

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

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COMMISSION ADJUDICATORY
DOCKET NO. 15-0004

IN THE MATTER

OF

JOSEPH TULIMIERI

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and Joseph Tulimieri (“Tulimieri”) enter into this Disposition Agreement pursuant to Section 5 of the Commission’s *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On January 18, 2013, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Tulimieri. On June 28, 2013, the Commission concluded its inquiry and found reasonable cause to believe that Tulimieri violated G.L. c. 268A, § 19.

The Commission and Tulimieri now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. The Cambridge Redevelopment Authority (“CRA”) is a redevelopment authority created in 1955 to administer urban renewal projects that involved, among other things, transforming the Kendall Square area and fostering economic development.

2. Tulimieri served as the CRA's full-time Executive Director from 1978 until January 1, 2011.

3. Chapter 121B of the Massachusetts General Laws and the CRA's bylaws state that the CRA will have a five-member board (the "Board"). Four of the members are appointed by the City Manager subject to confirmation by the Cambridge City Council; the fifth member is appointed by the Massachusetts Department of Housing and Community Development.

4. According to the bylaws, the CRA Executive Director, who also functions as the Board's Secretary, serves as an ex-officio, non-voting member of the Board.

5. Board members serve staggered five-year terms. Chapter 121B of the Massachusetts General Laws allows members whose terms have expired to serve as holdover members until replaced by a duly appointed successor.

6. The bylaws define a quorum as three members of the Board present and voting.

7. According to the bylaws, the compensation of the Executive Director is determined by the Board.

8. On February 10, 2010, Tulimieri, acting in his capacity as Executive Director, implemented his unilateral decision to award a three percent (3%) across the board salary increase retroactive to July 1, 2009 to staff, including himself. As a result, Tulimieri's salary was increased from \$198,114 to \$204,057. Tulimieri did not seek or obtain Board approval for this pay increase at that time.

9. Also on February 10, 2010, Tulimieri, acting in his capacity as Executive Director, implemented his unilateral decision to convert his \$10,000 travel allowance to

salary. As a result, Tulimieri's salary was increased from \$204,100 to \$214,100, retroactive to January 1, 2010. Tulimieri did not seek or obtain Board approval for this pay increase at that time.

10. Based on the materials provided to the Board for use at the CRA's March 17, 2010 meeting, it appears that the Board approved certain personnel actions, including voting to retroactively approve the salary increases referenced in paragraphs 8 and 9 above.

11. In November 2010, Tulimieri, acting in his capacity as Executive Director, implemented his decision to award a three percent (3%) across the board salary increase to all staff, including himself. As a result, Tulimieri's salary was increased from \$214,100 to \$220,479. Tulimieri claims that he did not seek or obtain Board approval for these pay increases at the time due to the absence of a quorum.

12. Tulimieri retired from the CRA on January 1, 2011, and received a payout for his accrued and unused vacation and compensatory time. The terms of Tulimieri's payout were detailed in Tulimieri's employment contract, which had been originally approved by the Board in 1999. Tulimieri's payout for his accrued vacation and compensatory time was based on his rate of pay as of December 2010, which he had unilaterally increased for himself to an annualized rate of \$220,480.

13. After his January 2011 retirement as the full-time CRA Executive Director, with some general awareness on the part of the Cambridge City Manager, Tulimieri unilaterally decided to continue as the Executive Director in a part-time capacity (12 hours per week) at an hourly rate of pay at \$113.07 (which corresponds to his rate of pay at retirement), which equaled an annualized part-time rate of pay of

\$78,617. Tulimieri claims that he did not seek or obtain Board approval to continue to work part-time at this rate of pay due to the absence of a quorum.

14. On September 27, 2012, Tulimieri resigned from the CRA.

15. Tulimieri received \$21,245¹ in unauthorized compensation as a result of his actions, as described above.

Conclusions of Law

Section 19

16. Except as otherwise permitted by § 19 of G.L. c. 268A,² § 19 prohibits a municipal employee from participating³ as such an employee in a particular matter⁴ in which, to his knowledge, he has a financial interest.⁵

17. As Executive Director of the CRA, Tulimieri was a municipal employee.

¹ The amount of the unauthorized compensation is calculated as follows: The last hourly pay rate approved by the Board (in March 2010) was \$109.79. Tulimieri was paid \$5,874.36 more than the amount of his Board-approved pay for the period July 2009 through 2010, based on his self-approved increases in his rate of pay. In calculating his payout for accrued time, Tulimieri used a self-approved higher pay rate of \$113.07 per hour. As a result, Tulimieri's payout was inflated by \$11,445. The CRA also paid Tulimieri an additional \$3,925.80 for his part-time work from 2011 until his resignation in 2012.

² None of the exemptions apply.

³ "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

⁴ "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

⁵ "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

18. The following were particular matters: (1) Tulimieri's decision in February 2010 to increase his annual salary from \$198,114 to \$204,057, retroactive to July 1, 2009; (2) his decision in February 2010 to increase his annual salary to \$214,057, effective January 1, 2010; (3) his decision in November 2010 to increase his annual salary to \$220,479; (4) his decision in or about December 2010 to base the amount of his payout for accrued and unused vacation and compensatory time on the higher rate of pay he previously approved for himself; and (5) his decision after retirement from the CRA to commence a part-time schedule as CRA Executive Director based on the higher rate of pay that he had previously approved for himself.

19. Tulimieri participated as Executive Director in each of these particular matters by making the above-described decisions related to his compensation.

20. Tulimieri had a financial interest in each of these particular matters because each one involved his compensation or an employment benefit.

21. When he participated as Executive Director in each of these particular matters, he knew he had a financial interest in each particular matter.

22. Accordingly, by participating as Executive Director in particular matters in which he knew that he had a financial interest, Tulimieri violated § 19 on five separate occasions.

Resolution

In view of the foregoing violations of G.L. c. 268A by Tulimieri, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and

conditions agreed to by Tulimieri:

- (1) that Tulimieri pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of Thirty-Seven Thousand, Five Hundred Dollars (\$37,500) as a civil penalty for five (5) violations of G.L. c. 268A, § 19;
- (2) that Tulimieri make restitution to the CRA in the amount of Twenty-One Thousand, Two Hundred Forty-Five Dollars (\$21,245), which represents the amount of unauthorized compensation he received as a result of violating § 19, with such payment to be delivered to the Commission; and
- (3) that Tulimieri waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

By signing below, Joseph Tulimieri acknowledges that he has personally read this Disposition Agreement, that it is a public document, and that he agrees to all of the terms and conditions therein.

STATE ETHICS COMMISSION

//signed// 6/16/15
Joseph Tulimieri Date

//signed// 6/23/15
Karen L. Nober Date
Executive Director