FLORIDA
COMMISSION ON ETHICS
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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re: Andreana Jackson,

Respondent. **Complaint No. 18-141**

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ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint, Complaint Amendment, and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

RESPONDENT/COMPLAINANT

Respondent, Andreanna Jackson, serves as the Vice Mayor of the City of North Bay Village. Complainant is Richard Chervony of North Bay Village, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and on August 19, 2016 ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Sections 112.313(6), 112.3148(3), 112.3148(4), and 112.3148(8), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on October 18, 2019.

ALLEGATION ONE

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by requesting and receiving free admission to a charity event for herself and a friend on the basis that she was Vice Mayor of the City of North Bay Village.

APPLICABLE LAW

Section 112.313(6), Florida Statutes, provides as follows:

> MISUSE OF PUBLIC POSITION. -No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

The term "corruptly" is defined by Section 112.312(9), Florida Statutes, as follows:

> "Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

In order to establish a violation of Section 112.313(6), Florida Statutes, the following elements must be proved:

1. Respondent must have been a public officer or employee.

2. Respondent must have:
   a) used or attempted to use his or her official position or any property or resources within his or her trust,
   or
   b) performed his or her official duties.

3. Respondent's actions must have been taken to secure a special privilege, benefit or exemption for him- or herself or others.

4. Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting him- or herself or another

person from some act or omission which was inconsistent with the proper performance of public duties.

ANALYSIS

Respondent has served on the North Bay Village Commission since 2015 and was appointed Vice Mayor in or around March 2018. (ROI 1, 15) North Bay Village is a municipality in Miami-Dade County whose governing body consists of a five-member Board of Commissioners that includes a Mayor and Vice-Mayor. (ROI 3)

The Little Lighthouse Foundation (LLF) is a 501(c)(3), non-profit corporation, providing volunteers and/or financial support to children, families, and youth-based charities in South Florida. (ROI 5) On March 17, 2018, the LLF hosted a Hearts and Stars Saturday Evening Gala, which was a black-tie charity event where guests enjoyed top entertainers, complimentary food, and complimentary premium cocktails. (ROI 6, Exhibit C) General admission event tickets were $200 per person. (ROI 4, 8) General admission did not include seating and was farther from the stage than VIP admission.[1] (ROI 6) Then-Commission candidate Julianna Strout[2] paid $5,000 for a 10-person table in the VIP lounge. (ROI 11) The VIP lounge offered unlimited bottle service and was closer to the stage. (ROI 6)

In the weeks preceding the Gala, Strout passed out flyers at City Hall advertising the Gala and told the Village Clerk Elora Riera that she planned on attending and advised that, if anyone else was interested in attending, tickets could be purchased online through the LLF website. (ROI 12) On March 7, then-Village Clerk Yvonne Hamilton sent an e-mail stating: "Good afternoon Mayor, Vice Mayor and Commissioners: I have left the original of the attached invitation from Julianna Strout in your mailbox." (ROI 12, 13, Exhibit C) The "invitation," described by Strout as

[1] Complainant valued the tickets between $500 and $7,000. (ROI 4)
[2] Strout is currently a Commissioner. (ROI 11)

a "flyer," provides that "The Little Lighthouse Foundation Presents Hearts and Stars Gala" on Saturday, March 17, 2018 from 9 p.m. to 2 a.m. and lists the names of several sponsors. (Exhibit C) Also included is the website address. (Exhibit C)

On or around March 16, 2018, Respondent called Strout soliciting[3] free tickets for herself and her friend to the Gala. (ROI 4, 14, 15, Exhibits B, C) Strout informed Respondent that the event might be sold out and advised her to try purchasing tickets online. (ROI 14) Then, Respondent asked if Strout could get the cost of the tickets waived by calling the LLF on Respondent's behalf to let them know that the Vice Mayor would like to attend. (ROI 14)

Strout sent the following text message to LLF Program Director and Gala event organizer Priscilla Roman:

> We have the vice mayor [Respondent] of north bay village wants to come Saturday so we do anything like comp politicians tickets? It's her and her plus one
> Guest name Rosie Nwakanma
> Vice Mayor Andreana Jackson

(ROI 10, Exhibit B)

Roman responded, "let me see if there's anything we can do." (Exhibit B) A short time later, Roman informed Strout that Respondent and her guest were added to the Gala guest list. (ROI 10, Exhibit B)

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[3] According to the Merriam-Webster Dictionary, "solicit" means to approach with a request or plea or to try to obtain by usually urgent requests or pleas. Solicit is a synonym for "ask, request, solicit mean to seek to obtain by making one's wants known. ask implies no more than the statement of the desire. *ask* a favor of a friend request implies greater formality and courtesy. *requests* the pleasure of your company solicit suggests a calling attention to one's wants or desires by public announcement or advertisement. a letter *soliciting* information."
https://www.merriam-webster.com/dictionary/solicit#synonymsDefinition of *solicit*

When Respondent arrived at the Gala, she sent a text message to Strout letting her know she had arrived. (ROI 17) Strout met Respondent at the entrance to the Gala and gave Respondent two general admission tickets.[4] (ROI 11) Respondent said that she never received an actual ticket assigning her to a specific area inside the Gala. (ROI 17) However, rather than proceeding to the general admission area, Respondent followed Strout into the VIP lounge where she remained for the entire evening. (ROI 11) According to Strout, it was awkward having Respondent and her guest "at the table because there was barely enough room to fit everyone." (ROI 11) Strout did not say anything to Respondent and no one questioned Respondent about being in the VIP area.[5] (ROI 19)

Strout said she felt pressured to facilitate the free admissions to the Gala for Respondent due to past tense interactions between them during Village Commission meetings and various Village board meetings. (ROI 18) Strout's characterization of the events to the Commission's investigator is as follows:

> Respondent [is] oftentimes difficult, so when the charity Gala took place, then-candidate Strout did not want any additional friction and felt compelled to acquiesce to the Respondent's request. Commissioner Strout claimed that it was an inconvenience to make arrangements for the Respondent, and she felt overburdened, especially since she (Commissioner Strout) made a charitable contribution for her own admission to what she believed was a worthy charitable event and the Respondent and her friend did not have to donate anything to attend.

(ROI 18)

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[4] Contrary to Complainant's assertion, there was no dispute about Respondent's admission at the door. (ROI 4, 11)

[5] An identical complaint was submitted to the Miami-Dade Commission on Ethics and Public Trust. The investigation concluded with a finding that the "evidence was insufficient to warrant the filing of an ethics complaint against Respondent" because Respondent "did not solicit tickets to the event." (ROI 7) In addition, "when [the Respondent] received the e-mail from the Village Clerk extending an 'invitation' to the Hearts and Stars Gala, she believed that to be an actual invitation." (ROI 7)

Respondent stated she was aware that the Gala tickets cost money but never inquired about the cost of the tickets until five months later when she was reminded by then-Village Clerk Hamilton to file a CE Form 9, "Quarterly Gift Disclosure." (ROI 15, 16)

Respondent used her title to get herself and her friend something to which she was not entitled and not otherwise available to the general public (i.e., free tickets based on her position). Respondent said that she attended in her official position, yet, she did not perform any Vice-Mayoral duties or speak publicly at the event. (ROI 14, 17) If Respondent *had* attended in her official capacity, according to Village Manager Ralph Rosado, she did not need prior approval and she could have submitted necessary documentation to be reimbursed for her expenditures (exclusive of expenses for her friend, of course). (ROI 19)

In a further display of disregard for the rules, Respondent and her friend then took advantage of their general admission tickets to sit in the VIP lounge where they were closer to the stage and had access to unlimited bottle service. (ROI 6) Respondent and her friend did not take over two empty seats at Strout's table but rather jammed two more chairs at a table set for 10. Each ticket holder at their table occupied a $500 seat ($5,000 paid by Strout for a 10-seat table), except for Respondent and her friend whose tickets were $200 each. In sum, Respondent and her friend deprived the charity of $400 in general admission tickets and then deprived it of an additional $600 by spending the evening in an area not authorized by their tickets.[6]

Respondent stated that she was "just trying to be a good Commissioner and show up for [her] residents." (ROI 17) A better example for her residents would have been making a donation to the charity. Respondent did not just receive a perk for herself and her friend due to her public

[6] ($200 tickets x 2 = $400) for general admission. (Two $500 seats in the VIP lounge = $1,000 minus $400 = $600). Six hundred dollars ($600) is the total value of the tickets for Respondent and her friend.

office, she did it at the expense of a charity. Her actions were done with a wrongful intent and were inconsistent with the performance of her official duties.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

ALLEGATION TWO

Respondent is alleged to have violated Section 112.3148(3), Florida Statutes, by soliciting a gift from a vendor or lobbyist for herself and/or another.

APPLICABLE LAW

Section 112.3148(3), Florida Statutes, provides as follows:

> A reporting individual or procurement employee is prohibited from soliciting any gift from a vendor doing business with the reporting individual's or procurement employee's agency, a political committee as defined in s. 106.011 or a lobbyist who lobbies the reporting individual's or procurement employee's agency, or the partner, firm, employer, or principal of such lobbyist, where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

In order to establish a violation of Section 112.3148(3), Florida Statutes, the following elements must be proved:

> 1. Respondent must have been a reporting individual or procurement employee.
>
> 2. Respondent must have solicited a gift, food or beverage.
>
> 3. The gift must have been solicited from a vendor doing business with Respondent's agency, political committee or committee of continuous existence or a lobbyist who lobbies the Respondent or his agency or the partner, firm, employer, or principal of such a lobbyist.
>
> 4. The gift must be for the personal benefit of the reporting

individual or procurement employee, another reporting individual or procurement employee, or any member of the immediate family of a reporting individual or procurement employee.

ANALYSIS

In addition to the facts set forth above under Allegation One, Village Clerk Riera stated that LLF is neither a vendor of the Village nor did it have an agent/employee authorized to lobby the Village for at least 12 months prior to the Gala. (ROI 13) Thus, element three for a violation (i.e., solicitation of a gift from a vendor or lobbyist) is not met.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.3148(3), Florida Statutes.

ALLEGATION THREE

Respondent is alleged to have violated Section 112.3148(4), Florida Statutes, by accepting a gift known to be over $100 from a prohibited donor.

APPLICABLE LAW

Section 112.3148(4), Florida Statutes, provides as follows:

> REPORTING AND PROHIBITED RECEIPT OF GIFTS BY INDIVIDUALS FILING FULL OR LIMITED PUBLIC DISCLOSURE OF FINANCIAL INTERESTS AND BY PROCUREMENT EMPLOYEES. A reporting individual or procurement employee or any other person on his or her behalf is prohibited from knowingly accepting, directly or indirectly, a gift from a political committee or committee of continuous existence, as defined in s. 106.011, or from a lobbyist who lobbies the reporting individual's or procurement employee's agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of $100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization. If the gift is accepted on behalf of a governmental entity or charitable organization, the person receiving the gift shall not maintain custody of the gift for any period of time beyond that

> reasonably necessary to arrange for the transfer of custody and ownership of the gift.

In order to establish a violation of Section 112.3148(4), Florida Statutes, the following elements must be proved:

> 1. Respondent must have been a reporting individual or procurement employee.
>
> 2. Respondent must have knowingly accepted a gift.
>
> 3. The donor of the gift must have been a lobbyist who lobbies the Respondent or his agency.
>
> 4. Respondent knew or reasonably believed that the gift had a value of more than $100.

ANALYSIS

The facts are set forth under Allegation One above. As stated in Allegation Two, LLF does not lobby the Village nor does it have an agency or employee authorized to lobby the Village, and LLF had no such status or agent/employee for at least 12 months prior to the Gala. (ROI 13) Thus, element three of a violation (i.e., donor is a lobbyist) is not met.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.3148(4), Florida Statutes.

ALLEGATION FOUR

Respondent is alleged to have violated Section 112.3148(8), Florida Statutes, by failing to file a timely CE Form 9, "Quarterly Gift Disclosure," and undervaluing the amount of the gift(s).

APPLICABLE LAW

Section 112.3148(8), Florida Statutes, provides as follows

> (8)(a) Each reporting individual or procurement employee shall file a statement with the Commission on Ethics on the last day of each

calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of $100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to $100 or less, except the following:

1. Gifts from relatives.
2. Gifts prohibited by subsection (4) or s. 112.313(4).
3. Gifts otherwise required to be disclosed by this section.

Section 112.312(12)(a), Florida Statutes, provides in its relevant part:

> "Gift" for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days . . . .

Section 112.312(12)(a), Florida Statutes, defines the term "gift" as follows:

> 'Gift,' for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days, including:
>
> * * *
>
> 10. Entrance fees, admission fees, or tickets to events, performances, or facilities.

ANALYSIS

In addition to the facts set forth under Allegation One, Respondent stated that she and Strout never discussed the cost of admission and she was not aware of the cost of the tickets until around the time she filed her CE Form 9, "Quarterly Gift Disclosure." (ROI 14, 15, Exhibit A) Two admission tickets received by Respondent for the Gala are each a "gift" for purposes of Section 112.312(12)(a), Florida Statutes, as each constitutes admission to an event. Regarding the acceptance of gifts, a "reporting individual" is required to file a quarterly gift disclosure CE Form 9 disclosing allowable gifts worth in excess of $100. "Reporting individuals," are defined in

Section 112.3148(2)(d), Florida Statutes, to mean persons who file financial disclosure. As a member of the North Bay Village Commission, Respondent is required to file a CE Form 1, "Statement of Financial Interests," annually and thus the gift disclosure law is applicable to her.

Regarding the gift valuation, Aaron Resnick, attorney for the LLF stated that the price or value of a ticket purchased on March 16, 2018 for general admission to the event was $200 per person. (ROI 8) Respondent was comped two tickets and was put on the guest list for general admission to the Gala. (ROI 8) One hundred percent (100%) of the general admission ticket is deemed a charitable contribution, according to Resnick. (ROI 8) Rule 34-13.500(9), *Florida Administrative Code*, provides that "[t]he value of a gift of an admission ticket shall not include that portion of the cost which represents a charitable contribution, if the gift is provided by the charitable organization benefiting from the contribution." Thus, based on Resnick's statement, the value of each ticket is $0 and not reportable.

June 30, 2018 was the deadline to file a CE Form 9 for gifts given during the first quarter of 2018. (ROI 9) The Florida Commission on Ethics records indicate that Respondent filed her CE Form 9 on August 28, 2018[7] for the quarter ending March 31, 2018. (ROI 9, Exhibit A) On her form, Respondent listed "Gala/Guest" under the description of gift, assigned a $250 monetary value to the ticket(s), and listed Julianna Strout as the person making the gift. (ROI 9) Respondent said that she was neither sure what was the admission price to the event nor was she certain about what constituted a gift, therefore, she filed the form untimely. (ROI 16) Respondent also said that she was reminded in August 2018 by then-Village Clerk Hamilton to file a CE Form 9. (ROI 15, 16) Since the admission tickets had $0 value, Respondent was not required to file a CE Form 9.

[7] The instant ethics complaint was received by the Commission on Ethics on August 29, 2018. (ROI 9)

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

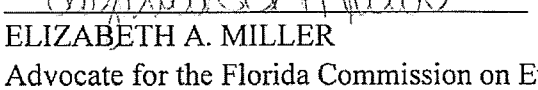
1. There is probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by requesting and receiving free admission to a charity event for herself and a friend on the basis that she was Vice Mayor of the City of North Bay Village.

2. There is no probable cause to believe that Respondent violated Section 112.3148(3), Florida Statutes, by. soliciting a gift from a vendor or lobbyist for herself and/or another.

3. There is no probable cause to believe that Respondent violated Section 112.3148(4), Florida Statutes, accepting a gift known to be over $100 from a prohibited donor.

4. There is no probable cause to believe that Respondent violated Section 112.3148(8), Florida Statutes, by failing to file a timely CE Form 9, "Quarterly Gift Disclosure," and undervaluing the amount of the gift(s).

Respectfully submitted this 1st day of November, 2019.



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