

**THE CITY OF NEW YORK
CONFLICTS OF INTEREST BOARD**

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In the Matter of

The Financial Disclosure Appeal of:

FD No. 2019-01

Yvonne Roman

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**FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

Upon consideration of all the evidence presented in this matter, and upon the full record herein, including all papers submitted to, and recommended findings of, the neutral arbitrator of the New York City Office of Collective Bargaining (“OCB”), the Conflicts of Interest Board (the “Board”) adopts the recommendation of OCB neutral arbitrator Earl R. Pfeffer that Yvonne Roman is required to file a financial disclosure report for calendar year 2017.

This financial disclosure appeal involves Yvonne Roman, a Claim Specialist Assignment Level II (“CSII”) at the New York City Office of the Comptroller (“Comptroller’s Office”).¹ Roman was notified by Comptroller’s Office of the requirement, pursuant to the Administrative Code of the City of New York (“Admin. Code”) § 12-110(b)(3)(a)(4), to file a financial disclosure report for calendar year 2017.² She fully and timely appealed the designation as a required filer to both the agency head and the Board. The matter was heard before OCB neutral arbitrator Earl R. Pfeffer, who issued his Report and Recommendation on November 21, 2018 (“Pfeffer Report”), recommending that the appeal be denied.³

Admin. Code § 12-110(b)(3)(a)(4) requires the filing of a financial disclosure report by:

Each employee whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances and special permits, as defined by rule of the conflicts of interest board and as

¹ Roman has been employed as a CSII at the Comptroller’s Office, first in the Law Division from 2000 to 2002 and in the Property Damage Unit from 2006 to the present. Pfeffer Report (Exhibit G) at 5.

² Financial disclosure reports pertaining to a particular calendar year are filed in the next calendar year. For example, reports relating to 2017 were filed in 2018.

³ The appeals were heard pursuant to the Financial Disclosure Appeals Process (“Appeals Process”) (Exhibit A), the procedure for hearing appeals that was previously agreed to among the Board, the City’s Office of Labor Relations, and DC 37.

annually determined by his or her agency head or employer, subject to review by the conflicts of interest board.

The Rules of the Board clarify which employees with the responsibilities set forth in Admin. Code § 12-110(b)(3)(a)(4) are required to file financial disclosure reports, colloquially termed “contract filers.” Any employee involved in the substantive determination of any aspect of the contracting process, whether in the drafting of a contract, the evaluation of a bid, the approval of documents relating to a contract, or the determination of contract policies, rules, or regulations, is required to file.⁴ Included in the category of contract filers is any employee who “[n]egotiates or determines the substantive content of a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order.”⁵ Exempted from this category of employees required to file financial disclosure reports are clerical personnel and other public servants who perform **only** ministerial tasks.⁶ New York City Charter § 2601(15) defines “ministerial matter” as “an administrative act...which does not involve substantial personal discretion.”

A CSII “[c]onducts investigations involving points of fact in such matters as...contractual claims arising from non-performance or additional costs incurred, refund or return of property and salary, good samaritan, equitable claims, and tort claims”⁷ filed against the City. Under the general supervision of a Claim Specialist Assignment Level III, “with latitude for independent initiative and judgment,” a CSII investigates and obtains proof regarding allegations, communicates with claimants, interviews interested parties, and analyzes facts and law to make liability determinations.⁸ Prior to December 15, 2017, most Claim Specialists, including Roman, could settle claims in the amount of up to \$2,000 without obtaining supervisory approval.⁹ On December 15, 2017, the Comptroller’s Office raised that amount to \$5,000.¹⁰ As Roman and her division chief, Judith Brusgard, confirmed, the change in settlement authority “did not modify any of Roman’s tasks and standards, which were the same in 2017 as they had been in 2016.”¹¹

⁴ Board Rules § 1-15.

⁵ Board Rules § 1-15(4) (emphasis added).

⁶ Board Rules § 1-15(b) (emphasis added). For example, “public servants who are under the supervision of others **and** are without substantial personal discretion, **and** who perform only clerical tasks...shall not, on the basis of such tasks alone, be required to file a financial disclosure report.” *Id.* (emphasis added). Examples of ministerial tasks include “typing, filing, or distributing contracts, leases, franchises, revocable consents, concessions, or zoning changes, variances, or special permits or calendaring meetings or who identify potential bidders or vendors.” *Id.*

⁷ Claim Specialist job profiles, dated July 23, 2003 (in effect in 2017) (Exhibit B at 2).

⁸ Roman’s 2017 Performance Evaluation and Development Plan (Exhibit D).

⁹ Pfeffer Report (Exhibit G) at 8.

¹⁰ *Id.* at 7–8.

¹¹ *Id.* at 8.

In her appeal to the Board, Roman argues that the Comptroller's Office's designation that she was a required filer was based on that change in settlement authority.¹² According to Roman, there is no evidence that she actually accepted the Comptroller's Office's delegation of authority or acted pursuant to it between December 15 and December 31, 2017.¹³ Instead, "she continued to do as she had always done, which was to obtain supervisory approval for every settlement offer she transmitted to a claimant."¹⁴ She thus contends that she did not exercise her settlement authority at any point in time,¹⁵ and denies negotiating, authorizing, or approving contracts in 2017.¹⁶

However, the evidence belies Roman's argument that, because she acted solely in accordance with her supervisor's directive, she is not a required filer for 2017. Brusgard testified that "the approvals Roman sought from her supervisors" for claims in the amount of \$5,000 or less "were not necessary."¹⁷ Indeed, though the December 15, 2017, email in which the Comptroller's Office increased the dollar amount of Roman's settlement authority advised her that "[her] supervisor and [Brusgard] are always available to discuss or review any claim should [she] need assistance or advice," Roman was not required to consult with her supervisor.¹⁸ Thus, Roman's decision to request pre-authorization before settling any claim was by choice, "not by compulsion."¹⁹ Moreover, as the Pfeffer Report explained, accepting Roman's argument could lead City employees to "unnecessarily seek out the advice of supervisors on matter[s] they are empowered to decide on their own, as a device to exempt themselves from filing."²⁰ As a result, agencies would have to "monitor the advice given and confirm it was followed in every case,"²¹ a burden that "might undo the operational efficiency the Comptroller's Office sought to establish by delegating to CSII's important duties and responsibilities related" to claim settlement.²²

More importantly, the requirement to file under Admin. Code § 12-110(b)(3)(a)(4) is determined by duties conducted during the previous calendar year, not on the amount of settlement authority. Here, the evidence demonstrates that, save for the increase in the dollar amount of Roman's settlement authority, the December 15, 2017, email did not materially change Roman's job responsibilities.²³ Roman was still negotiating and determining the content of claim settlements in 2017 as she had in 2016. As her supervisor stated in Roman's 2017 performance evaluation, Roman "negotiate[es]...pro se, represented and subrogated claims" and

¹² Roman's Appeal to COIB, dated June 28, 2018 (Exhibit F).

¹³ Pfeffer Report (Exhibit G) at 10–11.

¹⁴ *Id.* at 11. Brusgard did not dispute Roman's claim that she settles "only if her supervisor authorizes her to settle under terms approved by her supervisor." *Id.* at 10.

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 11.

¹⁷ *Id.* at 10.

¹⁸ *Id.* at 16, citing Cox email to Roman, dated December 15, 2017 (Exhibit C).

¹⁹ *Id.*

²⁰ *Id.* at 18.

²¹ *Id.* at 17.

²² *Id.* at 18.

²³ *Id.* at 8.

“settlements that are based on recommendations that are accurate...with a mindset toward balancing fairness and fiscal responsibility.”²⁴ The Pfeffer Report likewise observed: “It is undisputed that Roman negotiates settlement terms with claimants and makes recommendations based upon her research, which includes obtaining information directly from claimants.”²⁵ Even Roman testified that she uses “‘independent judgment and initiative to determine if the City has liability’” and “‘determine[s] if the dollar amount claimed is ‘excessive’...very often from her own examination of receipts, damage reports and even information available through the internet.”²⁶

Roman’s filing requirement is further supported by the Board’s decision in *Matter of Tirado, et al.*, FD Order 2009 (July 14, 2009), a determination upheld by the New York State Supreme Court in *In re: the Application of Vanessa Tirado v. New York City Conflicts of Interest Board*, Sup. Ct., New York County, July 1, 2010, Madden, J., Index No. 112955/2009. *Tirado* concerned CSIIIs at the Comptroller’s Office’s Property Damage Division “with responsibilities identical to Roman’s in all relevant respects”²⁷ but for one distinction—unlike Roman, the appellants could not make any initial offer without obtaining approval from a supervisor; it was only after the initial offer that they could agree to a new demand without further approval.²⁸ The Board determined in *Tirado* that “negotiating the settlement [of] a claim against the City in an amount up to \$2,000 constitutes negotiating a contract,” explaining that “[a] finalized settlement is a contract between the claimant and the City; and thus, negotiating the claim, with the possibility of a settlement, is the negotiation of a contract.”²⁹ Further, the Board established that the appellants were not “exempted from the filing requirement as clerical personnel who perform only ministerial duties,” because although they “are supervised, the supervision is not absolute,” since they “have full authority and substantial personal discretion up to \$2,000.”³⁰ Given that Roman has even more discretionary authority than the CSII in *Tirado*, the case for requiring her to file is even stronger. Moreover, as in *Tirado*, it is Roman’s involvement in the negotiation and determination of the terms of claim settlements that requires her to file for 2017, not the dollar amount of her settlement authority.

Conclusion

Board Rules § 1-15 was enacted to, among other things, “limit financial disclosure filing to those public servants who are at risk of conflicts of interests...[and] to ensure that rules for determining who is a ‘contract’ filer are uniform and uniformly applied throughout the City.”³¹ That objective is furthered by requiring Yvonne Roman to file a financial disclosure report for calendar year 2017.

²⁴ Roman’s 2017 Performance Evaluation and Development Plan (Exhibit D).

²⁵ Pfeffer Report (Exhibit G) at 17.

²⁶ *Id.* at 6.

²⁷ Pfeffer Report (Exhibit G) at 15.

²⁸ *Tirado* at 2.

²⁹ *Id.* at 3 (emphasis in original).

³⁰ *Id.*

³¹ Statement of Basis and Purpose for Board Rules § 1-15.

To be exempt from the filing requirement, public servants performing contracting responsibilities must perform **only** ministerial duties.³² Roman's official duties in 2017 directly and substantively contributed to the terms of her final settlement offers. She did not perform merely ministerial tasks but instead engaged in activities that are precisely the kind that have the potential to pose a conflict of interest.

Accordingly, the Board concludes that Roman's duties fall squarely within Admin. Code § 12-110(b)(3)(a)(4) and Board Rules § 1-15(a)(5).

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Admin. Code § 12-110(b)(3)(a)(4), that Yvonne Roman file a financial disclosure report for calendar year 2017 no later than February 28, 2019.

Yvonne Roman has the right to appeal this Order to the Supreme Court of the State of New York.

The Conflicts of Interest Board



Richard Briffault, Chair

Fernando A. Bohorquez, Jr.
Anthony Crowell
Jeffrey D. Friedlander
Erika Thomas

Dated: January 31, 2019

cc: Yvette Roman, Comptroller's Office
Amedeo D'Angelo, Comptroller's Office
Nicole M. Andrade, Comptroller's Office
Aaron Amaral, DC37

³² Board Rules § 1-15(b) (emphasis added).