

Patrick Ford
Executive Director

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Acting Director of Enforcement

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(415) 252-3100

BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

In the Matter of)	SFEC Case No. 23-588
)	
LUIS BARAHONA,)	
)	
)	
Respondent.)	STIPULATION, DECISION
)	AND ORDER
)	
)	
)	
)	
)	
)	

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order (Stipulation) is made and entered into by and between Luis Barahona (Respondent) and the San Francisco Ethics Commission (the Commission).
2. Respondent and the Commission agree to settle and resolve all factual and legal issues in this matter and to reach a final disposition without an administrative hearing. Upon approval of this Stipulation and full performance of the terms outlined in this Stipulation, the Commission will take no future action against Respondent, and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondent related to the violations of law described in Exhibit A.

Respondent understands and knowingly and voluntarily waives all rights to judicial review of this Stipulation and any action taken by the Commission or its staff on this matter.

3. Respondent acknowledges responsibility for and agrees to pay an administrative penalty as set forth in Exhibit A. Respondent agrees that this penalty is a reasonable administrative penalty.

4. Within ten business days of the Commission's approval of this Stipulation, Respondent shall either pay the penalty set forth in Exhibit A through the City's online payment portal or otherwise deliver to the following address a check or money order made payable to the "City and County of San Francisco":

San Francisco Ethics Commission
Attn: Enforcement & Legal Affairs Division
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

5. If Respondent fails to comply with the terms of this Stipulation, then the Commission may reopen this matter and prosecute Respondent under Section C3.699-13 of the San Francisco Charter for any available relief.

6. Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission's Enforcement Regulations with respect to this matter. These include, but are not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondent's expense, to confront and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

7. Respondent understands and acknowledges that this Stipulation is not binding on any other government agency with the authority to enforce the San Francisco Campaign & Governmental Conduct Code section 1.100 *et seq.*, and does not preclude the Commission or its staff from cooperating

with or assisting any other government agency in its prosecution of Respondent for any allegations set forth in Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.

8. This Stipulation is subject to the Commission's approval. In the event the Commission declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 9, which shall survive.

9. In the event the Commission rejects this Stipulation, and further administrative proceedings before the Commission are necessary, Respondent agrees that the Stipulation and all references to it are inadmissible. Respondent moreover agrees not to challenge, dispute, or object to the participation of any member of the Commission or its staff in any necessary administrative proceeding for reasons stemming from his or her prior consideration of this Stipulation.

10. This Stipulation, along with the attached Exhibit A, reflects the entire agreement between the parties hereto and supersedes any and all prior negotiations, understandings, and agreements with respect to the transactions contemplated herein. This Stipulation may not be amended orally. Any amendment or modification to this Stipulation must be in writing duly executed by all parties and approved by the Commission at a regular or special meeting.

11. This Stipulation shall be construed under, and interpreted in accordance with, the laws of the State of California. If any provision of the Stipulation is found to be unenforceable, the remaining provisions shall remain valid and enforceable.

12. The parties hereto may sign different copies of this Stipulation, which will be deemed to have the same effect as though all parties had signed the same document.

Dated: 04-15-2024 | 15:28:23 PDT DocuSigned by: [Redacted] 2CBDBB61AD064FE...

PATRICK FORD, EXECUTIVE DIRECTOR
SAN FRANCISCO ETHICS COMMISSION

Dated: 04-15-2024 | 11:57:37 PDT DocuSigned by: [Redacted] 134BF2490460421...

LUIS BARAHONA

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of "Luis Barahona, SFEC Case No. 23-588," including the attached Exhibit A, is hereby accepted as the final Decision and Order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: _____

THEIS FINLEV, CHAIRPERSON

SAN FRANCISCO ETHICS COMMISSION

Exhibit A

I. Introduction

Luis Barahona (“Respondent”) is a Senior Housing Inspector with the Department of Building Inspection (“DBI”). Respondent joined DBI as a Housing Inspector in 2013. In 2020, Respondent was promoted to the position of Senior Housing Inspector. While still in his role as a Housing Inspector in 2016, Respondent joined the Board of the Tenderloin Neighborhood Development Corporation (“TNDC”), a non-profit organization. The TNDC owns and manages several buildings within the City. While serving on the Board of the TNDC, Respondent, in his role as a City Housing Inspector, inspected several buildings owned or managed by the TNDC. As a Senior Housing Inspector, Respondent also made certain decisions regarding inspections of TNDC buildings conducted by his subordinates. By serving on the TNDC Board while making decisions regarding TNDC buildings, Respondent was engaged in outside activity that conflicted with his City duties in violation of DBI’s Statement of Incompatible Activities (“SIA”). Additionally, Respondent did not properly disclose his business relationship with the TNDC before conducting the inspections or making any decisions regarding TNDC buildings.

II. Applicable Law

Statement of Incompatible Activities (SIA)

San Francisco Campaign and Governmental Conduct Code (“SF C&GC Code”) section 3.218(a) states that “[n]o officer or employee of the City and County may engage in any employment, activity, or enterprise that the department, board, commission, or agency of which he or she is a member or employee has identified as incompatible in a statement of incompatible activities adopted under this Section.” DBI adopted an SIA pursuant to section 3.218 that applies to all DBI officers and employees.¹ Under section III(A)(1) of the SIA, an outside activity conflicts with City duties when the ability of the officer or employee to perform the duties of his or her City position is materially impaired. Additionally, DBI officers and employees are prohibited under the SIA from “engag[ing] in an outside activity (regardless of whether the activity is compensated) that is subject to the control, inspection, review, audit or enforcement of the Department.” DBI SIA §III(A)(3).

Disclosure of Personal, Professional, and Business Relationships

Under City law, City officers and employees are required to “disclose on the public record any personal, professional, or business relationship with any individual who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by the officer or employee where, as a result of the relationship, the ability of the officer or employee to act for the benefit of the public could reasonably be questioned.” SF C&GCC § 3.214(a). For City employees, this requires that the employee submit a memorandum disclosing the relationship that is kept on file at the offices of the City employee’s department. *Id.* “Disclosure on the public record must occur before the governmental decision is made and need be repeated when a decision is considered over multiple days or meetings.” Regulation § 3.214-6.

The regulations also specify what kinds of relationships must be disclosed, stating that “[a]n individual has an ownership or financial interest in the subject of a governmental decision when that

¹ This SIA was first adopted on March 14, 2008, and was later revised on August 28, 2020. The revisions did not affect the provisions at issue in this matter.

individual . . . holds a position as a director, officer, partner, or trustee with a business or non-profit entity that is the subject of the governmental decision.” Regulation § 3.214-4. Example 2 to Regulation 3.214-4 states that a City official “who is also a member of [a] non-profit’s board of directors is an individual who has an ownership or financial interest in the subject of a governmental decision because she is an officer of a non-profit organization that is the subject of a government decision.” *Id.*

The regulations define making a governmental decision to include when a City officer “obligates or commits his or her department, board, commission or agency to any course of action” or “determines not to act [on any course of action].” See Regulation § 3.214-2(a).

III. Material Facts and Analysis

Background

Respondent joined DBI as a Housing Inspector in 2013. As a Housing Inspector, Respondent was responsible for responding to and investigating housing code violations related to complaints reported by tenants against their landlords. Part of Respondent’s duties was to physically inspect the reported condition, verify whether there were any actual housing code violations, issue notices of violations requiring landlords to correct any identified violations, and refer matters for hearings where the landlord failed to correct the identified violations. Respondent became a Senior Housing Inspector in 2020. As a Senior Housing Inspector, Respondent is responsible for supervising three other housing inspectors responsible for different districts throughout the City. Respondent’s role as a Senior Housing Inspector is to train and assign work tasks as well as resources, including cars and personal protective equipment to Housing Inspectors. Unlike Housing Inspectors, Senior Housing Inspectors are not assigned to any specific district but instead are responsible for reviewing and approving the recommendations of Housing Inspectors to schedule a violation for a Director’s hearing where a landlord fails to abate or correct a violation. Where a violation is abated or corrected by the landlord and the matter is closed, Senior Housing Inspectors do not typically get involved in the complaint process unless they are contacted by the Housing Inspector for assistance or by a stakeholder regarding the housing matter.

In 2016, while serving in his role as a Housing Inspector, Respondent joined the Board of the TNDC. The TNDC owns and operates several residential buildings in the City. Governed by a Board of Directors, the TNDC works to provide affordable housing with supportive service to low-income residents in the Tenderloin and throughout San Francisco. As a member of the TNDC Board of Directors, Respondent served on the Committee for Community Organizing and Policy, within the TNDC Board. He also served on TNDC Board’s Executive Committee from 2018 to 2019, and, until his resignation from the TNDC Board on September 25, 2023, Respondent served as the Chair of the Board Governance Committee on the TNDC Board. The Board meets bi-monthly, while the Committees within the Board meet monthly to oversee the TNDC’s various departments. The TNDC as an organization holds an annual day-long retreat attended by Board members and senior staff.

Multiple properties that Respondent inspected as a Housing Inspector or reviewed as a Senior Housing Inspector between 2014 and 2022 were owned or managed by the TNDC. While serving on the Board of the TNDC, Respondent in his capacity as a Housing Inspector responded to and inspected six properties owned or managed by the TNDC and as a Senior Housing Inspector, reviewed seven complaints regarding those same six properties owned by the TNDC as a Senior Housing Inspector,

totaling thirteen complaints involving TNDC properties. Because one of the inspections conducted by Respondent as a Housing Inspector while serving on the Board of the TNDC was done in 2019, which is beyond the four-year statutes of limitation for this matter, only twelve of the complaints are considered and will be referenced in this matter.

Statement of Incompatible Activities

Respondent's position on the TNDC Board of Directors was incompatible with his City employment under two rules contained within DBI's SIA. First, Respondent's service on the TNDC Board violated DBI's SIA because it constituted an activity "subject to the control, inspection, review, audit or enforcement" of Respondent's department. DBI SIA §III(A)(3). As a housing provider, TNDC's housing operations and properties owned and managed by the TNDC are subject to inspection and review by DBI. DBI Inspectors respond to complaints and conduct inspections and review of building and housing code violations involving TNDC properties and enforce any notices of violations against the TNDC as required. As stated above, Respondent was personally involved in twelve such complaints as a DBI employee, which underscores that TNDC's operations are subject to the review of Respondent's department.

Second, Respondent's role on the Board of the TNDC had the potential to materially impair his ability to perform his City duties. Respondent was responsible for inspecting housing and, in the normal course of his duties, was required to inspect units owned or managed by the TNDC. To avoid the appearance of a conflict of interest and the potential for bias, Respondent should not have engaged in any official City work that pertained to the TNDC. Complaints relevant to this matter involving TNDC properties came before Respondent twelve separate times between 2016 and 2023. Respondent's duties as a City Housing Inspector could have been materially impaired by the opposing interests of his City employer and the organization he supported through his Board service. DBI is responsible for enforcing violations of housing laws, and TNDC would have been potentially harmed, both financially and reputationally, by a finding of housing law violations. Although Respondent's conduct does not constitute a financial conflict of interest under California Government Code section 87100 because Respondent was not paid by TNDC, it does constitute an incompatible activity because of its potential negative effect on Respondent's duty to perform his City duties in an unbiased way.

Respondent's service on the TNDC Board was incompatible with his City duties, and Respondent thus violated SFC&GC Code section 3.218.

Disclosure of Professional Relationships

As noted above, a member of the Board of a non-profit organization is considered to have a financial or ownership interest in the organization as provided under Ethics Commission Regulation 3.214-4. As a member of the TNDC Board of Directors, even though there was no evidence to indicate that Respondent received any income from the position, Respondent had a financial or ownership interest in TNDC, as defined under the Regulation, and was required to disclose his relationship with the organization by submitting a memorandum that should have been kept on file within the DBI. Respondent made decisions on at least seven separate occasions and should have made this disclosure before he made any of the decisions. However, there is no record of any disclosure of the relationship between Respondent and the TNDC on any memorandum on file at the DBI as required under the law.

Therefore, Respondent violated the provision requiring disclosure of a professional relationship under SF C&GCC Section 3.214.

IV. Violations of Law

Count 1
Engaging in incompatible activities
in violation of SF C&GCC Section 3.218(a)

Count 1: By serving on the Board of the TNDC while simultaneously inspecting TNDC buildings and making decisions regarding TNDC buildings, Respondent engaged in an activity that was incompatible with his City duties in violation of sections III(A)(1) and III(A)(3) of the DBI SIA and SF C&GCC section 3.218(a).

Count 2
Failure to disclose professional relationship in violation of SF C&GCC Section 3.214

Count 2: By failing to disclose on the public record his professional relationship with a person that was the subject of or had a financial or ownership interest in a governmental decision being made by Respondent, Respondent violated SF C&GCC Section 3.214.

Penalty Assessment

This matter consists of two counts involving violations of the San Francisco Campaign and Governmental Conduct Code. The San Francisco Charter authorizes the Commission to assess a maximum administrative penalty of “up to five thousand dollars (\$5,000) for each violation or three times the amount which the person failed to report properly or unlawfully contributed, expended, gave or received.” SF Charter § C3.699-13(c)(i)(3). However, the San Francisco Campaign and Governmental Conduct Code provides that no monetary penalties may be assessed for violation of this code section.

Per Commission Regulations section 9(D), when determining penalties, the Ethics Commission considers all of the relevant circumstances surrounding the case, including but not limited to: (a) the severity of the violation; (b) the presence or absence of any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was an isolated incident or part of a pattern; (e) whether the respondent has a prior record of violations of law; and (f) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.

Regarding count 1, SIA rules are important because they serve to prohibit practices that could compromise the public’s trust in the integrity of City government or give rise to potential conflicts of interest, undue influence, or unfair advantage. The TNDC is subject to the inspection, review, and enforcement of DBI, and Respondent himself conducted such inspections on twelve separate occasions. By inspecting or reviewing the inspections of properties owned or managed by the TNDC while serving on the Board of the TNDC, Respondent engaged in a prohibited activity. Additionally, Respondent potentially created the appearance of favoritism and preferential treatment by inspecting and making decisions on buildings belonging to or managed by the same organization on which he served as a Board

member. Also, because DBI enforces housing code violations against property owners and the TNDC owns properties within DBI's jurisdiction, DBI's interests and that of the TNDC could be considered to be opposing. Thus, Respondent's duties as a Housing or Senior Housing Inspector could have been materially impaired by the opposing interests of DBI and the TNDC, an organization he supported through his Board service. In fact, the incompatibility of Respondent's conduct was apparent to at least one member of the public, and Respondent's membership on the TNDC Board while performing his duty as a Senior Housing Inspector gave this member of the public the impression that Respondent was not properly conducting his City duty. Respondent's engagement in such activity was incompatible with his City employment.

Regarding Count 2, as described above, because Respondent was a member of the TNDC Board, he was considered to have a financial or ownership interest in the TNDC and, thus, required to disclose his relationship with the TNDC by submitting a memorandum on file with his Department, but he failed to do so. Notably, the TNDC was not an actual source of financial interest to Respondent and thus, there was no financial conflict of interest at issue here. However, Respondent's failure to properly disclose his professional relationship with the TNDC and members of the TNDC Board posed a risk that his ability to act for the benefit of the public could reasonably be questioned. Although this conduct constitutes a violation under the law, as stated above, the San Francisco Campaign and Governmental Conduct Code provides that no monetary penalties may be assessed for violation of this code section.

In mitigation, as stated above, Respondent did not engage in a financial conflict of interest in this matter, and there is also, no evidence that he provided any favorable treatment to the TNDC buildings, or that his role on TNDC Board in fact impacted his duties as a Housing Inspector or Senior Housing Inspector. Additionally, Respondent explained that he joined the TNDC because of his desire to continue to serve the community of mostly low-income tenants in the Tenderloin. He noted that for personal reasons, he had planned to step down from the Board by the end of last year, but following his interaction with investigators, Respondent stepped down sooner in September instead. Also, Respondent has no history of violations of ethics rules, and Respondent fully cooperated with investigators in this matter.

In balancing the above facts and considering the penalty factors and prior analogous enforcement cases resolved by the Ethics Commission, and to promote a future deterrent effect, Staff proposes, and Respondent agrees to, the following penalties for the above listed violations of City law:

Count 1 (Incompatible Activity): \$2,500

Count 2 (Disclosure of Professional Relationship): \$0