will discuss those relating to the cleaning of the jet-ski float.

#### A. The Alleged Violation based on the Installation of the Finger Piers

The allegation is that Famolare knowingly, or with reason to know, used his Harbormaster position to secure the substantially valuable unwarranted privilege not properly available to similarly situated individuals of Boston Towing's free provision and installation of finger piers in 2007.

Petitioner argues that, absent some legitimate explanation, and where Famolare denied a private relationship with any Boston Towing employee, it is reasonable to infer that the company installed the finger piers at Famolare's float because "Famolare had authority and oversight over the company both under his general duties as harbormaster and his duties specifically assigned by Town Manager White on the Pier Project," and, therefore, that Famolare

used his official position to obtain the free finger piers from Boston Towing. Petitioner further argues that Famolare knew, or had reason to know, that he was using his official position to obtain from Boston Towing the free installation of the finger piers because: (1) as Harbormaster and as the Town's representative on the Pier Project, he had substantial authority over the company; (2) he witnessed the installation by the company of two finger piers at his float; and (3) he admitted to the Boston Towing's then president Tibbetts (in 2009) that he owed the company for the finger piers and asked the company to bill Ward Marine.

Famolare argues that the evidence shows that he had no involvement in Boston Towing's installation of the finger piers at his float other than to give his assent to Ward who arranged the installation so that he could safely board the boat they owned together. According to Famolare, the evidence shows that Boston Towing installed the piers at the request of Ward, with whom the company had a long-standing business relationship, and that there "was not a shred of evidence that Famolare needed or benefited from these finger piers." Famolare further argues that Petitioner has failed to prove that Famolare had any official authority over Boston Towing that he used to obtain the free installation of the finger piers. Famolare asserts that the evidence of his general authority as Harbormaster over harbor activities is not sufficient to prove that he had official authority over Boston Towing. As to his role in the Town Pier Project, Famolare argues that the evidence shows that he was merely an observer or "user-adviser," and had no authority over Boston Towing concerning the Project. Famolare argues that, given his lack of authority over Boston Towing as Harbormaster, he could not have used his official position to cause the company to install finger piers at his dock for free.

#### Famolare as Harbormaster Had Official Authority over Boston Towing

Boston Towing's former president, Tibbetts, credibly testified that the company had to abide by Famolare's rules and regulations as Harbormaster when operating its barges and other vessels in Winthrop Harbor. We also take notice of the enforcement powers of harbormasters set out in G. L. c. 90B. Thus, the preponderance of the evidence establishes that, as Harbormaster, Famolare had official authority over Boston Towing's on-the-water activities in Winthrop Harbor in 2007.

#### Famolare was an Influential Participant in the Pier Project

In his testimony, Famolare described himself as an observer of the Pier Project. Famolare's counsel attempted with a number of witnesses to elicit testimony to the effect that Famolare was one of many interested observers of the project with no power or authority with respect to Boston Towing's work on the Pier Project. While the evidence indicates that Famolare was not involved in the bid process for the Pier Project, did not sign any contracts or change orders relating to the project and may not have been involved in reviewing or approving Boston Towing's requests for payment (although former Town Manager White, a credible witness, testified that he was), the evidence further shows that Famolare was more than just one of many observers of the Pier Project. Most importantly, White testified that he assigned Famolare to be "the major representative for the town," "a daily presence on the water" and the "town's eyes and ears" on the \$2 million Pier Project. According to White, Famolare was also "the first contact that the contractor would have if the contractor experienced any difficulties" or there were any changes to the Pier Project plans, specifications or design, and that Famolare regularly met with White to report on the progress of the project. Thus, to the degree he was an observer, Famolare was an observer in his capacity as Harbormaster and a town employee, rather than merely as a curious resident. The evidence also shows that Famolare, as Harbormaster, was generally viewed as a principal or ultimate user of the new Town pier. As such, Famolare's input was sought and noted by the builders of the Pier Project, including Boston Towing. As established by one of his admissions, Famolare had "input on changes to the Project" as an "observer with expertise that was relevant to certain Project tasks" who "made requests or suggestions for the execution of those tasks," and who "provided feedback" when he was consulted for his opinion on particular aspects of the Project. Accordingly, the preponderance of the evidence establishes that Famolare had a significant role in and influence on the Pier Project because he was Harbormaster, and affected and had the potential to affect Boston Towing's work on the project.

#### Lake and Boston Towing were Motivated by Famolare's Position and Influence

The direct evidence of how Boston Towing got involved in installing the finger piers at Famolare's dock, the testimony of Famolare, Ward and Lake, supports the conclusion that Ward approached Lake to do the work. That Ward contacted Lake does not, however, explain why Lake had Boston Towing employees install the two finger piers at no cost.

Thus, even assuming that Ward, a former customer and current and long-time supplier, approached Lake and requested help, these facts do not explain why Lake and Boston Towing did the work without charge and went to the significant additional time and substantial added expense to provide and install two finger piers, rather than the single one Ward appears to have needed. While Lake testified that he had the work done for Ward and did not bill him for it because Ward was a good client of Boston Towing and that he had made similar good will gestures to "dozens" of clients in the past, we do not find Lake's explanation credible. For the reasons discussed below, we find that the preponderance of the evidence establishes that Lake and Boston Towing installed two finger piers substantially for Famolare's benefit.

First, Boston Towing had only done one project for Ward several years earlier. In fact, it was Boston Towing that was Ward's customer. Thus, Ward was not a current client whose good will Boston Towing needed, and there is no evidence that Boston Towing had previously given anything to Ward or Ward Marine to cultivate good will. By contrast, Famolare, as Harbormaster and the future principal or primary user of the new Town pier, was in effect a current Boston Towing customer with respect to the Pier Project. Lake thus had a reason to cultivate Famolare's good will as a Boston Towing customer in effect, as Harbormaster and future principal user of the Town Pier, with input into and influence upon the Pier Project. In addition, given the extent of Boston Towing's on-the-water activities in Winthrop Harbor in 2007, Lake had a reason to seek Famolare's good will in his law enforcement activities as Harbormaster.

Second, Ward needed only one finger pier to access the Grady White,<sup>9</sup> and a second unneeded pier could not have created any good will with Ward.<sup>10</sup> By contrast, given the number of boats docked at Famolare's pier at the time, added docking space was useful to Famolare and providing such space at no cost would tend to create good will with him. Third, Lake and Famolare were present, but Ward was not, when the two finger piers were installed at Famolare's dock. Thus, Famolare's wishes, not Ward's, were determinative relative to the installation of the two finger piers.

Finally, the fact that Lake had, less than a week earlier, directed the cleaning of Famolare's jet-ski float at substantial expense to Boston Towing and at no charge to Famolare shows that Lake was disposed to provide Famolare with valuable free benefits. As

there was no personal or private relationship between Famolare and Lake or Boston Towing which could have provided a legitimate explanation for the latter's free provision and installation of the two finger piers, it is, therefore, reasonable to infer that Lake and Boston Towing provided one or both of them because Famolare was Harbormaster and involved in the Pier Project and thus in a position to affect Boston Towing's activities in Winthrop Harbor. See In the Matter of Ruberto and Duquette, 2010 SEC 2320,2326 (2010) (where mayor was in a position to help or hinder the giver's business dealings with the city, and in the absence of a private relationship, it was reasonable to infer that he knew or should have known that he was being given the opportunity to purchase scarce World Series tickets at face value because he was mayor.)

#### The Finger Floats were Each of Substantial Value<sup>11</sup>

Petitioner argues that Boston Towing installed newly manufactured piers, worth \$3,500 each, plus installation. Famolare argues that the piers were old, about to be scrapped and were, according to Lake's testimony, worth no more than \$200 to \$300 each. Whether new or used, the evidence shows that the piers were in good to nearly new condition when installed. In addition, the evidence shows that, whatever their value, the installation of the piers required welding and assembly work worth a total of \$3,100 to \$3,425. Thus, the evidence establishes that the two installed finger piers were together worth between \$3,500 and \$10,425. In addition to their cost, the evidence shows that the finger floats provided substantially valuable benefits to Famolare. Not only did the installation of the floats resolve the safe boat access issue regarding Ward, Famolare personally benefited from the increase in dockage space at his private pier provided by the installation of the two finger piers, especially given the number of boats he kept docked there. These benefits, while not subject to precise monetary calculation, were plainly worth more than \$50. Accordingly, the evidence establishes that each of the finger piers were of substantial value.

#### The Free Provision and Installation of the Finger Floats were Unwarranted Privileges Not Properly Available to Similarly Situated Individuals

Thus, in receiving from Boston Towing the benefits of the free provision and the free installation of the finger piers, Famolare secured substantially valuable privileges.<sup>12</sup> Those privileges were not properly available to similarly situated individuals. No private pier owner in Winthrop would be entitled to receive

free materials and services of substantial value for his private benefit from a Town contractor because of the owner's public position in the absence of statutory or regulatory authorization. Indeed, such receipt would be prohibited by G. L. c. 268A. Famolare has not claimed such statutory or regulatory authorization for his receipt of the finger piers, and we are not aware of any such law or regulation applicable in this case. As far as the preponderance of the credible evidence shows, Boston Towing's free provision and installation of the finger piers for Famolare's benefit was without legitimate reason or justification. Accordingly, we find that the free provision and the free installation of the finger floats received by Famolare from Boston Towing in July 2007 were unwarranted privileges<sup>13</sup> of substantial value which were not properly available to Famolare or similarly situated individuals.

#### Famolare Knowingly, or with Reason to Know, Used his Official Position to Obtain the Finger Piers

The ultimate deciding factor as to whether Boston Towing's free provision and installation of the two finger piers resulted in a § 23(b)(2) violation by Famolare is whether Famolare knowingly, or with reason to know, used his position as Harbormaster to secure the free finger piers. Thus, the issue is what Famolare knew or should have known, and specifically whether he knew or should have known that he was being provided with the finger piers by Boston Towing without charge and because of his official position as Harbormaster and involvement in the Pier Project.

Because Famolare was present during the installation of the finger piers, he was aware that Town contractor Boston Towing was performing work on his pier and that it was installing more than the single finger pier that Ward needed. As set out in paragraph 21 of the Finding of Facts and in footnote 7, supra, the preponderance of the evidence establishes that Famolare knew at the time of their installation that the piers were being provided to him at no charge. However, even if we assume for the sake of discussion that Famolare initially believed that the work Boston Towing and Boston Welding were performing on his main float was for Ward,<sup>14</sup> given that Ward's problem boarding the Grady White was obviously solved by a single finger pier, there was no reason for Famolare to believe that the installation of the second pier was at Ward's request or for Ward's benefit or that Ward would pay for it.<sup>15</sup> The installation of the second pier (as well as the welding repair to his main float) gave Famolare ample reason to know that he was being given free materials and

services by Lake and Boston Towing. More specifically, where Famolare had not previously undertaken and did not undertake on July 17, 2007, to pay for work and materials that would plainly benefit him as the pier owner rather than Ward, and where there was no discussion of the cost or payment for the work at the time of its performance, he had reason to know that he was receiving free work and materials from Lake and Boston Towing. Furthermore, in light of his involvement in the Pier Project and the fact that he had no friendship or other private relationship with Lake and Boston Towing to motivate their generosity toward him, Famolare also had reason to know that Lake and Boston Towing were providing him with at least the second finger pier at no charge because, as Harbormaster, he had input and influence concerning Boston Towing's work on the Pier Project and law enforcement authority over its on-the-water activities in Winthrop Harbor. See *In the Matter of Ruberto and Duquette*, 2010 SEC 2320, 2326.

Where Famolare created a situation rife with potential conflicts of interest by allowing a major Town contractor with whom he had official dealings to perform work at his residence, his failure to ask about payment for the piers or confirm payment by Ward was at best willful blindness to the conflict of interest risks inherent in his situation. Under these perilous circumstances of his own creation, it was incumbent on Famolare as a public official to act to avoid his receipt of any substantially valuable benefit given because of his official position or actions. As far as the evidence shows, Famolare made no effort to avoid being the beneficiary of Boston Towing's largesse; a largesse that could be based only on Famolare's official position and involvement in the Pier Project. An unwarranted privilege of substantial value, given because of a public employee's official position and actions, does not cease to be such because the recipient accepts it without asking any questions. A public employee accepting such a privilege under circumstances of his own making, which he chooses to leave ambiguous by not asking the questions that any reasonably prudent person would ask under the same circumstances,<sup>16</sup> has reason to know that he is using his official position to secure an unwarranted privilege.

A public employee does not have to take official action in order to "use or attempt to use [the employee's] official position" to secure an unwarranted privilege. See Commission Advisory No. 04-02 Gifts and Gratuities. Accepting what one knows or has reason to know is being given to one because of one's official position and actions is in itself the use of one's official position. See

Commission Advisory No. 04-01 Free Tickets and Special Access to Event Tickets (fact that public employee obtains ticket to attend event or otherwise takes advantage of ticket and he knows, or has reason to know, that it was given to him because of his public position, constitutes a "use of position" for § 23(b)(2) purposes); see also EC-COI-87-7. Accordingly, we find that the preponderance of the evidence establishes that by, under the above-described circumstances, accepting the free provision and installation of the finger piers, particularly the second pier which Ward obviously did not need, Famolare knowingly or with reason to know used his official position secure unwarranted privileges which were of substantial value and not properly available to similarly situated individuals.

Therefore, Petitioner has proved by a preponderance of the evidence that on or about July 17, 2007, Famolare, knowingly or with reason to know, used his position as Harbormaster to secure for himself unwarranted and substantially valuable privileges, not properly available to similarly situated individuals, i.e., Boston Towing's free provision and installation of finger piers, in violation of § 23(b)(2).

#### B. The Alleged Violation based on the Cleaning of the Jet-ski Float

The allegation is that Famolare knowingly, or with reason to know, used his Harbormaster position to secure the substantially valuable unwarranted privilege not properly available to similarly situated individuals of Boston Towing's free cleaning of his jet-ski float in 2007.

#### Cleaning was of Substantial Value

The preponderance of the evidence establishes that a Boston Towing crew, at Lake's direction, cleaned Famolare's jet-ski float on or about July 11, 2007 at a cost of over \$800, and thus provided Famolare with a service of substantial value. Apt's detailed testimony concerning when and why he and his crew performed this work was credible and more believable than Lake's testimony that Famolare did not ask Lake to do the work and that Lake did not recall that the work was done by the company. It is undisputed that Famolare did not pay anything for the cleaning of his jet-ski float.

#### Cleaning was an Unwarranted Privilege Not Properly Available to Similarly Situated Individuals Provided to Famolare because of His Official Position

As the record shows that there was no personal or private relationship between Famolare and Lake or Boston Towing which could have provided a legitimate explanation for the free cleaning, it is reasonable to infer that Lake and Boston Towing provided the free cleaning because Famolare was Harbormaster and involved in the Pier Project. Thus, the free cleaning of Famolare's jet-ski float by Boston Towing was an "unwarranted privilege" as there was no legitimate justification for the company to perform the work for Famolare without charge. The free cleaning was not properly available to "similarly situated individuals" as other owners of private docks in Winthrop could not properly use an official position and its related authority to obtain free goods and services from a Town contractor.

Petitioner Failed to Show that Famolare Knowingly or with Reason to Know Used his Official Position to Secure Cleaning

The ultimate deciding factor as to whether Boston Towing's free cleaning of Famolare's jet-ski float resulted in a § 23(b)(2) violation by Famolare is whether Famolare knowingly or with reason to know used his position as Harbormaster to secure the free cleaning.

Petitioner did not introduce any direct evidence that Famolare knowingly used his position as Harbormaster in order to obtain the free cleaning of his jet-ski float by Boston Towing. Indeed, Petitioner did not introduce any direct evidence that Famolare had any contemporaneous knowledge that Boston Towing employees cleaned his jet-ski float. Famolare testified upon direct and cross-examination that he did not request and did not know of the cleaning in 2007.

Petitioner argues that it can be reasonably inferred that Famolare knew both that Boston Towing cleaned his jet-ski float and that it did so because of his position as Harbormaster from the evidence in the record that: (a) Boston Towing employees used a 30 by 85 foot barge with a 70-foot boom to remove the float from the water to clean it and then to replace it over the course of several hours (established by Aptt's testimony); and (b) Famolare used his private dock, which is located behind his home, as his base of operations as Harbormaster and patrolled the harbor from there (established by Famolare's and others' testimony). Based on the evidence in the record, Petitioner argues that Famolare "would have seen" the barge, crane and work being performed. In addition, Petitioner argues that "common sense dictates" that Boston Towing would not have done

the work without Famolare's permission and "without receiving credit" from Famolare for doing the work. In short, Petitioner seeks to have the Commission infer and conclude that Famolare, despite his repeated denials, knew that Boston Towing cleaned his jet-ski float and knew that it did so because he had authority over the company as Harbormaster.

Petitioner's argument is undercut by the absence of any evidence in the record placing Famolare at or near his dock and the jet-ski float on the day that the jet-ski float was cleaned. The only evidence of Famolare's whereabouts at the time of the cleaning is his testimony on cross-examination, "I wasn't present for that." Had evidence been introduced showing that Famolare was on duty as Harbormaster on the day the work was performed, the inference that he knew of the work would be compelling, given that his dock, to which the jet-ski float was attached, was used as the Harbormaster's headquarters. The same would be true if there were evidence in the record that Famolare was at his home at the time of the work, given that the jet-ski float was effectively in his backyard. In addition, there is no evidence in the record that Lake, Aptt or anyone else from Boston Towing, or any other person, told Famolare of the cleaning of the jet-ski float during the relevant time period. Nor is there any evidence in the record that the cleaning of the jet-ski float would have been noticeable after the fact in a way that might have prompted Famolare to inquire about the cleaning, e.g., by asking his neighbors if they saw the work being performed. In the absence of any such evidence, the inference argued for by Petitioner that Famolare knew of the free cleaning in 2007, and of Boston Towing's motive for performing it is not sufficiently supported. We decline to make that inference, and find that Petitioner has failed to prove by a preponderance of the evidence that Famolare knew or had reason to know of the cleaning in 2007.

Accordingly, we find that Petitioner has not proved that Famolare knowingly or with reason to know used his position as Harbormaster to secure the free cleaning of his jet-ski float in 2007 in violation of § 23(b)(2).

**V. Conclusions and Findings**

For the above stated reasons, we conclude and find: first, that Petitioner has proved by a preponderance of the evidence that Famolare violated G. L. c. 268A, § 23(b)(2), in 2007 by using his position as Harbormaster to secure the free provision and installation of finger piers by Boston Towing; and,

second, that Petitioner has not proved by a preponderance of the evidence that Famolare violated G. L. c. 268A, § 23(b)(2) in connection with Boston Towing's cleaning of his jet-ski float in 2007.

## VI. Order

Accordingly, having found that Famolare violated G. L. c. 268A, § 23(b)(2), in connection with the finger piers as specified above, the Commission, pursuant to the authority granted it by G. L. c. 268B, § 4(j), hereby ORDERS Famolare to pay a civil penalty of \$2,000 for that violation. Finally, the allegation that Famolare violated G. L. c. 268A, § 23(b)(2), in connection with the July 2007 cleaning of his jet-ski float, is DISMISSED.

**DATE AUTHORIZED:** July 20, 2012

**DATE ISSUED:** August 16, 2012

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<sup>1</sup> At the time of Famolare's alleged violations, § 23(b)(2) prohibited a municipal employee from, knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals. In 2009, the section was rewritten and now provides, in relevant part, that no municipal employee shall knowingly or with reason to know, "(i) solicit or receive anything of substantial value for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee's official position; or (ii) use or attempt to use such official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals."

<sup>2</sup> White's testimony concerning Famolare's role in the Pier Project was more credible than Famolare's. White's testimony is supported by the construction meeting minutes prepared by Vine and other documents in evidence as exhibits and by the testimony of other witnesses. There is no evidence that White had any reason to overstate Famolare's role, while Famolare was strongly motivated to understate it. Famolare's minimization of his role in the Pier Project during his testimony reduced his credibility as a witness.

<sup>3</sup> Aptt's detailed testimony concerning this work was credible while Lake's claimed lack of recollection of

it was not. There was no evidence that Aptt had any reason not to be fully truthful. Lake, by contrast, had a motive not to recall directing the provision of free services to Famolare for which there was no legitimate explanation. We find credible Aptt's testimony that the work was done at Lake's direction and find it unlikely that Lake would not recall directing the cleaning of the Harbormaster's private jet-ski float. Lake's testimony that he did not recall the cleaning reduced his credibility as a witness.

<sup>4</sup> "Finger pier" and "finger float" are used interchangeably in this Decision and Order.

<sup>5</sup> Regarding the origin of the finger piers installed at Famolare's float, the testimony of Brenner and Aptt was more credible than Lake's. Brenner and Aptt's testimony was consistent and believable. By contrast, Lake's story of locating two about-to-be-demolished, but serviceable piers at Atlantis Marina and offering them to Ward, after obtaining the marina owner's consent, was entirely uncorroborated and not believable. Brenner and Aptt had no reason to be untruthful. Lake was motivated to deviate from the truth in order to legitimize the benefits he provided to Famolare.

<sup>6</sup> While Lake, consistent with his testimony, may have been partly motivated by his company's long-standing business relationship with Ward Marine and Ward, we did not find credible Lake's testimony that he supplied and did not charge for the two piers as a good will gesture for Ward as customer. Boston Towing was actually Ward's customer, and there is no evidence that Lake or Boston Towing had ever on any other occasion given anything to Ward or Ward Marine to cultivate good will. By contrast, Lake had, just days prior to the installation of the finger piers, directed his subordinates to clean Famolare's jet-ski float and Famolare was at the time an influential representative of the Town on Boston Towing's biggest project in Winthrop.

<sup>7</sup> We find that the preponderance of the evidence establishes that Famolare already knew that the finger piers had not been paid for before the nonpayment issue was raised by White. Famolare's prior knowledge is demonstrated by his behavior after White raised the nonpayment issue. Thus, had Famolare not already known that Ward had not paid for the piers, his first step after learning of the nonpayment from White most probably would have been to contact Ward, his longtime friend, and ask him to pay Boston Towing for the finger piers. That Famolare instead went to Boston Towing after the nonpayment issue was raised by White indicates that

Famolare already knew of the nonpayment and was attempting to conceal Boston Towing's free installation of the piers by having Boston Towing bill Ward Marine. In addition, the fact that Famolare never asked what the piers would cost or discussed payment at the time they were installed is more consistent with his knowing that they were being provided without charge than that they were being paid for by Ward. Thus, had Famolare believed that Ward was going to pay for the work, it is more likely than not that he would have confirmed with Lake, before the work started, that Ward, not Famolare, would be paying for it, and would have confirmed with Ward that Ward understood the extent and cost of the work and would indeed pay for all of the work. That there is no evidence of Famolare doing either supports the conclusion that he knew that the piers and their installation were being provided to him without charge. Based on all of the evidence, we find that it is more likely than not that Famolare knew at the time of their installation that the piers and their installation were being provided to him by Lake and Boston Towing at no charge.

<sup>8</sup> Tibbetts' testimony stands un-rebutted. During his hearing testimony, Famolare was not asked about, and did not otherwise deny, making the admission to and request of Tibbetts concerning the finger piers described by Tibbetts in his testimony.

<sup>9</sup> Ward testified that he asked Famolare for approval to put in, and asked Lake to install, "a finger float," in contrast to Lake and Famolare's testimony that Ward requested two finger piers. Although Ward resisted Petitioner's attempts to have him confirm that by "a" he meant "one," Ward admitted on cross-examination that he needed only one finger float to safely board his boat. Given that the Grady White was 24 feet long and each of the fingers piers at least 20 feet long, it is clear that Ward's boat access problems were in fact solvable by a single finger pier.

<sup>10</sup> Famolare's testimony that the Grady White was subsequently tied up between the two finger piers, to the degree Famolare was implying that it was tied to both floats, was an unconvincing attempt to rationalize the installation of two finger piers for Ward's benefit.

<sup>11</sup> Anything worth \$50 or more is of substantial value for the purposes of G. L. c. 268A. *Life Insurance Association of Massachusetts, Inc. v. State Ethics Commission*, 431 Mass. 1002, 1003 (2000).

<sup>12</sup> A privilege is "a special advantage, immunity, permission, right or benefit granted to or enjoyed by

an individual, class or caste," *The American Heritage Dictionary, Second College Edition* 986 and 474 (1985).

<sup>13</sup> The Commission has previously concluded that an "unwarranted privilege" is one that is "[l]acking in adequate or official support" or "having no justification; groundless." See *EC-COI-98-2*.

<sup>14</sup> Where the work purportedly "for Ward" was a substantial and long-term improvement to Famolare's private pier that provided benefits to Famolare beyond merely solving the problem of Ward's access to the Grady White, and where Famolare also used the Grady White, we do not find credible Famolare's claim that the finger pier work was for Ward, or that paying for it was Ward's responsibility.

<sup>15</sup> We did not find credible Famolare's testimony that Ward asked for his approval to have two finger piers installed. Nor did we find Lake's testimony credible that Ward asked him to install two finger piers. Instead, we are convinced by the preponderance of the evidence, including Ward's testimony, that he only needed and sought the installation of "a finger pier." While Ward under cross-examination resisted specifically confirming that by "a" he meant one, his testimony as a whole convinces us that that is in fact what he meant.

<sup>16</sup> Here those questions to Lake would have included: (1) Why are you installing two finger piers? (2) Who is going to pay for the finger piers?

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 12-0012**

**IN THE MATTER OF  
NORMAN RANKOW**

**DISPOSITION AGREEMENT**

The State Ethics Commission ("Commission") and Norman Rankow ("Rankow") enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On April 20, 2012, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Rankow. The Commission has concluded its inquiry and, on September 21, 2012, found reasonable cause to believe that Rankow violated G.L. c. 268A.

The Commission and Rankow now agree to the following findings of fact and conclusions of law:

### **Findings of Fact**

1. Rankow is president of Colonial Reproductions Inc., a general contractor based in the Town of Edgartown (“Town”).

2. Rankow served as the Town Dredge Advisory Committee (“Dredge Committee”) chairman since the Dredge Committee’s inception in 1995. The Dredge Committee was originally established to prepare a long-range master plan for dredging the Town’s waterways. Upon completion and adoption of the master plan, the Dredge Committee put the master plan into effect.

3. The Town’s dredge is used primarily to deepen navigation channels and to improve water circulation in shellfish habitat. To operate the dredge, the Town employs three seasonal workers, a foreman and a part-time clerical assistant.

4. Dredging is regulated by the Massachusetts Department of Environmental Protection and the U. S. Army Corps of Engineers, among others. After all required permits are obtained, dredging using Town resources can only occur with approval from the Dredge Committee.

5. At the 1998 Annual Town Meeting, the Town Board of Selectmen (“BOS”) was authorized “to apply for and accept any financial grant, reimbursement or other assistance available in connection with the Town’s dredging program and to expend the funds for the same.” Subsequent to the Town Meeting vote, the Town set up a “dredge gift account” in order to accept donations from Town residents for various purposes, including taking sand from Town dredging operations and providing the sand to residents for use on their private beaches, and for dredging performed on private property by the Town dredge. Pursuant to the Town dredge gift account procedure, the BOS votes on whether to accept each such donation.

6. Rankow, through his company Colonial Reproductions, had been building a summer home for his private clients at a three-acre waterfront site in the Town. In addition, the private clients separately retained an engineering firm (not Colonial Reproductions) for the dock design, dredging plans, and permitting work.

7. On January 6, 2012, Rankow’s private clients applied to the Edgartown Conservation Commission (“ConCom”) for a permit to dredge around their dock. Obtaining all the necessary permits for such work typically takes approximately a year.

8. By letter dated January 11, 2012, Rankow’s private clients notified the Dredge Committee of their intention to make a \$5,000 contribution to the Town’s dredge gift account.

9. As of January 13, 2012, none of the required permits had been issued for Rankow’s private clients’ dredging work nor had the Dredge Committee approved the use of the Town’s dredge and employees to do the work.

10. Nevertheless, on January 13, 2012, pursuant to Rankow’s instructions as Dredge Committee Chairman, the Town dredge crew used the Town dredge on Town time to perform the dredging work for Rankow’s private clients.<sup>1</sup> The Town paid the crew approximately \$2,000 for the work.

11. The BOS voted at its February 3, 2012 meeting to accept the \$5,000 donation to the dredge gift account from Rankow’s private clients.

12. Rankow resigned from the Dredge Committee on February 2, 2012.

### **Conclusions of Law**

13. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

14. As the Dredge Committee chairman, Rankow was a municipal employee as defined by G.L. c. 268A, § 1.

15. The ability to obtain private dredging using Town resources is a benefit, and, therefore, a privilege.

16. The dredging at Rankow's private clients' dock performed by Town employees on Town time and using the Town dredge, and without the required permits and approvals, was an unwarranted privilege.

17. Rankow knowingly used his official position as Dredge Committee chairman to direct the Town dredge crew to use the Town dredge while on Town time to dredge his private clients' property without the required permits and approvals, thereby securing an unwarranted privilege for Rankow's private clients.

18. This unwarranted privilege was of substantial value because Rankow's private clients received dredging services from the Town and did not have to go through the time and expense of obtaining the required permits and approvals.

19. This unwarranted privilege was not properly available to similarly situated individuals (i.e., other property owners seeking private dredging from the Town).

20. Therefore, by, in the manner described above, using his official position as Dredge Committee chairman to secure for his private clients private dredging using Town resources without the required permits and approvals, Rankow knowingly or with reason to know used his official position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2)(ii).

### **Resolution**

In view of the foregoing violation of G.L. c. 268A by Rankow, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, based on the following terms and conditions agreed to by Rankow:

- (1) that Rankow pay to the Commonwealth of Massachusetts, with such payment delivered to the Commission, the sum of \$5,000 as a civil penalty for violating G.L. c. 268A, § 23(b)(2)(ii); and
- (2) that Rankow waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

**DATE:** October 3, 2012

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<sup>1</sup> The Massachusetts Department of Environmental Protection fined the Town \$8,160 for the unauthorized and unpermitted dredging. Rankow reimbursed the Town for this fine and for the Town's legal fees incurred to date.

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## **COMMONWEALTH OF MASSACHUSETTS STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 12-0013**

**IN THE MATTER OF  
JOHN O'BRIEN**

### **DISPOSITION AGREEMENT**

The State Ethics Commission ("Commission") and John O'Brien ("O'Brien") enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On December 16, 2011, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by O'Brien. The Commission has concluded its inquiry and, on July 20, 2012, found reasonable cause to believe that O'Brien violated G.L. c. 268A.

The Commission and O'Brien now agree to the following findings of fact and conclusions of law:

### **Findings of Fact**

1. O'Brien was the City of Melrose Fire Chief from August 2003 until his retirement in June 2012.
2. Cataldo Ambulance Service, Inc. ("Cataldo Ambulance") is the primary emergency medical services ("EMS") provider to the City of Melrose (the "City") pursuant to a contract with the City.

3. The City's Fire Department's support is an important consideration in the awarding of the City's EMS contract.

4. In early summer 2010, the City put the EMS contract out to bid. A committee comprising the mayor, the mayor's chief of staff, and O'Brien reviewed the bids. The committee awarded the City's new three-year EMS contract, commencing on September 1, 2010, to Cataldo Ambulance.

5. In November 2010, Cataldo Ambulance gave O'Brien two Boston Bruins premium club tickets that O'Brien used to attend the November 17, 2010 game.

6. The Boston Bruins tickets O'Brien received were worth approximately a total of \$350.

7. O'Brien knew or had reason to know that Cataldo Ambulance gave him the tickets because of O'Brien's official position as fire chief.

#### **Conclusions of Law**

8. Section 23(b)(2)(i) of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, soliciting or receiving anything of substantial value for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee's official position.

9. As the City's fire chief, O'Brien was a municipal employee as defined by G.L. c. 268A, § 1.

10. O'Brien received two Boston Bruins premium club tickets from Cataldo Ambulance.

11. The two tickets were of substantial value as they were worth approximately \$350.<sup>1</sup>

12. The receipt of the tickets was not authorized by statute or regulation.

13. The tickets were received by O'Brien from Cataldo Ambulance because of O'Brien's official position as the City's fire chief.

14. When he received these tickets from Cataldo Ambulance, O'Brien knew or had reason to know they were given to him because of his official position as the City's fire chief.

15. Therefore, by so receiving the two Boston Bruins tickets from Cataldo Ambulance, O'Brien, knowingly, or with reason to know, received

something of substantial value for himself, which was not otherwise authorized by statute or regulation, for or because of his official position, in violation of § 23(b)(2)(i).

#### **Resolution**

In view of the foregoing violation of G.L. c. 268A by O'Brien, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, based on the following terms and conditions agreed to by O'Brien:

- (1) that O'Brien pay to the Commonwealth of Massachusetts, with such payment delivered to the Commission, the sum of \$1,500 as a civil penalty for violating G.L. c. 268A, § 23(b)(2)(i); and
- (2) that O'Brien waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

**DATE:** October 4, 2012

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<sup>1</sup> The Commission has established a \$50.00 threshold to determine "substantial value." 930 CMR 5.05.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 12-0014**

**IN THE MATTER OF  
EUGENE DOHERTY**

**DISPOSITION AGREEMENT**

The State Ethics Commission ("Commission") and Eugene Doherty ("Doherty") enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order

enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On December 16, 2011, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Doherty. The Commission has concluded its inquiry and, on July 20, 2012, found reasonable cause to believe that Doherty violated G.L. c. 268A.

The Commission and Doherty now agree to the following findings of fact and conclusions of law:

### **Findings of Fact**

1. Doherty has been employed as the City of Revere Fire Chief since March 2001.
2. Cataldo Ambulance Service, Inc. (“Cataldo Ambulance”) is the primary emergency medical services (“EMS”) provider to the City of Revere (the “City”) pursuant to a contract with the City.
3. The City’s Fire Department’s support is an important consideration in the awarding of the City’s EMS contract.
4. In early summer 2010, the City’s EMS contract was up for renewal. In June 2010, Doherty, along with the mayor, purchasing agent, and auditor, signed the contract awarding the City’s EMS business to Cataldo Ambulance.
5. In or about around November 2010, Cataldo Ambulance gave Doherty two Boston Bruins premium club tickets that Doherty gave to his son and his son’s friend to attend the game.
6. These Boston Bruins tickets Doherty received were worth approximately a total of \$350.
7. In May 2011, Cataldo Ambulance gave Doherty two Boston Bruins premium club Stanley Cup playoff tickets that Doherty used to attend the May 23, 2011 game.
8. The premium club Stanley Cup playoff tickets Doherty received were worth a total of approximately \$600.
9. Doherty knew or had reason to know that Cataldo Ambulance gave him the tickets because of Doherty’s official position as fire chief.

### **Conclusions of Law**

10. Section 23(b)(2)(i) of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, soliciting or receiving anything of substantial value for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee’s official position.

11. As the City’s fire chief, Doherty is a municipal employee as defined by G.L. c. 268A, § 1.

12. Doherty received two Boston Bruins premium club tickets and two premium club Stanley Cup playoff tickets from Cataldo Ambulance.

13. The two sets of tickets were of substantial value as they were worth approximately \$350 and \$600, respectively.<sup>1</sup>

14. The receipt of the tickets was not authorized by statute or regulation.

15. The tickets were received by Doherty from Cataldo Ambulance because of Doherty’s official position as the City’s fire chief.

16. When he received these tickets from Cataldo Ambulance, Doherty knew or had reason to know they were given to him because of his official position as the City’s fire chief.

17. Therefore, by so receiving these four Boston Bruins tickets from Cataldo Ambulance, Doherty, knowingly, or with reason to know, received something of substantial value for himself, which was not otherwise authorized by statute or regulation, for or because of his official position, in violation of § 23(b)(2)(i).

### **Resolution**

In view of the foregoing violations of G.L. c. 268A by Doherty, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, based on the following terms and conditions agreed to by Doherty:

- (1) that Doherty pay to the Commonwealth of Massachusetts, with such payment delivered to the Commission, the sum of \$3,000 as a civil penalty for repeatedly violating G.L. c. 268A, § 23(b)(2)(i); and
- (2) that Doherty waive all rights to contest, in this or any other administrative or judicial

proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

**DATE:** October 4, 2012

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<sup>1</sup> The Commission has established a \$50.00 threshold to determine "substantial value." 930 CMR 5.05.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss. COMMISSION  
ADJUDICATORY  
DOCKET NO. 12-0015**

**IN THE MATTER OF  
MARK JOSEPH**

**DISPOSITION AGREEMENT**

The State Ethics Commission ("Commission") and Mark Joseph ("Joseph") enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On January 20, 2012, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. On May 18, 2012, the Commission concluded its inquiry and found reasonable cause to believe that Joseph violated G.L. c. 268A, § 23(b)(2)(ii).

The Commission and Joseph now agree to the following findings of fact and conclusions of law:

**Findings of Fact**

1. Joseph was a member of the Norwood School Committee from 1997 through June 2011, and served as Chairman of the School Committee from 2010 through June 2011.

2. On or about June 19, 2011, Joseph took ownership of a restaurant located on the first floor of 82 Chapel Street in Norwood, which has been in

Joseph's family for 150 years, and which had formerly been known as The Take Out and as O'Donnell's Pizza before that. Joseph renamed it The Take Away, and opened for business in September 2011.

3. The Take Away is set up to be a take-out restaurant. It is 900 square feet, with a small area for customers in front of the counter, and a kitchen and preparation area behind the counter. The kitchen equipment was updated by Joseph's family in 2006.

4. In or about spring 2011, the Norwood Public Schools ("NPS") undertook a project in which the high school was to be demolished, and a new high school built in its place (the "Project"). The NPS contracted with a management company to run the Project (the "Project Manager").

5. At the outset of the Project, NPS employees began to remove NPS equipment from the old high school in preparation for its demolition. NPS employees were given color-coded labels to mark the old equipment for use in other schools in the district or other town agencies. The Project Manager and NPS Superintendent mandated that any items that were not labeled by NPS staff by Thursday, June 23, 2011, the last day of school, were to become the property of a management company to be disposed of as salvage.

6. When asked, the NPS Superintendent told NPS employees and other members of the public that if anyone wanted to take any NPS equipment for private use, they needed to contact the Project Manager.

7. During the week of June 23, 2011, Joseph contacted the NPS Superintendent about the possibility of Joseph taking old high school cafeteria equipment and donating it to a local charity, the Norwood Food Pantry, which is located at 70-72 Bond Street in Norwood. The Superintendent told Joseph to call the Assistant Project Manager in order to receive approval to do this.

8. According to Joseph, after speaking with the Superintendent, Joseph spoke to the Assistant Project Manager, who gave Joseph a contact person at the management company to call. The Assistant Project manager also told Joseph to speak with the high school principal's secretary for further assistance.

9. On Friday, June 24, 2011, Joseph went to the high school principal's office and spoke to the secretary about potentially having items labeled for donation to

the Norwood Food Pantry. Joseph told the secretary that he had been told to get in touch with a certain contact person at the management company. The secretary had that contact person's phone number and dialed it for Joseph. Joseph left a voicemail message for the contact person, explaining Joseph's intention to donate equipment to the Norwood Food Pantry.

10. After Joseph left the phone message, the secretary gave Joseph labels and advised Joseph to write his name and "Food Pantry" on any items he planned to have donated.

11. According to the secretary, she would not have given Joseph the labels had he not been a School Committee member.

12. Joseph did not ever speak to the contact person from the management company, and did not get permission from the Project Manager, the Superintendent or the School Committee to take NPS equipment for non-NPS purposes.

13. On Friday, June 24, 2011, Joseph marked four warming tables, two cold serving tables, two six-foot-by-three-foot steel tables, two sixteen-crate capacity milk coolers, one folding transition table, one fire extinguisher, and three 40-gallon trash barrels with labels reading "Mark Joseph – Food Pantry."

14. Later that same day, after having labeled the cafeteria equipment, Joseph obtained the assistance of six NPS custodians and had them transport the labeled equipment in NPS vehicles to 82 Chapel Street. The loading, transporting and unloading of equipment took approximately one and a half hours, and was performed during the custodians' NPS work hours.

15. According to the NPS, Superintendent, the total cost incurred by the Town for the labor involved for NPS custodians to move the equipment from the old Norwood High School to 82 Chapel Street on June 24, 2011 was \$241.68.

16. According to Joseph, he did not request the assistance of the NPS custodians, but rather the custodial staff offered to help because Joseph had "always been good to them." Joseph also stated that he believed the assistance was offered due to his position on the School Committee.

17. After being unloaded at 82 Chapel Street, two or three of the labeled items were placed inside The Take Away, in the small area in front of the counter.

The remaining equipment was placed in a storage closet in the basement of the building.

18. None of the labeled equipment was taken to the Norwood Food Pantry.

19. The Norwood Food Pantry is a charity that gives and receives canned goods. The Norwood Food Pantry does not serve warm or chilled foods, and, therefore, had no use for warming tables, cold serving tables or milk coolers.

20. According to Joseph, he had not previously spoken with anyone from the Norwood Food Pantry about donating the items to them, but he was aware that the Norwood Food Pantry dealt with only canned goods. Joseph has stated that he planned to give any items that the Norwood Food Pantry did not need to another local charity, The Abundant Table, although Joseph had not contacted that charity either prior to having the items removed from the old high school. Joseph did not label any of the items "Abundant Table."

21. When the Superintendent found out what had taken place, he called Joseph and instructed him to return all of the equipment by the end of the day on Saturday, June 25, 2011.

22. The Superintendent has estimated that the total value of the equipment removed by Joseph was \$2,950, although Joseph disputed that amount. Joseph admitted to removing seventeen pieces of equipment on June 24, 2011.

23. Joseph had the equipment returned on Saturday, June 25, 2011. Returning the equipment required the use of two NPS custodians, who had to be paid overtime by the NPS, as well as an NPS truck.

24. According to the NPS Superintendent, the total cost incurred by the town for NPS custodians to move equipment from 82 Chapel Street back to the old Norwood High School on June 25, 2011 was \$270.08. Once returned, the equipment was left to a salvage company.

25. On June 26, 2011, Joseph met with the Superintendent and members of the School Committee. Approximately one week later, Joseph resigned from the School Committee because of his above-described actions.

## **Conclusions of Law**

### Section 23(b)(2)(ii)

26. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a municipal employee from knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

27. Obtaining cafeteria equipment at no charge and receiving the assistance of NPS employees during their work hours using NPS vehicles were privileges.

28. Obtaining the cafeteria equipment was unwarranted because it was secured contrary to specific instructions given by the Superintendent. Using the custodians on NPS time and NPS trucks to transport the equipment was unwarranted because NPS resources are not to be used for private purposes.

29. The cafeteria equipment removed by Joseph was valued by the Superintendent to be worth \$2,950. Joseph disputes that amount, but admits that he removed, and later returned, seventeen pieces of equipment from the school. The equipment was worth substantial value, \$50 or more.<sup>1</sup> Additionally, the NPS resources used were also worth \$50 or more and, therefore, of substantial value.

30. These privileges were not properly available to similarly situated individuals.

31. Joseph knowingly or with reason to know used his official position to secure these privileges because he knew or had reason to know that the reason the NPS secretary gave him the labels and the custodians helped him transport the equipment because he was a School Committee member.

32. Therefore, by acquiring school kitchen equipment for a private use, and by using public resources of substantial value to transport school kitchen equipment from the old high school to Joseph's private restaurant, and then by using those resources to transport the equipment back to the school, Joseph twice violated § 23(b)(2)(ii).

**Resolution**

In view of the foregoing violations of G.L. c. 268A by Joseph, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Joseph:

- (1) that Mark Joseph pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$5,000, as a civil penalty for twice violating G.L. c. 268A, § 23(b)(2)(ii);
- (2) that Mark Joseph pay to the Town of Norwood, with such payment delivered to the Commission, the sum of \$511.76 (\$241.68 from June 24, 2011 plus \$270.08 from June 25, 2011) to reimburse the Town for use of Town employees and Town vehicles; and
- (3) that Mark Joseph waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

**DATE:** November 13, 2012

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<sup>1</sup> The Commission has established a \$50 threshold to determine "substantial value." 930 CMR 5.05.

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**COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION**

**SUFFOLK, ss.**

**COMMISSION  
ADJUDICATORY  
DOCKET NO. 12-0016**

**IN THE MATTER OF  
DEAN MAZZARELLA**

**DISPOSITION AGREEMENT**

The State Ethics Commission ("Commission") and Dean Mazarella ("Mazarella") enter into this Disposition Agreement pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On October 14, 2011, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mazarella. On March

16, 2012, the Commission concluded its inquiry and found reasonable cause to believe that Mazzarella violated G.L. c. 268A.

The Commission and Mazzarella now agree to the following findings of fact and conclusions of law:

### **Findings of Fact**

1. Mazzarella has been the mayor of the City of Leominster since 1994. As the Leominster mayor, Mazzarella is a municipal employee, as that term is defined in G.L. c. 268A, § 1.

2. In Leominster, there is a 968 square-foot single family home at 72 Carter Street (the "Property"). As of 2007, the only resident of the home was Mario Cavaoli ("Cavaoli"), the last living son of Thomas Cavaoli, who died in 1960 without a will.

3. Mazzarella had a long-standing personal relationship with Cavaoli. According to Mazzarella, due to the closeness of their relationship, Cavaoli used to tell him, "I should deed the Property over to you," and, "You might own this house someday."

4. In late 2007, Cavaoli, a World War II veteran who was 81 at the time, fell while at home at the Property. After being treated in a hospital for his injuries, Cavaoli was admitted to a nursing home in Lancaster.

5. In late 2007, Mazzarella contacted the Leominster Housing Rehabilitation Program Coordinator (the "Rehab Coordinator") and said that he had a friend, Cavaoli, who was in a rehabilitation center and who needed his home repaired as soon as possible using federal community development block grant ("CDBG") funds so the friend could return home. Mazzarella told the Rehab Coordinator they had a limited amount of time to get the property ready for Cavaoli's return.

6. Leominster receives approximately \$500,000 in CDBG funds each year. CDBG grants are targeted at low- and moderate-income families. The CDBG program is designed to bring substandard housing into compliance with various state and federal codes. The waiting list for rehabilitation funds in Leominster is usually around two years, and there are usually about 10 to 12 applications in the queue at any time.

7. While the projects are usually done in the order received, the Rehab Coordinator makes adjustments to the order and determines the priority given to CDBG applicants after inspecting the property.

Applicants who have leaking roofs or other unsafe conditions get priority treatment. Veterans and "the most needy" are often moved to the top of the waiting list.

8. Due to Mazzarella's late 2007 intervention, the Rehab Coordinator moved the Property to the top of the waiting list for rehabilitation funds. At that time, the Rehab Coordinator had not yet inspected the Property, and he did not learn until later that Cavaoli was a veteran.

9. Upon inspecting the Property, the Rehab Coordinator did not find the house in need of emergency repairs. The Rehab Coordinator understood from talking with Mazzarella that the idea behind the renovation work was to make it possible for Cavaoli to live on the first floor. The Rehab Coordinator accordingly drew up a scope of work that included renovating the kitchen, bathroom, and living room, all on the first floor, as well as installing a new electrical service panel. The work was put out to bid, and bids were opened on December 29, 2007. The winning bid was \$19,850.

10. The City's renovation work program manual states that "[e]ligibility for participation in this program requires that applicants ... have clear title to the property." According to the terms of the City's renovation work contract, "If the rehabbed building is sold or title transferred, or refinanced, the total amount of the grant received shall be refunded to the City of Leominster." The contract goes on to state that the City will place a lien on the property at the Registry of Deeds so as to enforce this provision.

11. The Rehab Coordinator does a title search on every property being considered for renovation work funds. The City has a standard form that applicants sign, after which the Rehab Coordinator goes to the Registry of Deeds to record the lien. If there are title issues, the City refuses to renovate the property.

12. The Rehab Coordinator could not find any record at the Registry of Deeds regarding the Property. The Assessor's Office said the Property might be in probate. The Rehab Coordinator brought the Property title issue to Mazzarella's attention, telling the mayor, "We really can't go forward with this." Mazzarella told the Rehab Coordinator, "Let's go ahead with it, and I'll worry about the paperwork."

13. The Rehab Coordinator proceeded with the renovation of the Property, although no lien securing the renovation work loan was ever filed by the City.

14. During the renovation of the Property, the plumbing inspector determined that the Property needed a new water main. In addition, the old windows were replaced with new energy efficient vinyl windows. On January 10, 2008, the project contractor submitted a change order reflecting the new additional costs of the water main and replacement vinyl windows, as well as some other non-code-related work. The Rehab Coordinator approved the change order, raising the project cost by \$5,269 to a total of \$25,119.

15. In or about late January 2008, the project contractor completed the work, submitted its invoice to the City and was paid \$25,119.

16. Cavaoli moved back into the house on the Property shortly after the renovation work was completed.

17. Cavaoli died in June 2010, at the age of 84. Cavaoli did not have a will. Cavaoli was survived by three nieces, and whatever interest Cavaoli had in the Property went to the nieces. It is unknown at this time if there are other heirs that would have an ownership interest in the Property.

18. In or around December 2010, two of the three nieces agreed to transfer their interest in the Property to Mazzarella at no cost. Mazzarella offered the third niece \$2,000 for her interest. She refused his offer.

19. A deed registered on March 2, 2011, with the Worcester Northern Registry of Deeds, indicates that the two nieces signed over their interest in the Property to Mazzarella for less than \$100.

20. As of November 28, 2012, the Leominster Assessor's Office listed the assessed value of the Property as \$130,400. The Property is currently assessed to Edward Cavaoli et al. in care of Dean Mazzarella.<sup>1</sup>

21. On January 18, 2012, the City initiated a tax taking on the Property for the non-payment of real estate taxes in the amount of \$1,874.95.

## **Conclusions of Law**

### Section 23(b)(2)

22. Section 23(b)(2)<sup>2</sup> of G.L. c. 268A prohibits a municipal employee from, knowingly, or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial

value and which are not properly available to similarly situated individuals.

23. The securing of \$25,119 in CDBG funds to renovate the Property was a privilege.

24. Mazzarella used his official position as mayor to secure the privilege by instructing the Rehab Coordinator to expedite the CDBG process, to skip over waiting applicants and to proceed with renovating the Property without a lien on the Property, which lien would have protected the City's interests.

25. The privilege was unwarranted because it was secured in noncompliance with the City's protocol and standard practice for awarding CDBG renovation work grants.

26. The privilege was of substantial value<sup>3</sup> as it involved a total of \$25,119 in CDBG funds.

27. This privilege was not properly available to similarly situated individuals.

28. Therefore, by securing this privilege, Mazzarella violated § 23(b)(2).

### Section 23(b)(3)

29. Section 23(b)(3) prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the facts, to conclude that anyone can improperly influence or unduly enjoy that person's favor in the performance of his official duties or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. This subsection goes on to provide that the appearance of impropriety can be avoided if the public employee discloses in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

30. Mazzarella acted in his capacity as mayor to secure \$25,119 in CDBG funds to renovate the Property, which was owned and/or occupied by Cavaoli.

31. Whenever he so acted, Mazzarella had a significant personal relationship with Cavaoli.

32. Mazzarella made no public written disclosure of these facts.

33. Therefore, Mazzarella knew or had reason to know that he was acting in a manner which would cause a reasonable person, knowing all of the relevant facts, to conclude that Cavaoli could improperly influence or unduly enjoy Mazzarella's favor in the performance of his official duties as mayor or that he was likely to act or fail to act as a result of the undue influence of Cavaoli. Consequently, Mazzarella repeatedly violated § 23(b)(3).

<sup>4</sup> At the time of Mazzarella's violations of § 23, the maximum civil penalty was \$2,000 per violation.

### **Resolution**

In view of the foregoing violations of G.L. c. 268A by Mazzarella, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Mazzarella:

- (1) that Mazzarella pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$4,000<sup>4</sup> as a civil penalty for violating G.L. c. 268A, §§ 23(b)(2) and (b)(3); and
- (2) that Mazzarella waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

**DATE:** November 14, 2012

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<sup>1</sup> Edward Cavaoli (now deceased) was Mario Cavaoli's brother.

<sup>2</sup> G.L. c. 268A was amended by c. 28 of the Acts of 2009, effective September 29, 2009. The language of § 23(b)(2) now appears in § 23(b)(2)(ii) of G.L. c. 268A, as amended, and states: "No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know, use or attempt to use such official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals."

<sup>3</sup> For the time period in question, the Commission relies on *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976), to determine that anything valued at \$50 or more is "of substantial value."





**ADVICE**



**EDUCATION**



**DISCLOSURE**



**ENFORCEMENT**



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