

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

_____ X

In the Matter of

The Annual Disclosure Appeal of:

COIB Case No. 2022-552

Michelle Babbitt

_____ X

**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, the New York City Conflicts of Interest Board (the “Board”) finds that, pursuant to Sections 12-110(b)(3)(a)(3) and 12-110(b)(3)(a)(4) of the New York City Administrative Code (“Admin. Code”) and Sections 1-02, 4-03, and 4-04 of the Rules of the Board, Title 53, Rules of the City of New York (the “Board Rules”), Michelle Babbitt is not required to file an annual disclosure report for calendar year 2021.

Procedural History

This appeal involves Michelle Babbitt, who was an Agency Attorney Level III at the New York City Department of Transportation (“DOT”) during the relevant time period, serving as an Assistant General Counsel in the DOT Office of the General Counsel. In April 2022, Babbitt was notified that she was required to file an annual disclosure report for calendar year 2021 pursuant to Admin. Code Sections 12-110(b)(3)(a)(3) and 12-110(b)(3)(a)(4).¹ In accordance with the appeals process, Babbitt fully and timely appealed the designation as a required filer to DOT and the Board.

Analysis

Admin. Code Section 12-110(b) sets forth the categories of required filers of annual disclosure reports. In the present appeal, whether Babbitt is required to file an annual disclosure report depends on whether she meets the filing criteria of a policymaker or a contract filer.

A. Policymaker

Admin. Code Section 12-110(b)(3)(a)(3) requires a City employee to file an annual disclosure report if the employee “holds a policymaking position.” Board Rules Section 4-03 clarifies that an employee holds a “policymaking position” if he or she has been designated as having “substantial policy discretion.” Pursuant to Board Rules Section 1-

¹ Annual disclosure reports pertaining to a particular calendar year are filed in the next calendar year. Thus, reports covering 2021 are filed in 2022.

02(a), an employee has substantial policy discretion “if he or she has major responsibilities and exercises independent judgment in connection with determining important agency matters.” Each year, agencies are required to submit a list to the Board identifying the employees at their agency who have substantial policy discretion. See Board Rules Section 1-02(a)(2).

DOT argues that Babbitt is required to file an annual disclosure report because of her involvement with litigation, grants compliance, and parking permits. Specifically, Babbitt worked on litigation matters under the supervision of a DOT supervisor, the New York City Law Department (“Law Department”), and the Office of the New York City Comptroller (“Comptroller’s Office”); assisted DOT’s Grants Compliance Officer to draft procedures and guidance documents; and facilitated hearings to suspend or revoke parking permits and reviewed findings from the hearing officers.

Based on the available evidence, the Board concludes that Babbitt did not have substantial policy discretion at DOT. DOT did not include Babbitt on its list of employees with substantial policy discretion for 2021 or 2022, and the evidence provided by DOT does not show that Babbitt exercised “independent judgment in connection with determining important agency matters” in the performance of her job duties at DOT. Accordingly, Babbitt does not meet the filing criteria of a policymaker under Admin. Code Section 12-110(b)(3)(a)(3).

B. Contract Filer

Admin. Code Section 12-110(b)(3)(a)(4) requires a City employee to file an annual disclosure report when the employee’s:

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 board and as annually determined by his or her agency head, subject to review by the board.

Board Rules Section 4-04 clarifies which employees with these duties are required to file, including any employee who “[n]egotiates or determines the substantive content of a contract.”²

DOT argues that Babbitt is a contract filer because she was involved in the settlement of litigation matters, including claims against DOT.³ Based on the available

² Board Rules Section 4-04(a)(4).

³ In 2009, in denying appeals by seven Claims Specialists II at the Comptroller’s Office, the Board concluded that negotiating the settlement of a claim against the City constitutes negotiating a contract and held that the Claims Specialists II were contract filers. See *Matter of Tirado, et al.*, FD Order 2009 (July 14, 2009), 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; see also *Matter of Roman*, FD Order No. 2019-01 (January 31, 2019).

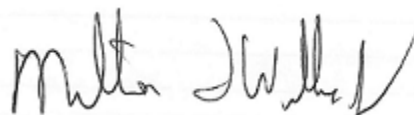
evidence, the Board concludes that Babbitt was not responsible for negotiating or determining the “substantive content” of those settlements.⁴ When Babbitt communicated a settlement offer to an opposing party, she did so only after the settlement amount was approved by a DOT supervisor, the Law Department, and the Comptroller’s Office. Accordingly, Babbitt does not meet the filing criteria of a contract filer under Admin. Code Section 12-110(b)(3)(a)(4).

Conclusion

The Board concludes that the available evidence fails to demonstrate that Babbitt is required to file an annual disclosure report as a policymaker or contract filer.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Admin. Code Sections 12-110(b)(3)(a)(3) and 12-110(b)(3)(a)(4), that Michelle Babbitt is not required to file an annual disclosure report for calendar year 2021.

The Conflicts of Interest Board



By: Milton L. Williams Jr., Chair

Fernando A. Bohorquez Jr.
Wayne G. Hawley
Ifeoma Ike
Georgia M. Pestana

Dated: October 14, 2022

cc: Michelle Babbitt
Janice M. Stroughter, DOT

⁴ See Board Rules Section 4-04(a)(4).