

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

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In the Matter of

Joseph C. DeLisi

FD No. 2013-02

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

Upon consideration of all papers submitted in this matter, the Conflicts of Interest Board (“COIB” or “the Board”) grants the appeal of the above captioned Department of Youth and Community Development (“DYCD”) employee on default, and he is not required to file an annual disclosure report for calendar year 2012.¹

Joseph DeLisi was notified of his designation, pursuant to New York City Administrative Code § 12-110 (hereinafter “NYC Admin. Code”), as an employee required to file an annual disclosure report for calendar year 2012. On April 19, 2013, he timely appealed to DYCD his designation as a required filer. DYCD initially denied his appeal on April 24, 2013, but failed to provide reasons for its determination. It formally denied the appeal on May 21, 2013, and explained the basis for its decision. On May 21, 2013, DeLisi timely appealed to the Conflicts of Interest Board.²

Section 12-110(b) of the New York City Administrative Code sets forth the categories of required filers of annual disclosure reports. These categories include those that are easily identifiable, e.g., elected and political party officials³ and candidates for public office,⁴ and those that require analysis of an employee’s duties and responsibilities, e.g., policymakers⁵ and filers who have contracting responsibilities (“contract filers”).⁶

¹ Annual disclosure reports pertaining to a particular calendar year are filed in the next calendar year. For example, reports relating to 2012 were filed in 2013.

² Pursuant to the Financial Disclosure Appeals Process, which was entered into upon agreement between the City, the Board, and DC 37, an employee whose appeal is denied by the agency shall, within thirty days of service of the denial, either submit an annual disclosure report to the Board or file an appeal with the Board. *See* Financial Disclosure Appeals Process § D(3).

³ NYC Admin. Code § 12-110(b)(1).

⁴ NYC Admin. Code § 12-110(b)(2).

⁵ NYC Admin. Code § 12-110(b)(3)(a)(3).

⁶ NYC Admin. Code § 12-110(b)(3)(a)(4).

The Financial Disclosure Appeals Process sets forth the procedure to appeal a designation as a required filer of an annual disclosure report. Pursuant to this Process, if the employee appeals to his or her agency the designation as a required filer of an annual disclosure report, the agency must timely determine the appeal, and explain how the employee falls within one of the filing categories.

DeLisi filed his notice of appeal on April 19, 2013, and had until May 3, 2013, to submit written documents in support of his appeal.⁷ DYCD was required to provide the employee with the full 14-day period with which to submit documents in support of his appeal, and to render a decision between May 4, 2013, and May 17, 2013.⁸ It also was required to “set forth the reasons for that determination and the specific evidence in support of the determination” with the burden on the agency “to come forward with specific evidence showing that the employee performed duties falling within one of the filing categories set forth in New York City Administrative Code § 12-110(b)(3)-(4) and Rules of the City of New York, Title 53, §§ 1-02, 1-14, and 1-15.”⁹

DeLisi reports that DYCD initially denied his appeal on April 24, 2013, with a post-it containing only one sentence: “This appeal is denied.” The April 24, 2013, denial was premature because, having been rendered before May 4, 2013, it failed to provide the employee with the full 14-day period with which to submit documents in support of the appeal.¹⁰ Even if it had been timely, this early determination was insufficient as a matter of law because it did not provide any reasons for the agency’s denial of the appeal, a deficiency that alone would have required the Board to grant the appeal on default.¹¹

DYCD ultimately formally denied DeLisi’s appeal with a memorandum dated May 21, 2013. Although this determination set forth reasons for the agency’s denial of the appeal, it was untimely: DYCD was required to render its decision by May 17, 2013. Accordingly, the agency’s failure to determine DeLisi’s appeal within the 14-day time period requires that the appeal be granted on default.¹²

⁷ Financial Disclosure Appeals Process § B(4) (employee must submit documents in support of the appeal within 14-days after filing the notice of appeal).

⁸ Financial Disclosure Appeals Process §§ B(5), E(6).

⁹ Financial Disclosure Appeals Process § B(7).

¹⁰ Financial Disclosure Appeals Process §§ B(5), E(6).

¹¹ Financial Disclosure Appeals Process § B(7). The Board has previously found that an agency’s failure to provide any reasons for its determination renders the decision deficient as a matter of law because the failure to set forth any reasons for its denial of an employee’s appeal is, in effect, a failure to respond within the required time frame and requires any such appeal to be granted on default. *See Matter of Acevedo, et. al.*, FD Order No. 2013-1.

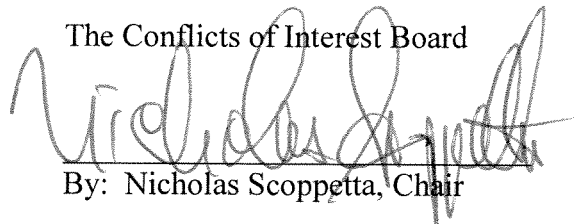
¹² Financial Disclosure Appeals Process §§ B5, E6 (an appeal shall be granted on default if the agency fails to meet the 14-day deadline). *See also* Financial Disclosure Appeals Process § B(6).

The Board notes that the agency failed to comply with the Financial Disclosure Appeals Process in three ways (premature determination, determination without reasons, and late determination), and that any one of these failures by itself would have caused the Board to grant DeLisi's appeal on default. In *Matter of Acito, et. al.*, the Board previously remanded cases to the employees' agency to provide the appealing employees with the full 14-day period with which to submit documents in support of their appeals where the agency had failed to do so.¹³ The Board declines to remand here. In those cases, the failure to provide the appealing employees with the full 14-day time period was the agency's only noncompliance with the Financial Disclosure Appeals Process; in the instant case, there are three. In addition, *Acito* was a matter of first impression for the Board, and agencies may not have been on notice of the Board's jurisprudence on this point. In contrast, the *Acito* decision was rendered and made available to agencies well before the most recent filing period and DYCD's determination in the instant case. Therefore, an agency's failure to provide an employee with the full 14-day period in which to submit documents in support of an appeal will now and henceforth result in the appeal being granted on default.

Accordingly, as DYCD's initial determination of DeLisi's appeal both was premature and failed to set forth reasons for the denial and its formal determination of that appeal was untimely, the Board grants DeLisi's appeal of the designation as a required filer of an annual disclosure report for calendar year 2012 on default for calendar year 2012.¹⁴

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Administrative Code §12-110(c)(2) and the Financial Disclosure Appeals Process §§ B(5) and (E)(5), that DeLisi's appeal of the designation as a required filer of an annual disclosure report for calendar year 2012 is granted on default for calendar year 2012.

The Conflicts of Interest Board



By: Nicholas Scoppetta, Chair

Anthony Crowell
Andrew Irving
Burton Lehmann
Erika Thomas-Yuille

Dated: August 22, 2013

cc: Joseph C. DeLisi, DYCD
John V. Cirolia, Deputy Commissioner for Administration, DYCD

¹³ *Matter of Acito, et. al.*, FD Order 2012-2.

¹⁴ In the case of any appeal that is granted by default, the grant of the appeal shall apply to that filing year only and shall not be a determination on the merits. Financial Disclosure Appeals Process § E(5).