

CITY OF NEW YORK CONFLICTS OF INTEREST BOARD

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July 25, 2011

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FOR IMMEDIATE RELEASE

CONFLICTS OF INTEREST BOARD FINES BROOKLYN BOROUGH PRESIDENT \$20,000 FOR USING HIS CITY POSITION TO ACCEPT FREE FOREIGN TRAVEL FOR HIS WIFE ON THREE OCCASIONS.

The New York City Conflicts of Interest Board (the "Board") adopted the Report and Recommendation of an Administrative Law Judge ("ALJ") of the New York City Office of Administrative Trials and Hearings ("OATH") fining the Brooklyn Borough President \$20,000 for accepting free foreign travel and related accommodations for his wife on three occasions: a trip to Turkey in May 2007, a trip to the Netherlands in March 2009, and a second trip to Turkey in November 2009.

For each of these trips, it was undisputed that the Brooklyn Borough President was conducting official business and thus could accept free airfare and related accommodations for himself. However, at no time was the Brooklyn Borough President's wife an employee of the Borough President's Office or of any other City agency. Therefore, her travel was not an expense that could have been properly paid for with City funds; and, thus, if the Borough President wished to have his wife accompany him, he was required to pay for her travel expenses himself. As stated in the Board's Order, the Brooklyn Borough President was so advised by the Board in writing of this requirement prior to the first of the three trips at issue.

Notwithstanding that prior notice from the Board, the Brooklyn Borough President accepted travel-related expenses for his wife from the Republic of Turkey for a trip in May 2007, from the Kingdom of the Netherlands in March 2009, and from the Federation of Turkish American Associations in November 2009. While none of these entities have business dealings with the City, and thus the acceptance of gifts from these entities is not prescribed by the Board's Valuable Gift Rule (found in Charter Section 2604(b)(5)), the Board in its Order restated is long-standing advice that "a public servant may violate Charter Section 2604(b)(3) by accepting a gift even if the donor does not have such business dealings, if the public servant is receiving the gift only because of his or her City position." Here, the ALJ made a finding, which the Board adopted, that "Respondent received these

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trips abroad because of his position as Borough President of Brooklyn and his wife went on all three trips because of her relationship to him. By accepting travel expenses for his wife for each trip, respondent used his position as a public servant for private or personal advantage. Simply put, his wife was able to travel with him abroad – for free.”

As a penalty, the ALJ recommended, and the Board imposed, a total fine of \$20,000, apportioned by the Board follows: \$3,000 for the 2007 Turkey trip, \$7,000 for the 2009 Netherlands trip, and \$10,000 for the 2009 Netherlands trip, which came after the Brooklyn Borough President was most recently on notice that it would be a violation to accept such expenses on behalf of his wife. Copies of the Board Order and the OATH Report and Recommendation are attached.

The Conflicts of Interest Board is the City’s ethics board and is responsible for enforcing Chapter 68 of the New York City Charter, the City’s conflicts of interest law. The Board is composed of five members, appointed by the Mayor with the advice and consent of the City Council. Board penalties are civil fines. Public servants who have any questions about the City’s conflicts of interest law are urged to contact the Board by calling (212) 442-1400.

Carolyn Lisa Miller, Director of Enforcement, handled this case for the Board. The Board gratefully acknowledges the work of its confidential investigative arm, the New York City Department of Investigation (“DOI”), DOI Commissioner Rose Gill Hearn, DOI Deputy Commissioner for Legal Affairs & General Counsel Marjorie Landa, and DOI Special Counsel to the Commissioner & First Deputy General Counsel Michael Siller, who conducted the investigation.

The Board does not comment on its dispositions, except as set forth above. For copies of any additional public documents, e-mail miller@coib.nyc.gov.

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

_____ x
In the Matter of

MARTY MARKOWITZ

COIB Case No. 09-181

OATH Index No. 1400/11

Respondent.
_____ x

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

Upon consideration of all the evidence presented in this matter, and of the full record, and all papers submitted to, and rulings of, the Office of Administrative Trials and Hearings ("OATH"), the Conflicts of Interest Board (the "Board") hereby adopts the annexed Report and Recommendation of OATH Administrative Law Judge ("ALJ") Kevin F. Casey dated May 5, 2011 (the "Report"), in the above-captioned matter. The Report found, as Petitioner had charged, that Respondent violated Charter 2604(b)(3) on three occasions and recommended a total fine of \$20,000. The Board similarly finds, accepts the recommended fine, and hereby imposes a fine of \$20,000 upon Respondent for violating Chapter 68 of the City Charter, the City's conflicts of interest law.

This enforcement matter involves Marty Markowitz, the Brooklyn Borough President, who accepted free travel and other accommodations for his wife to accompany him on trips to Turkey in 2007 and 2009 and to the Netherlands in 2009. At no time was Respondent's wife an employee of the Brooklyn Borough President's Office or of any other City agency.

New York City Charter §2604(b)(3)

This section states:

"No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or

personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.”

Petitioner served Respondent with a Notice of Initial Determination of Probable Cause (the “Notice”) on September 27, 2010, alleging that Respondent violated Charter Section 2604(b)(3) on three occasions:

- 1) That in May 2007 Respondent accepted from the Republic of Turkey between \$1,000 and \$4,999 for his wife’s travel related expenses for a trip Respondent made to Turkey.
- 2) That in March 2009 Respondent solicited and accepted from the Kingdom of the Netherlands between \$5,000 and \$39,999.99 for his wife’s travel related expenses for a trip Respondent made to the Netherlands.
- 3) That in November 2009 Respondent accepted from the Federation of Turkish American Associations between \$5,000 and \$39,999.99 for his wife’s travel related expenses for a trip Respondent made to Turkey.

Respondent’s answer to this Notice followed, as did Petitioner’s petition before OATH, and ultimately on February 24, 2011, a hearing at OATH. Besides the hearing transcript and exhibits, the record herein also includes pre-trial and post-trial memoranda of law by both parties, as well as comments to the Board by both parties following the issuance of the Report.

At the OATH hearing, Petitioner presented one witness, who testified about what Respondent reported on his financial disclosure reports filed with this Board for calendar years 2007 and 2009, and also relied on documentary evidence, including trip itineraries that Respondent provided to the Board and the transcript of an interview of the Respondent conducted by the New York City Department of Investigation. Respondent cross-examined Petitioner’s witness, presented one witness, his wife (whom Petitioner cross-examined), and also presented documentary evidence.

It should be noted that the facts herein were never substantially in dispute. Respondent instead argued in his answer to the Notice of Probable Cause and in his pre-trial and post-trial briefs at OATH that his conduct did not violate Charter Chapter 68 or at a minimum that the Board had not given clear guidance that such conduct would violate Chapter 68. The ALJ did not find those arguments persuasive, nor does this Board.

The ALJ aptly summarized his findings as follows:

By accepting travel expenses for his wife for each trip, respondent used his position as a public servant for a private or personal advantage. Simply put, his wife was able to travel with him abroad—for free.

The Board notes that the Petition herein did not charge Respondent with a Charter violation in connection with *his own* travel. As the ALJ states, Petitioner did not dispute that

Respondent could accept free airfare and lodging *for himself*, consistent with the Board's jurisprudence permitting the acceptance of gifts of travel for official purposes. See, e.g., Board Rules Section 1-01(h). As Rule 1-01(h) recognizes, however, such gifts, which are "considered a gift to the City rather than to the public servant in question," are permissible for those expenses that "could properly be paid for with City funds." Paying for the company of one's spouse on business trip abroad is plainly not an expense that can be paid for with City funds.

Respondent was free to pay for his wife's travel with his own funds. In contrast, the Board has long advised that, in addition to the prohibition in Charter Section 2604(b)(5) against accepting valuable gifts from persons or firms that have business dealings with the City, a public servant may violate Charter Section 2604(b)(3) by accepting a gift even if the donor does not have such such dealings, if the public servant is receiving the gift only because of his or her City position. In Advisory Opinion No. 92-10, the Board advised an elected official that his acceptance of a trip to an out of State resort from a firm with no City business dealings would violate Charter Section 2604(b)(3). Similarly, in Advisory Opinion No. 92-23, the Board advised an elected official that it would violate Section 2604(b)(3) for him to accept two free tickets from a common carrier for travel to a destination outside of the State where the tickets were presented to him at a community event sponsored by a number of business organizations. See also Board Rules Section 1-01(k)(2), which provides, in pertinent part, that the "provisions of this section [the Valuable Gift Rule] shall be read in conjunction with the provisions of ...§2604(b)(3) of the Charter (prohibiting the use or attempted use of one's City position for private gain)..."

Here, the record demonstrates that, prior to the travel at issue here, the Board advised Respondent in writing that if his wife were to accompany him on an official trip, he would be required to pay for her travel expenses. Subsequently, on the eve of his May 2007 trip to Turkey, Respondent in a letter to the Board acknowledged his receipt of that advice, writing that "[a]s indicated by the COIB..., I will pay for my wife's airfare, our meals and incidental expenses while in Turkey." As the ALJ observed, "[r]espondent may disagree with the Board's interpretation of the Charter, but there is no question that the Board gave him advance notice of its position on this issue."

Following the issuance of the ALJ's Report, which, as noted above, found three violations of Charter Section 2604(b)(3) and recommended a fine of \$20,000, Petitioner submitted comments to the Board pursuant to Board Rules Section 2-04(a), recommending that the Board impose a fine of \$30,000 – \$10,000 for each violation. Respondent also submitted comments to the Board, which included a letter from Respondent wherein Respondent accepted responsibility for the violation and waived any right to appeal in the event the Board did accept the ALJ's finding of violations. Respondent's comments addressed the amount of the recommended fine, arguing that it was excessive. Respondent also requested that the Board consult with the Mayor, pursuant to Charter Section 2603(h)(3), which directs the Board, following an OATH hearing, to consult with the Respondent's agency head, "or in the case of an agency head, with the mayor," before issuing an Order imposing penalties.

It is the view of the Board that the requirement of Charter Section 2603(h)(3) that the Board consult with the Mayor before imposing a penalty on an “agency head” was plainly not intended to include elected officials, such as Respondent, who are not appointed by, or responsible to, the Mayor. The clear purpose of the consultation requirement was to afford the City official directly responsible for overseeing a respondent’s work, and with the power to retain or discharge the respondent, the opportunity to weigh-in on the appropriate penalty, before final Board action. Consultation with the Mayor would not serve that purpose where, as here, the Respondent is an elected official not subject to oversight or removal by the Mayor. In such a case, any requirement to consult is with the elected official himself or herself, a consultation afforded Respondent here in his opportunity to submit a comment to the Board on the Report, whose recommendations, as noted above, the Board accepts in this Order.

As to the amount of fine to be imposed, Petitioner argues, as it did at the hearing, for the maximum permissible fine of \$10,000 per violation,¹ for a total fine of \$30,000. Respondent, for his part, argues that the recommended fine of \$20,000 is excessive. The Board determines that the recommended fine of \$20,000 is the proper one. As the record and the Report reflect, Respondent received a benefit of at least \$11,000, though perhaps not substantially more, in free travel expenses for his wife. To impose a fine of no more than that amount would leave Respondent in the same financial status as the public servant who conformed his conduct to the Charter by paying for his or her spouse’s travel. Moreover, as the Board has previously held, in order to encourage settlements and thereby conserve government resources, the Board will usually impose a higher fine following trial than it would have accepted in a settlement. See COIB v. Williams, COIB Case No. 2006-045 (2009). A fine of \$20,000, as recommended by the ALJ, is thus in the Board’s view the appropriate one. However, the Board does agree with Petitioner that the total fine imposed should be apportioned among the three violations. Accordingly, the \$20,000 fine is imposed as follows in approximate proportion to the expenses of Mrs. Markowitz for which payment was accepted: \$3,000 for the 2007 Turkey trip, \$7,000 for the Netherlands trip, and \$10,000 for the 2009 Turkey trip, which came after Respondent was most recently on notice that it would be a violation to accept such expenses.

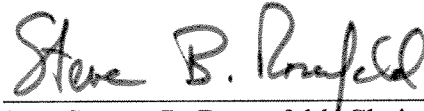
For these reasons, the Board finds that Respondent violated Charter Section 2604(b)(3) on three occasions and that the penalty for these three violations shall be \$20,000, apportioned as set forth above.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Charter Section 2606(b), that Respondent be assessed a civil penalty of \$20,000 to be paid to the Conflicts of Interest Board within 30 days of service of this Order.

¹ Effective November 2, 2010, after the trips at issue here, the maximum fine that the Board may impose was increased from \$10,000 to \$25,000 per violation. See Charter Section 2606(b).

Respondent has the right to appeal this Order to the Supreme Court of the State of New York by filing a petition pursuant to Article 78 of the Civil Practice Law and Rules.

The Conflicts of Interest Board

A handwritten signature in black ink, reading "Steve B. Rosenfeld". The signature is written in a cursive, slightly stylized font. The first name "Steve" is written in a larger, more prominent script than the last name "Rosenfeld".

By: Steven B. Rosenfeld, Chair

Monica Blum
Andrew Irving
Burton Lehman

Dated: July 21, 2011

Attachment

cc: Laurence D. Laufer, Esq.
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Administrative Law Judge Kevin F. Casey
Office of Administrative Trials and Hearings
40 Rector Street
New York, New York 10006

Conflicts of Interest Bd. v. Markowitz

OATH Index No. 1400/11 (May 5, 2011)

Petitioner proved that respondent, an elected official, violated the City Charter when he accepted free foreign travel for his wife on three occasions. \$20,000 fine recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
CONFLICTS OF INTEREST BOARD
Petitioner
- against -
MARTY MARKOWITZ
Respondent

REPORT AND RECOMMENDATION

KEVIN F. CASEY, *Administrative Law Judge*

Petitioner, the Conflicts of Interest Board, brought this civil penalty proceeding under Chapter 68 of the New York City Charter and Title 53 of the Rules of the City of New York. The Board alleged that respondent, the Brooklyn Borough President, used his position as a public servant for personal advantage, in violation of section 2604(b)(3) of the Charter (ALJ Ex. 1).

At a hearing on February 24, 2011, petitioner relied on testimony from one witness and documentary evidence, including the transcript of an interview with respondent. Respondent also offered documentary evidence and his wife testified on his behalf. Following receipt of post-hearing submissions, the record was closed on March 28, 2011. For the reasons below, I find that petitioner proved the charges and recommend a \$20,000 fine.

ANALYSIS

The charges stem from three trips abroad that respondent and his wife went on in 2007 and 2009. Foreign governments paid for two of the trips and a not-for-profit association paid for the third. Petitioner did not dispute that respondent conducted official business on all three trips and he could accept free airfare and lodging for himself. However, petitioner alleged that

respondent violated the Charter by accepting travel expenses for his wife. Petitioner proved the charges because free travel for respondent's wife personally benefitted respondent and his wife.

In April 2007, respondent asked the Board for an opinion regarding an invitation from Cunard to respondent and his wife to go on a cruise from England to Brooklyn aboard the Queen Mary 2 (Pet. Ex. 6). Respondent advised the Board that, during the cruise, he would deliver lectures and participate in a panel discussion promoting tourism in Brooklyn, a priority of his administration (Pet. Ex. 6). In May 2007, the Board advised respondent that it would not violate the Charter if he accepted the trip as long as he paid for his wife's passage and incremental expenses (Pet. Ex. 7). Petitioner did not charge respondent with any violation in connection with this trip.

In August 2007, respondent notified the Board that the Turkish government had invited him and his wife to Turkey, to promote Brooklyn tourism and improve relations between Turkey and Brooklyn, which has a large Turkish community (Pet. Ex. 8). Respondent informed the Board, "As indicated by the COIB for my trip in May 2007 on the Queen Mary 2, I will pay for my wife's airfare, our meals and incidental expenses while in Turkey" (Pet. Ex. 8).

The Turkish government paid for respondent's airfare and hotel lodging for him and his wife (Tr. 87-91). Respondent paid for his wife's international flight, but the Turkish Government paid for roundtrip flights for respondent and his wife from Istanbul to Antalya, Turkey (Tr. 87-88, 90-98). Respondent's wife testified that she did not know that there would be a flight within Turkey until the hosts drove her to the airport. She estimated that the value of that round-trip flight was \$200 (Tr. 91). In Turkey, respondent and his wife were guests of mayors and other officials for several meals (Tr. 89; Resp. Ex. F). Respondent paid for all other meals. In his Financial Disclosure Report for 2007, respondent stated that the Republic of Turkey paid between \$1,000 and \$5,000 for his wife's airfare and hotel expenses (Pet. Ex. 1 at 13).

In March 2009, respondent received an invitation to visit the Netherlands to celebrate the 400th anniversary of Henry Hudson's voyage to New York (Pet. Ex. 11). Respondent told the hosts that he could not attend the event without his wife and, if she attended, she would need official responsibilities (Pet. Ex. 5 at 56, 58). A Dutch representative advised respondent that his wife was welcome to be part of the visiting delegation but that there was no budget for her travel expenses (Pet. Ex. 5 at 62-63). When another member of the delegation dropped out, the Dutch government agreed to pay the travel expenses for respondent's wife (Pet. Ex. 5 at 64-65).

Respondent and his wife went on the trip as part of a delegation of eight New Yorkers, including a member of congress and other dignitaries (Pet. Ex. 11; Tr. 105). In his Financial Disclosure Report for 2009, respondent reported that the Dutch government paid between \$5,000 and \$40,000 for airfare and hotel lodging for respondent's wife (Pet. Ex. 2 at 9).

In November 2009, respondent and his wife returned to Turkey to develop sister-city status with Izmir, Turkey and strengthen "socio-economic relations" (Pet Ex. 2, at 5-6, 9). In his Financial Disclosure Report, respondent reported that the Federation of Turkish American Associations paid between \$5,000 and \$40,000 for airfare and hotel lodging for respondent's wife (Pet. Ex. 2 at 9).

Based on the foregoing, petitioner charged respondent with violating section 2604(b)(3) of New York City's Charter, which states:

No public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.

Respondent argued that petitioner had failed to provide guidance on the issue of whether solicitation or acceptance of travel-related expenses for a spouse violated the Charter (Resp. Mem. at 1, 6-12; Respondent's Trial Brief (Resp. Br.) at 12). He denied receiving a personal or private advantage (Resp. Br. at 4, 11). Respondent also claimed: his wife could accompany him on official business even if it resulted in a personal advantage (Resp. Memo at 12; Resp. Br. at 7); government-paid trips to Turkey and the Netherlands were exempt from the Charter's conflict of interest provisions (Resp. Br. at 7-11); and petitioner failed to show that he performed any act in connection with his wife's travel expenses for the 2009 trip to Turkey (Resp. Br. at 3).

The charges should be sustained. As an elected official, respondent is a public servant. Charter § 2601(19). His wife is "associated" with him. Charter § 2601(5). Respondent received the trips abroad because of his position as Borough President of Brooklyn and his wife went on all three trips because of her relationship to him. By accepting travel expenses for his wife for each trip, respondent used his position as a public servant for a private or personal advantage. Simply put, his wife was able to travel with him abroad -- for free.

Adequacy of Notice Regarding Expenses of an Accompanying Spouse

Respondent argued that a spouse may accompany an elected official on official business and the Board failed to provide clear guidance on this issue (Tr. 119; Resp. Memo at 12; Resp. Br. at 7). That claim lacks merit. The Charter broadly prohibits the use of a public servant's position to obtain any "direct or indirect" personal advantage. Charter § 2604(b)(3).

The Board recognizes an exception for a public servant's guest at some events. An elected official may accept a ticket to an annual fundraiser for a not-for-profit entity funded by the official's office, where attendance at the event serves the City's purposes. Conflicts of Interest Bd. Advisory Opinion 2000-4 at 10 (Dec. 29, 2000). Noting "the strains on family and personal life which certain obligations of a public servant present," the Board opined that an elected official may accept one free guest ticket to such an event. *Id.* at 11. Where the elected official attends an event for official business, the value of the second ticket was "irrelevant." *Id.* at n. 3; *see also* Conflicts of Interest Bd. Advisory Opinion No. 2007-3 at 8-9 (Dec. 12, 2007) (lobbyist may invite a public servant, "plus one guest," to fundraising events and exhibitions, where the public servant is invited in an official capacity and there is a nexus between the guest and the event); *see also* Conflicts of Interest Bd. Advisory Opinion No. 2009-01 at 11 (Mar. 12, 2009) (elected official, whom the Police Department has determined requires an official car, may be accompanied in the car by spouse or guest passengers, when the official is tending to City business or "is travelling out of town, for example, to a weekend home").

Business trips place greater strains on personal relationships than the occasional black-tie dinner. Thus, it could be argued that the "plus one on the guest list" exception should also apply when a spouse or guest accompanies an elected official on a business trip.

The flaw in this argument is that nothing in the Charter authorizes acceptance of travel expenses for a spouse to accompany an elected official on a business trip. Although the Board has carved out a limited exception for some official events, it has never suggested that this exception applies to foreign travel. The Board has long recognized that foreign travel is a fundamentally different type of benefit. *See* Conflicts of Interest Bd. Advisory Opinion No. 90-03 at 1-2 (Apr. 4, 1990) (elected official may accept a philanthropic organization's gift of trip to a foreign country, but the Board cautioned that acceptance of such a gift from a private organization, without a clear City purpose, creates a "disturbing" appearance). The Board's rules limit the circumstances under which a public servant may accept travel expenses. Those

expenses are permissible only where the trip is for a City purpose, the travel arrangements are appropriate for that purpose, and the trip is no longer than reasonably necessary to accomplish that purpose. 53 RCNY 1-01(h) (Lexis 2010); *see* Conflicts of Interest Bd. Advisory Opinion 92-19 at 2 (Apr. 6, 1992) (acting director of agency responsible for promoting film production may attend Cannes Film Festival at the expense of private entities). The rules regarding travel expenses are narrowly tailored and do not authorize acceptance of such expenses to enable a spouse to accompany a public servant on a business trip.

Even if the Board had sent mixed signals regarding the expenses for a spouse, there was no ambiguity here. In reply to respondent's inquiry regarding a trip aboard the Queen Mary 2, the Board replied that acceptance of travel expenses for his wife would violate the Charter (Pet. Ex. 7). The advisory letter was limited to the facts presented, where a company that did business with the City offered to pay the travel expenses, and it implicated an additional provision of the Charter. *See* Charter § 2604(b)(5) (public servants may not accept a valuable gift from any person or firm where the public servant knows that the person or firm does, or intends to do, business with the City). But the Board's letter also cited Charter section 2604(b)(3), which prohibits public servants from using their position for private or personal advantage, even if the entity paying the expenses does no business with the City.

The Board's May 2007 letter, with its explicit reference to section 2604(b)(3), undercuts any suggestion that respondent lacked adequate guidance. Indeed, respondent's letter of August 22, 2007, removed any doubt. A few days before he and his wife traveled to Turkey, respondent told the Board, "[a]s indicated by the COIB for my trip in May 2007 on the Queen Mary 2, I will pay for my wife's airfare, our meals and incidental expenses while in Turkey" (Pet. Ex. 8).

Respondent may disagree with the Board's interpretation of the Charter, but there is no question that the Board gave him advance notice of its position on this issue.

Personal or Private Advantage

Respondent claimed that neither he nor his wife received a personal or private advantage because the three contested trips were for business rather than pleasure (Pet. Ex. 5 at 78; Tr. 76-77, 115, 117). There is some merit to this point. The trips had detailed itineraries with little downtime (Tr. 74-75, 79). Respondent and his wife dined with mayors and their spouses; listened to speeches; received proclamations; and visited hospitals, urban renewal zones, and

religious centers (Tr. 97-98, 100-01). When they went to tourist destinations, such as the Anne Frank House or the Hagia Sophia, local officials accompanied them (Tr. 97-98, 100). However, despite the hectic schedule, the opportunity to travel at little or no cost to Turkey or the Netherlands also personally benefitted respondent and his wife.

Respondent also presented evidence that he had turned down other trips abroad, he "is not a good flyer," and he never flew anywhere without his wife (Tr. 85; Pet. Ex. 5 at 53-54, 56). Thus, respondent argued, he needed his wife to join him on the trips to enable him to perform his official duties (Tr. 115). The wish to stay home or only travel with a spouse is a personal preference. Once he accepted free travel for his wife, respondent used his position to satisfy his personal preference. That is a private or personal advantage.

The Role of an Elected Official's Spouse

Respondent offered evidence that his wife has been referred to by constituents, local media, and foreign officials as "the First Lady of Brooklyn" (Tr. 65-67; Resp. Ex. G). Building on that evidence, respondent's counsel compared the role of respondent's wife to that of the nation's First Lady (Resp. Mem. at 21). The comparison is inapt.

Historically, the nation's First Ladies have been subject to intense public scrutiny. Recent First Ladies are household names to most Americans, they are internationally recognized figures, and they have a full-time staff. There is simply no meaningful comparison between the role of First Lady of the United States and the First Lady of Brooklyn.

Spouses of most elected officials endure a loss of privacy and extra demands on their time, and respondent's wife actively assists her husband in his official duties. However, respondent's wife does not have any official role in the Borough President's office. Even though respondent's wife actively participated in some of the events abroad, such as making formal remarks at a few ceremonies and minting a coin in honor of Henry Hudson, her attendance was not required (Tr. 77, 104). Indeed, respondent and his wife were part of a larger delegation of New Yorkers who went to the Netherlands. Yet it appears that no other delegation member was accompanied by a spouse (Tr. 106; Pet. Ex. 11, Confirmed Guests). Respondent's wife would never have been a member of the delegation if she had not been associated with respondent.

Gifts From The Public Sector

For the first two trips, paid for by the governments of the Turkey and the Netherlands, respondent claimed that gifts from the “public sector” do not violate the Charter’s conflict of interest provisions. That claim rested on an advisory opinion footnote where the Board stated that donations from other public entities “present no Chapter 68 problems.” Conflicts of Interest Bd. Advisory Opinion No. 2003-04 at 17, n.4 (May 7, 2003). Respondent is mistaken.

The cited opinion focused on the propriety of soliciting funds for the benefit of the City or not-for-profit groups. *Id.* at 1. The footnote referred to by respondent states, “It should be noted that the focus of this Advisory Opinion is on solicitation of gifts *from the private sector*. Donations of goods or services from other public sector entities – e.g., free consulting or training programs provided to City agencies by the City University – present no Chapter 68 problems.” *Id.* at 17-18, n. 4 (emphasis in original). From this thread, respondent weaves the claim that the Board’s “longstanding” policy permits donations by government entities (Resp. Br. at 8-9).

A lone footnote in an opinion involving a different issue hardly qualifies as a longstanding policy. Moreover, the facts here bear no resemblance to the example given by the Board, where a public university, partly funded by the City, could donate training to various City agencies. Here, in contrast, foreign governments donated travel expenses to respondent and his wife. Although payment for respondent’s travel is a gift to the City, the same is not true for the payment of his wife’s expenses. Those payments personally benefitted respondent and his wife.

Respondent also invoked the Act of State Doctrine to argue that the Board is precluded from questioning the decision of two sovereign governments to invite respondent’s wife to their countries. *See Underhill v. Hernandez*, 168 U.S. 250, 252 (1897) (“courts of one country will not sit in judgment of the acts of the government of another country done within its own territory”). In respondent’s view, “an agency of the City of New York cannot question the motive of an official of a foreign government” (Resp. Br. at 10).

Petitioner does not question the right of a foreign government to invite respondent and his wife for a visit. Instead, petitioner questions respondent’s acceptance of travel expenses on his wife’s behalf. This is within the Board’s power. To hold otherwise would lead to odd results. For example, a foreign government might decide that it was in its interest to give a large amount of money to a City official vacationing in that country. Without questioning a sovereign nation’s motives, the Board could conclude that acceptance of such a donation violates the Charter.

Respondent's Actions in Connection with 2009 Trip to Turkey

As for the 2009 trip to Turkey, paid by the Federation of Turkish-American Associations, respondent argued that petitioner failed to prove a Charter violation (Tr. 117-18; Resp. Br. at 3). On the contrary, petitioner's evidence was sufficient. In his Financial Disclosure Report for 2009, respondent revealed that he and his wife went to Turkey to improve cultural and economic ties, and to develop "sister-city" status with Izmir, Turkey (Pet. Ex. 2 at 5-6, 9). Respondent reported that he accepted, on his wife's behalf, airfare and hotel expenses valued at between \$5,000 and \$40,000 (Pet. Ex. 2 at 7, 9). That un-rebutted admission proved, by a preponderance of evidence, that respondent accepted a benefit. Again, it is unlikely that respondent's wife would have received those benefits without her connection to respondent. By accepting a private benefit, respondent violated the Charter. *See* Conflicts of Interest Bd. Advisory Opinion No. 92-10 (Apr. 6, 1992)(acceptance of trip to a resort may violate Charter section 2604(b)(3)).

FINDINGS AND CONCLUSIONS

Petitioner proved that respondent violated section 2604(b)(3) of the Charter by using his position for personal advantage and accepting travel expenses on his wife's behalf, as alleged in the petition.

RECOMMENDATION

At the hearing, petitioner requested a recommended penalty of \$10,000 for each of the three trips, for a total penalty of \$30,000 (Tr. 131; Pet. Br. at 9). That is the maximum allowable penalty. Charter 2606(b) (Lexis 2011).¹ That is excessive.

Petitioner argued that the Board routinely imposed penalties ranging from \$1,500 to \$5,000 for City employees who use their position to obtain a personal benefit and respondent, as an elected official, should be held to a higher standard (Tr. 129). *Compare Conflicts of Interest Bd. v. Holtzman*, OATH Index No. 581/94 (Nov. 23, 1994), *aff'd in part, rev'd in part*, Conflicts of Interest Bd. Case No. 93-121 (Apr. 3, 1996), *aff'd sub nom., Holtzman v. Oliensis*, 91 N.Y.2d 488 (\$7,500 fine imposed for violating Charter section 2604(b)(3) where Comptroller used her position to delay repayment of campaign loan), *with Conflicts of Interest Bd. v. Williams*, Conflicts of Interest Bd. Case No. 2006-045 (Nov. 5, 2009), *modifying on penalty*, OATH Index

¹ Effective November 2, 2010, the maximum allowable penalty was increased to \$25,000 for each violation. Charter § 2606(b).

No. 2135/08 (Feb. 3, 2009) (\$1,500 fine imposed on hospital police officer who hired subordinates to work for his video production company, in violation of Charter sections 2604(b)(3) and (b)(14)). Petitioner also argued that respondent should receive a tougher penalty because he ignored the Board's Advisory Opinion and he actively solicited the Dutch government to cover travel expenses for his wife (Tr. 131).

Respondent argued that a \$30,000 penalty was too harsh because he voluntarily disclosed all of the information that led to the charges and he cooperated with the investigation, the penalty sought by petitioner was disproportionate to the benefit received, and the Board's prior precedents were unclear (Tr. 119, 123).

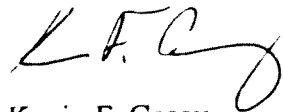
There is some merit to each side's penalty arguments. Neither side cited precedent involving a penalty for accepting travel expenses for a spouse who accompanied an official on City business. Both sides referred to cases involving travel expenses for trips with no City purpose. *See Matter of Mir*, Conflict of Interest Bd. Case No. 2008-421 (Sept. 11, 2008) (official fined \$11,500, where vendor paid for official's meals and honeymoon travel expenses for the official's son); *Matter of Safir*, Conflict of Interest Bd. Case No. 99-115 (Aug. 16, 2000) (former police commissioner rebuked for accepting a free trip for himself and his wife to attend the Oscars, from a company that did business with the City; former commissioner later repaid host \$7,100 for the trip's cost and no fine imposed). Here, unlike *Mir* and *Safir*, the trips partly served the City's interests by promoting cultural awareness and tourism, and the entities that paid the expenses did no business with the City. This does not excuse respondent's actions, but it shows that this is not a case requiring the maximum fine.

Petitioner noted that *Mir* and *Safir* involved agreed upon settlements. To encourage settlements, the Board has said that it may impose higher penalties after a hearing. *See Williams*, Conflicts of Interest Bd. Case No. 2006-045 at 4-5. Despite that policy, imposition of the maximum penalty would unduly penalize respondent for exercising his right to a hearing.

It is also noteworthy that the violations came to the Board's attention because respondent fully disclosed all of the benefits he received. Indeed, it appears that respondent erred on the side of caution and voluntarily reported more than he was required to disclose. Julia Davis, Special Counsel and Director of Financial Disclosure at the Board, testified that it was not unusual or improper for individuals to "over-report" on their financial disclosure forms and respondent was not required to report expenses paid by a government entity (Tr. 43).

The value of the benefit received is not dispositive, but it is relevant. Based on respondent's disclosures, petitioner argued that respondent received a benefit of at least \$11,000 (Pet. Br. at 9). It does not seem that respondent received much more than that. The major benefit received was airfare. For the 2007 trip to Turkey, respondent paid for his wife's international flight, but he did not pay for her \$200 flight within Turkey. For the 2009 trip to the Netherlands, respondent's wife credibly testified that the roundtrip airfare was about \$5,000 (Tr. 84-85). As for lodging, it was unclear how much additional expense, if any, was attributable to respondent's wife. The hotel in the Netherlands only had double rooms and, thus, there was no additional cost for respondent's wife; she did not know whether there was any added cost for her to stay in Turkey (Tr. 82-84, 89-90). There was little evidence regarding the 2009 trip to Turkey beyond respondent's report that his wife's airfare and hotel expenses were at least \$5,000.

In sum, respondent received a substantial benefit and his solicitation of travel expenses for the trip to the Netherlands was an aggravating factor. However, consideration of the mitigating circumstances, including the minimal benefit received for the 2007 trip to Turkey, justifies a less than maximum penalty. Accordingly, I recommend a total fine of \$20,000.



Kevin F. Casey
Administrative Law Judge

May 5, 2011

SUBMITTED TO:

STEVEN B. ROSENFELD
Chair

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