

THE CITY OF NEW YORK
OFFICE OF ADMINISTRATIVE TRIALS
AND HEARINGS

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In the Matter of

NEW YORK CITY
CONFLICTS OF INTEREST BOARD,

DISPOSITION

Petitioner,

COIB Case No. 2013-903
OATH Index No. 152481

-against-

MELISSA MARK-VIVERITO,

Respondent.

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WHEREAS, pursuant to Section 2603(h)(1) of Chapter 68 of the New York City Charter (the “City Charter”), Petitioner the New York City Conflicts of Interest Board (the “Board”) commenced an enforcement action against Respondent Melissa Mark-Viverito (the “Respondent”) alleging a violation of a provision of the City of New York’s conflicts of interest law, Chapter 68 of the City Charter (“Chapter 68”);

WHEREAS, Respondent filed a response to the Board’s enforcement action denying that she had violated Chapter 68 and asserting that she acted at all times in good faith reliance on the advice of counsel;

WHEREAS, pursuant to City Charter § 2603(h)(2), the Board determined that there remained probable cause to believe that Respondent violated Chapter 68 and designated the New York City Office of Administrative Trials and Hearings (“OATH”) to hold a hearing on the record to determine whether such violation occurred;

WHEREAS, Respondent filed an answer to the Board’s OATH Petition denying that she had violated Chapter 68 and asserting that she acted at all times in good faith reliance on the advice of counsel and was prepared to participate in the hearing before OATH to determine whether any such violation in fact occurred; and

WHEREAS, the Board and Respondent wish to resolve this matter on the following terms,

IT IS HEREBY AGREED by and between the parties as follows:

1. Respondent admits to the following:

- a. Since January 1, 2006, I have been a member of the New York City Council, representing Council District 8. As such, I am a “public servant” within the meaning of Chapter 68.
- b. In 2013, I was a candidate for reelection to the City Council. I won the September 10, 2013, primary for the general election and, around that time, began to campaign to be elected Speaker of the City Council (“Speaker”).
- c. The Charter provides that “the council shall elect from among its members a speaker and such other officers as it deems appropriate.” New York City Charter § 44. As such, the Speaker is a leadership position within the Council and is not an independent public office. The process by which the Council chooses a Speaker and other officers is not an “election” under the Election Law. My counsel advised me that a Council member’s effort to obtain the Speaker position is “campaign-related” activity in furtherance of the Council member’s next election, regulated by the City of New York’s Campaign Finance Board (“CFB”). *See* New York City Campaign Finance Act § 3-702(21); CFB Rule 1-08(c)(1); CFB Advisory Opinion No. 2008-2.
- d. I relied on counsel’s advice that accepting the below-described volunteer efforts from the TAG Volunteers complied with the relevant laws, including the New York City Campaign Finance Act, codified in the New York City Administrative Code, § 3-701, *et seq.* As a result, I believed my Speaker Campaign was in compliance with Chapter 68.
- e. Scott Levenson is the president of The Advance Group, Inc. (“TAG”). I am advised that, for a period of time including 2013, Levenson was required to be, and was, listed on a statement of registration as a lobbyist pursuant to Section 3-213(c)(1) of the New York City Administrative Code.
- f. On or about September 24, 2013, Levenson volunteered to provide his support and assistance to my campaign to become Speaker (herein, the “Speaker Campaign”), which I accepted.
- g. Thereafter, Levenson, along with Jonathan Yedin, TAG Vice President, and Katie Franger, TAG Chief of Staff, (collectively, the “TAG Volunteers”), volunteered their efforts to further my Speaker Campaign.
- h. Beginning around October 2013 and continuing until December 2, 2013, more than one month before I was elected Speaker on January 8, 2014, the TAG Volunteers each worked, on average, approximately two to three hours per week on my Speaker Campaign. This work included assisting my Speaker Campaign with general strategy and preparing for and attending weekly “Kitchen Cabinet” meetings with, on average, ten to fifteen other members of my Kitchen Cabinet, which included paid staff and other volunteers. The

Kitchen Cabinet helped to prepare me for networking events and for forums among the Speaker candidates.

- i. In advance of the 2013 Somos El Futuro Fall Conference, a graphic designer working for TAG redesigned a flier for a reception hosted by 1199SEIU in my honor at Somos. TAG incurred an expense of \$1,796.44 to have 3,000 copies of the flier printed at a FedEx Office. The TAG Volunteers coordinated with my 2013 City Council campaign manager to hand-carry the fliers in their luggage to San Juan, Puerto Rico, and distribute them to Somos Conference attendees. In addition, the TAG Volunteers used TAG administrative staff to print reading material in-house and to deliver these materials to me in New York.
- j. At no time did the TAG Volunteers invoice me or my registered campaign committees for the cost of their efforts to advance my Speaker Campaign. As is always the case, campaign volunteers are not compensated, and my registered campaign committees did not compensate the TAG volunteers for their efforts at the time the services were rendered. Further, at no time did the TAG Volunteers or TAG invoice me or my registered campaign committees for their out-of-pocket Speaker Campaign costs. My registered campaign committees did not reimburse the TAG Volunteers or TAG for these costs at the time they were incurred.
- k. My committee for the 2013 City Council race, "Viverito 2013," retained the legal counsel of Pitta & Giblin LLP to handle campaign and election law compliance during the 2013 election cycle. Following the November 5, 2013 general election, a new campaign committee, "Viverito NY," was established for an undeclared New York City office for the 2017 election cycle. Pitta & Giblin LLP continued to act as compliance counsel to Viverito NY during the remainder of my Speaker Campaign.
- l. Although I was unaware at the time and despite counsel's advice about the permissibility of a political campaign candidate's acceptance of volunteer services under the New York City Campaign Finance Act, I now understand that my acceptance of the volunteer efforts described above was acceptance of free consulting services, including corporate resources, valued at more than \$50.00, in connection with a campaign to become Speaker of the City Council from a registered lobbyist, and was a violation of City Charter § 2604(b)(5), which provides:

No public servant shall accept any valuable gift, as defined by rule of the board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the City, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.

I further understand that the Board interprets “business dealings with the City” to include registered lobbyists. City Charter § 2601(8) defines “business dealings with the City” as follows:

[A]ny transaction with the city involving the sale, purchase, rental, disposition or exchange of any goods, services, or property, any license, permit, grant or benefit, and any performance of or litigation with respect to any of the foregoing, but shall not include any transaction involving a public servant's residence or any ministerial matter.

Board Rules § 1-01(a) defines “valuable gift” to mean “any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. Two or more gifts to a public servant shall be deemed to be a single gift for the purposes of this subdivision and Charter § 2604(b)(5) if they are given to the public servant within a twelve-month period under one or more of the following circumstances (1) they are given by the same person; and/or (2) they are given by persons who the public servant knows or should have known are (i) relatives or domestic partners of one another; or (ii) are directors, trustees, or employees of the same firm or affiliated firm.”

- m. My registered campaign committee has since determined with TAG, consistent with CFB regulations, the amount of fees, in addition to the out-of-pocket printing cost, due to TAG for the value of the services I received and for the costs expended in connection with the TAG Volunteers’ work on my Speaker campaign. TAG will be paid \$2000.00, to reflect the amount of those fees, plus \$1,796.44, for TAG’s out-of-pocket printing cost.

2. Respondent agrees to the following:

- a. In recognition of the foregoing, I agree to pay a fine of Seven Thousand Dollars (\$7,000.00) to the New York City Conflicts of Interest Board, which will be due upon signing this disposition, by money order or by cashier, bank, or certified check, made payable to the “New York City Conflicts of Interest Board.”
- b. This disposition is a public and final resolution of the Board’s charges against me.
- c. I knowingly waive, on my behalf and on behalf of my successors and assigns, any rights to commence any judicial or administrative proceeding or appeal before any court of competent jurisdiction, administrative tribunal, political

subdivision, or office of the City or the State of New York or the United States, and to contest the lawfulness, authority, jurisdiction, or power of the Board in imposing the penalty which is embodied in this disposition, and I waive any right to make any legal or equitable claims or to initiate legal proceedings of any kind against the Board, or any members or employees thereof relating to, or arising out of this disposition or the matters recited therein.

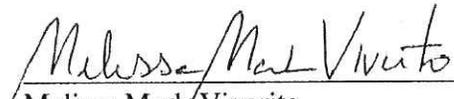
d. I confirm that I have had the opportunity to be represented by an attorney of my choice in this proceeding; that I have entered into this disposition freely, knowingly, and intentionally, without coercion or duress; that I accept all terms and conditions contained herein without reliance on any other promises or offers previously made or tendered by any past or present representative of the Board; and that I fully understand all the terms of this disposition.

e. Any material misstatement of the facts of this matter, including of the disposition, by me or by my attorney or agent shall, at the discretion of the Board, be deemed a waiver of confidentiality of this matter.

3. The Board accepts this disposition and the terms contained herein as a final disposition of the above-captioned matter only, and affirmatively states that no further action will be taken by the Board against Respondent based upon the facts and circumstances set forth herein, except that the Board shall be entitled to take any and all actions necessary to enforce the terms of this disposition.

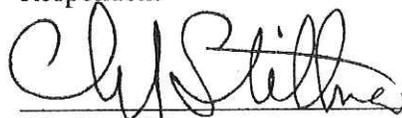
4. This disposition shall not be effective until all parties have affixed their signatures below.

Date: 12/15/15



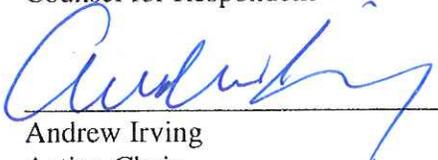
Melissa Mark Viverito
Respondent

Date: 12/15/15



Charles Stillman
Ballard Spahr LLP
Counsel for Respondent

Date: 12/30/15



Andrew Irving
Acting Chair
NYC Conflicts of Interest Board