

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

\_\_\_\_\_x

In the Matter of

The Financial Disclosure Appeals of:

FD No. 2015-01

Emmanuel Akeloko  
Katherine Lawrence

\_\_\_\_\_x

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

Upon consideration of all the evidence presented in this matter, and upon the full record herein, including all papers submitted to, and recommended findings of, the neutral arbitrator of the Office of Collective Bargaining (“OCB”), the Conflicts of Interest Board (“COIB” or “the Board”) adopts the recommendation of OCB neutral arbitrator Jane Morgenstern that, pursuant to section 12-110(b)(3)(a)(4) of the New York City Administrative Code and Board Rules § 1-15, Emmanuel Akeloko is required to file a financial disclosure report for calendar year 2013 and rejects the recommendation that Katherine Lawrence is not required to file a financial disclosure report for calendar year 2013.<sup>1</sup>

These financial disclosure appeals involve Emmanuel Akeloko and Katherine Lawrence, employees of the Department of Citywide Administrative Services (“DCAS”).<sup>2</sup> Each was notified by DCAS of the requirement, pursuant to Section 12-110(b)(3)(a)(4) of the Administrative Code of the City of New York, to file a financial disclosure report for calendar

<sup>1</sup> At the outset, the Board notes that Katherine Lawrence appealed the designation that she was required to file a financial disclosure report for calendar year 2012. The Board granted her appeal on default, finding that an agency’s failure to provide employees with the full 14-day period to submit written materials in support of their appeals resulted in the appeals being granted on default. *See Matter of Begley, et. al*, FD Order 2013-4, November 7, 2013 ([http://www.nyc.gov/html/conflicts/downloads/pdf2/fd%20docs/coib\\_fdorder\\_2013-4.pdf](http://www.nyc.gov/html/conflicts/downloads/pdf2/fd%20docs/coib_fdorder_2013-4.pdf)).

<sup>2</sup> Akeloko’s civil service title is Assistant Architect and his office title is Director of Roofs and Scaffolds; Lawrence’s civil service title is Landscape Architect II and her office title is Project Manager.

year 2013.<sup>3</sup> Each employee fully and timely appealed the designation as a required filer to the agency head and the Board, and the matters were heard before an OCB neutral arbitrator.<sup>4</sup>

Section 12-110(b)(3)(a)(4) of the Administrative Code of the City of New York requires the filing of a financial disclosure report by:

Each employee whose duties at any time during the preceding calendar year involved the negotiation, authorization or approval of contracts, leases, franchises, revocable consents, concessions, and applications for zoning changes, variances and special permits, as defined by rule of the conflicts of interest board and as annually determined by his or her agency head or employer, subject to review by the conflicts of interest board.

The rules of the Board clarify which employees with the responsibilities set forth in that Section are required to file financial disclosure reports (“contract filers”). Any employee who is **involved in the substantive determination** of any aspect of the contracting process, whether in the drafting of a contract, the evaluation of a bid, the approval of documents relating to a contract, or the determination of contract policies, rules, or regulations, is required to file.<sup>5</sup> Included in the category of contract filers is any employee who “[n]egotiates or determines the substantive content of a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order,”<sup>6</sup> “[r]ecommends or determines whether or to whom a contract, lease, franchise, revocable consent, concession, or application for a zoning change, variance, or special permit or change order should be awarded or granted,”<sup>7</sup> or “[a]pproves a contract, lease, franchise, revocable consent, or concession or change order on behalf of the City or any agency subject to Administrative Code §12-110.”<sup>8</sup> Exempted from this particular category of employees required to file financial disclosure reports are clerical personnel and other public servants who perform only ministerial tasks.<sup>9</sup> Charter

---

<sup>3</sup> Financial disclosure reports pertaining to a particular calendar year are filed in the next calendar year. For example, reports relating to 2013 were filed in 2014.

<sup>4</sup> The appeals were heard pursuant to the Financial Disclosure Appeals Process, the procedure for hearing appeals that was previously agreed to among COIB, the City’s Office of Labor Relations, and DC 37. Both matters were heard by Jane Morgenstern, the matter of Emmanuel Akeloko on November 21, 2014; and the matter of Katherine Lawrence on November 20, 2014. On December 23, 2014, Ms. Morgenstern submitted her reports (“Akeloko Report” and “Lawrence Report,” respectively).

<sup>5</sup> Board Rules § 1-15.

<sup>6</sup> Board Rules § 1-15(4)(emphasis added).

<sup>7</sup> Board Rules § 1-15(5)(emphasis added).

<sup>8</sup> Board Rules § 1-15(6)(emphasis added).

<sup>9</sup> Board Rules § 1-15(b) (emphasis added). For example, “public servants who are under the supervision of others **and** are without substantial personal discretion, **and** who perform only clerical tasks ...shall not, on the basis of such tasks alone, be required to file a financial disclosure report.” (*Id.*; emphasis added) Examples of ministerial tasks include “typing, filing, or distributing contracts, leases, franchises, revocable consents, concessions, or zoning changes,

§2601(15) defines “ministerial matter” as “an administrative act . . . which does not involve substantial personal discretion.”<sup>10</sup>

### **Emmanuel Akeloko**

During the reporting period, Emmanuel Akeloko served as DCAS’s sole Director of Roofs and Scaffolds and was responsible for the repairs of roofs and scaffolds for more than fifty City-owned buildings.<sup>11</sup> When alerted to a problem by the appropriate personnel, Akeloko responded to the affected site within 24 hours. If the problem was within his jurisdiction, that is, if it concerned roofs or scaffolds, he directed the contractor for the borough to visit the site and prepared a work order “over which there is no review.”<sup>12</sup> These emergencies included “occasions in which [Akeloko] alone determines whether the work is outside the scope of the original specifications and accordingly requires a change order.”<sup>13</sup> In addition, Akeloko was “the sole DCAS signatory on the contractor’s daily time sheets in connection with additional work stated by the contractor to be outside of the scope of the original contract for work at 10 Richmond Terrace in Staten Island” and enjoyed “discretion to determine if monetary deductions should be made; i.e., if the contractor is charging for work that wasn’t done.”<sup>14</sup>

The Board first concludes that Akeloko’s role in managing roof and scaffold problems and emergencies on City-owned properties, which included the discretion to approve change orders, the authority to make deductions from contractors’ payment requisitions, and the assessment of contractor performance, involve him in recommending whether a change order should be awarded and granted and in approving a change order. Therefore, his role falls squarely within Administrative Code §12-110(b)(3)(a)(4) and Board Rules §§1-15(a)(5) and (6).

To be exempted from the filing requirement, public servants performing contracting responsibilities must perform **only** ministerial duties.<sup>15</sup> Akeloko is directly and substantially, and sometimes solely, involved in the discretionary process of deciding whether change orders should be awarded, granted, or approved, and, thus, does not perform merely ministerial tasks.” In contrast, he performs activities that are precisely the kind that have the potential to pose a conflict of interest. Thus, as the Akeloko Report correctly concluded, he is required to file a

---

variances, or special permits or calendaring meetings or who identify potential bidders or vendors.” *Id.*

<sup>10</sup> The Board concludes that the Charter definition of “ministerial matter” shall apply to the interpretation of “ministerial tasks” referenced in Board Rules § 1-15(b).

<sup>11</sup> The position was within the Capital Construction Unit in 2012, the Design and Construction Unit in 2013, and most recently in Tenant Services. Akeloko Report at 3.

<sup>12</sup> *Id.* at 4. Akeloko testified that he tells the contractor what to do and ensures the accuracy of the measurements. *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (footnote omitted). The neutral arbitrator noted that Akeloko “has discretion to determine if monetary deductions should be made, *i.e.*, if the contractor is charging for work that wasn’t done” and also evaluates contractor performance. *Id.*

<sup>15</sup> Board Rules § 1-15(b) (emphasis added).

financial disclosure report for calendar year 2013 pursuant to section 12-110 of the New York City Administrative Code and Board Rules § 1-15.

### **Katherine Lawrence**

Katherine Lawrence, whose civil service title is Landscape Architect II and whose in-house title is Project Manager, performed duties in 2013 that included review of a proposal for additional work at 1 Centre Street pursuant to a requirements contract.<sup>16</sup> Lawrence conceded that a proposal for additional work is similar to a change order in that they both relate to “unforeseen circumstances that arise as the work proceeds.”<sup>17</sup> Lawrence also was involved in processing payments to contractors: she was the first individual to review the payment package and ensured that the contractor was in compliance with the contract.<sup>18</sup> Finally, Lawrence worked with the Agency Chief Contracting Officer and Legal Division to draft Landscape Maintenance Specifications, by editing the language contained therein and by responding to questions based on her specific expertise.<sup>19</sup> Her edits, which provided industry language, custom, and practice, directed which wording should be retained or omitted, and indicated when tasks were required to be performed, became part of the final contract document.<sup>20</sup>

The Board first concludes that there is insufficient evidence to find that Lawrence is required to file an annual disclosure report based on her work either evaluating the proposal for additional work at 1 Centre Street or processing payments to contractors.<sup>21</sup> As to the former, while Lawrence reviewed the proposal for additional funds with the contractor, her supervisor, and “the EAO Auditor, who looked at the site based on information and pictures”<sup>22</sup> she provided, there is no indication in the record before the Board as to what Lawrence said or recommended as to the proposal, or to what degree her supervisor, who informally approved the request, relied on what she did, in fact, say.<sup>23</sup> In addition, Lawrence’s role in processing payments, as the first

---

<sup>16</sup> Lawrence Report at 4.

<sup>17</sup> *Id.* Although Board Rules § 1-15 does not explicitly list proposals for additional work, the Board finds that they are equivalent to change orders in relation to both their purpose of authorizing additional funds to be awarded to an outside party and the potential conflicts of interest that might result if an employee approved or denied one for a person or entity with whom they have a financial relationship.

<sup>18</sup> Lawrence Report at 5.

<sup>19</sup> *Id.*

<sup>20</sup> City Exhibit 5.

<sup>21</sup> The burden is on the agency “to come forward with specific evidence showing that the employee performed duties falling within one of the required filing categories.” Appeals Process § B(7) (citations omitted).

<sup>22</sup> Lawrence Report at 4.

<sup>23</sup> *Id.* In contrast, the Board previously found that a DCAS employee whose duties included verifying tenant representatives’ measurements of square footage in floor plans based on DCAS standards and rules, or doing the measurements himself, was required to file when the evidence established his measurements were checked to insure that they were based on the correct layout but not independently certified, and his explanation was relied on to resolve any questions. Evidence also established that his measurements affected the price of the lease. *See Matter of*

individual to review the payment request, was limited to determining whether the contractor was in compliance with the contract.<sup>24</sup>

The Board concludes, however, that Lawrence's duties during the reporting period involves her in contracting responsibilities based on her work drafting the Landscape Maintenance Specifications. Contrary to the arbitrator's conclusion, Lawrence, as set forth above, offered substantive comments concerning the Landscape Maintenance Specifications.<sup>25</sup> Thus, her role falls squarely within Administrative Code §12-110(b)(3)(a)(4) and Board Rules §§1-15(a)(5) and (6).<sup>26</sup>

To be exempted from the filing requirement, public servants performing contracting responsibilities must perform **only** ministerial duties.<sup>27</sup> Lawrence is directly and substantially involved in determining the substantive content of contract specifications. Thus, she does not perform merely ministerial tasks, but engages in activities that are precisely the kind that have

---

*Acevedo, et. al.*, FD Order 2013-1 (April 10, 2013) (section concerning Dubravko Cebalo)([http://www.nyc.gov/html/conflicts/downloads/pdf2/fd%20docs/board\\_fd\\_order\\_2013-1.pdf](http://www.nyc.gov/html/conflicts/downloads/pdf2/fd%20docs/board_fd_order_2013-1.pdf)).

<sup>4</sup> Lawrence Report at 4. In contrast, the Board found a DCAS employee was required to file an annual disclosure report based on evidence that she: 1) was the sole DCAS representative at meetings with the landlord, the contractor, and other stakeholders; 2) participated in periodic meetings with these individuals during the construction period; 3) advised her supervisor what stage construction was in or whether a field condition required approval of a change order request; 4) explained the particulars of a change order request to her unit's assistant director who, along with her supervisor, reviewed and approved it; 5) ensured that the landlord had complied with lease requirements; and 6) walked through the premises with the consultant architect, tenant representative, and landlord to see if the work on these items had been completed. *See Matter of Acevedo, et. al., supra*, (section concerning Isabel Acevedo).

<sup>25</sup> Lawrence Report at 5. The arbitrator also concluded that Lawrence did not offer any substantive comments to the document because she "did not advise that any line items be retained or deleted nor did she give advice on changing prices." *Id.* An employee involved in contracting could be required to file an annual disclosure report even if his or her involvement in the drafting of a contract does not involve such advice.

<sup>26</sup> The instant case is distinguished from the Board's decision in *Matter of Acevedo, et. al.* In that case, DCAS Project Architects provided technical assistance that ultimately led to the creation of scope of work documents that were affixed to the City's lease for new spaces. In that work, they followed pre-set guidelines established in DCAS worksheets, their role was limited to the architectural component of a site report, and once the client agency's needs were identified therein, they chose from a boilerplate scope of work those options that applied to the client agency's needs. In their work, the Project Architect applied DCAS policies and standards within a pre-defined and pre-approved range of options," and "any requests by the client agency outside the pre-determined options go to the unit director." *See Matter of Acevedo, et. al., supra* (section concerning Hans Arnsten, et. al.) In contrast, in the case herein, Lawrence's input was not restricted to preset guidelines, boilerplate scopes of work, or agency policies and standards. Her input was wide-ranging and based on her specific expertise.

<sup>27</sup> Board Rules § 1-15(b) (emphasis added).

the potential to pose a conflict of interest. Therefore, she is required to file a financial disclosure report for calendar year 2013 pursuant to section 12-110 of the New York City Administrative Code and 53 RSNY 1-15.

**Conclusion**

Board Rules § 1-15 was enacted to, among other things, “limit financial disclosure filing to those public servants who are at risk of conflicts of interests ... [, and] to ensure that rules for determining who is a ‘contract’ filer are uniform and uniformly applied throughout the City.”<sup>28</sup> That objective is furthered by requiring Emmanuel Akeloko and Katherine Lawrence to file financial disclosure reports.

The work performed by Akeloko and Lawrence is exactly the type that might pose a conflict of interest. No DCAS employee should be evaluating, recommending, or approving contract documents (including recommending or determining to whom change orders should be awarded) or determining the substantive content of a contract with a party with whom the employee has a financial relationship. To determine whether such financial relationships exist, and thus to avoid such conflicts of interest violations, is precisely why financial disclosure by these employees is crucial and is required.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Administrative Code §12-110(b)(3)(a)(4), that Emmanuel Akeloko and Katherine Lawrence each file a financial disclosure report for calendar year 2013 no later than May 1, 2015.

Emmanuel Akeloko and Katherine Lawrence each have the right to appeal this Order to the Supreme Court of the State of New York.

The Conflicts of Interest Board



By: Richard Briffault, Chair

Fernando Bohorquez  
Anthony Crowell  
Andrew Irving  
Erika Thomas-Yuille

Dated: March 24, 2015

---

<sup>28</sup> Conflicts of Interest Board Notice, The City Record, January 30, 2004, at 276.

Cc: Emmanuel Akeloko  
Katherine Lawrence

Shameka Boyer, DCAS  
Latrisha Desrosiers, DCAS

Aaron Amaral, DC 37  
Dena Klein, DC 37

Susan Panepento, OCB

Mayra Bell, OLR

Jane Morgenstern, Esq.