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Inspector General

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May 13, 2016

Veronique Hakim
President
MTA New York City Transit
2 Broadway, 30th Floor
New York, N Y 10004

Re: Unethical Conduct
MTA/OIG #2016-02

Dear Ms. Hakim:

In 2014, the Office of the MTA Inspector General (OIG) was engaged in two separate investigations relevant to this report: The first involved William Lindner, the Senior Director Consultant Services, Sandy Recovery & Resiliency, Capital Programs Management (CPM), NYC Transit, now Senior Director, Closeouts, CPM; the second generally involved CPM's Indefinite Quantities Consultant Contract, known as the "Job Shopper" program.

In September 2015, we were contacted by Paige Graves, then Assistant General Counsel / Ethics Officer, NYC Transit. Ms. Graves noted her awareness of these investigations and alerted us that she was conducting a nepotism policy compliance review involving Caitlin Michelena (Ms. Michelena), an employee hired by Linder through Job Shoppers, and her father, Andres Michelena (Mr. Michelena), whose employment as a Job Shopper at NYC Transit overlapped for a time with that of his daughter.¹

Meanwhile, our investigation against Lindner at the point of the Graves contact involved a similar ethical issue (i.e. violation of public trust), but in a factual context wholly-unrelated to the Michelenas or the Job Shopper program. Our then-pending investigation subsequently led to charges that subjected Linder to disciplinary proceedings in accordance with the Managerial Disciplinary Policy and Procedure, P/I 6.5.1.

On January 11, 2016, Presiding Hearing Officer John Kivlehan, Vice President, MTA Bus Operations, in a written decision addressing the appeal by Linder from the charges and recommended penalty of dismissal (the Kivlehan Decision), modified the penalty to suspension and imposed two particularly significant conditions on Lindner: one was the issuance of a "Final

¹ By the time of the Graves interview, Ms. Michelena had been hired as a permanent NYC Transit employee in the Recovery & Resiliency Program. As such, she became subject to the MTA Code of Ethics and the New York State Public Officers Law.

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Warning that same or similar misconduct in the future shall result in your Dismissal.” More relevant to our current recommendation, however, is the other condition: “In the event that it is determined that you have engaged in additional misconduct unbecoming an Authority manager you should be dismissed from service.” Lindner accepted and signed this modified penalty on that date.

Based on our ensuing investigation stemming from the referral by Ms. Graves into the hiring of Ms. Michelena, we find, as also more fully described below, that Lindner, Ms. Michelena, and Lindner’s supervisor, Eddie Feizbakhsh, Chief Officer, Sandy Recovery & Resiliency, NYC Transit, violated provisions of the MTA Code of Ethics.

In our view, with respect to all three individuals, the gravity of this misconduct, standing alone, warrants discipline up to and including termination. Further, as to Lindner, in light of our findings below that established that Lindner “engaged in additional misconduct unbecoming an Authority manager” (i.e. manipulation of the employment process involving Ms. Michelena), we recommend specifically that he be terminated now in accordance with the Kivlehan Decision. Additionally, because certain of the conduct described here also appears to violate provisions of the New York State Public Officers Law, we will refer this matter to the New York State Joint Commission on Public Ethics (JCOPE), in accordance with its jurisdiction, for such action as it may deem appropriate.

INVESTIGATION

Andres Michelena commenced employment with NYC Transit in 1973, and retired after 37 years on November 2, 2010. Three years after his retirement, Mr. Michelena was hired by Parsons Brinckerhoff (PB) and was assigned as a consultant to NYC Transit from March 2013 through December 2013. In interviews with OIG staff, Mr. Michelena stated that when he returned to work for NYC Transit as a PB consultant, he spoke to a number of people about his daughter Caitlin’s job search. Specifically, he told us that he gave his daughter’s resume to Seymour Portes, then Vice President & Deputy Chief Engineer, CPM, NYC Transit, who himself had been employed by NYC Transit since 1989; Eddie Feizbakhsh, who had previously worked with Mr. Michelena for 20 years in the Station Area of NYC Transit; and a third NYC Transit/CPM employee in Stations.²

² OIG staff interviewed the third employee who stated that he received Ms. Michelena’s resume but discarded it because it lacked engineering experience.

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Hiring of Caitlin Michelena

Lindner told OIG staff that in the summer of 2013 he planned to put together Work Order #121 to hire three employees through the Job Shopper program. Lindner told us further that before the work order was posted, his supervisor Feizbakhsh asked him to look at Ms. Michelena when she applied for the position.

Lindner's Work Order #121 was approved on August 7, 2013, and posted to staffing firms on August 8, 2013, with a deadline of August 22, 2013 to submit resumes. This posting required a Bachelor's Degree and two years of full-time experience working with a large public or private firm with a concentration in payroll, financial systems, timekeeping, audit and/or a related field.

On August 6, 2013, the day before Work Order #121 was approved, Mr. Michelena sent his daughter a handwritten list of staffing firms that included Rotator Staffing, Inc. (Rotator), which list, Mr. Michelena explained, he had received from Feizbakhsh. On August 7, 2013, Ms. Michelena sent her resume to Rotator via email with the following message:

I was informed that the Transit Authority [sic] and was hoping that your staffing agency may know of any clerical openings in the New York City Transit Authority."

In response to the job posting of August 8, Rotator and other staffing firms sent a total of 19 resumes to NYC Transit Procurement. Notably, Rotator representatives stated they did not include Ms. Michelena's resume because it did not meet the posting's requirements.

Mr. Michelena stated that sometime after handing out his daughter's resume, although he did not know Lindner, had not given Lindner the resume, and had not told him that his daughter was looking for work, Lindner approached Mr. Michelena and said he knew Ms. Michelena was looking for work (which was consistent with Lindner's statement to OIG that Feizbakhsh had previously told him about Ms. Michelena). Further, according to Mr. Michelena, Lindner told him a work order to hire a Job Shopper had been reposted and provided Mr. Michelena with the Work Order number (121). Mr. Michelena admitted he passed this information on to his daughter.

On August 28, 2013, Ms. Michelena submitted her resume to Rotator a second time and, according to a Rotator representative, specifically mentioned that she was submitting it for Work Order #121. Rotator's representative stated that a recruiter spoke with Ms. Michelena by phone and told her that the work order was closed. The recruiter reported a strong recollection of this conversation because upon being told it was closed, Ms. Michelena responded, "I have some work to do on my end."

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Lindner admitted to OIG staff that when he received the batch of 19 resumes that did not include the resume of Ms. Michelena, he reopened Work Order #121 (without interviewing any candidates) for the purpose of obtaining the Michelena resume. Lindner claimed he did not recall telling anyone that this batch did not include Ms. Michelena's resume, but added that if he had told anyone it would have been Feizbakhsh. Lindner initially denied speaking to Mr. Michelena about Ms. Michelena applying for a Job Shopper position. However, during our second interview, when we confronted Lindner with Mr. Michelena's version of events, Lindner conceded that he may have told Mr. Michelena that the work order had been reposted, but claimed that he had no specific recollection of doing so.

On September 5, 2013, NYC Transit reopened Work Order #121. The following day, September 6, Ms. Michelena sent an e-mail to Rotator that stated:

The Transit Authority has just reopened the following position again – please send my resume and information to the TA for this posting as soon as you can. I would like to apply for the Assistant Project Manager/Staff Analyst Trainee position-Work Order #121.

Rotator forwarded Ms. Michelena's resume to NYC Transit that same day.

Following the reopening, Lindner interviewed ten of the new total of 28 candidates (including Caitlin Michelena) whose resumes were submitted by the various staffing firms. Of those ten that Lindner interviewed, nine had experience in construction firms and project management that Ms. Michelena did not possess. Additionally, of the eighteen candidates Lindner rejected without interview, nine had resumes that presented stronger credentials than those contained on Ms. Michelena's resume, which did not meet the work experience requirements of Work Order #121—which, in turn, is consistent with Rotator's original rejection of the resume.

When asked about resumes he rejected, Lindner stated he rejected anyone who described their prior work experience as "administrative assistant." However, contrary to his assertions, we found that six of the candidates Lindner *did* interview described their prior employment as "administrative assistant." Additionally, Lindner's stated reason for rejecting at least three of the candidates was that they had no procurement experience, which Ms. Michelena also lacked.

Moreover, Ms. Michelena was the only one of all ten interviewed candidates, who had no experience working in a construction or engineering setting. Indeed, the only experience on Ms. Michelena's resume that Lindner could point to as at all relevant was her experience archiving documents and with document control. Lindner attempted to defend his decision to hire Ms. Michelena by stating that shortly after she was hired, she and another individual recently hired through the Job Shopper program "ran the shop" while Lindner and a co-worker were out of the office on leave.

Caitlin Michelena was Untruthful about Her Hiring

As noted above, Paige Graves conducted a routine nepotism policy compliance review given Andres and Caitlin Michelena's familial relationship.³ As part of that review, Ms. Graves interviewed Ms. Michelena about how she came to be hired by Rotator and assigned to NYC Transit. Ms. Michelena stated to Ms. Graves that she found Rotator by searching a number of different search engines. However, that statement was belied by her own August 7, 2013, e-mail to Rotator, stating that she had been told that NYC Transit was hiring and her father's admission that he had sent his daughter the handwritten list provided to him by Feizbakhsh that included Rotator and other staffing firms. When OIG staff confronted her with the false statement to Graves and asked why she had not told Graves the truth, Ms. Michelena stated she had forgotten, but later went through emails and found the one she sent to Rotator on September 6, 2013, regarding Work Order #121. When asked why she did not contact Ms. Graves to correct what she had told her, Ms. Michelena stated the meeting was over and she did not recognize its significance. In a later interview with OIG investigators, when Ms. Michelena was asked whether she knew the work order had been reposted, Ms. Michelena said she did not, a statement belied by her same September 6 email to Rotator which began, "The Transit Authority just reopened the following position again. . ."

Feizbakhsh's Statements Regarding his Involvement in Ms. Michelena's Hiring were Incredible

OIG staff interviewed Feizbakhsh twice (including once with Ms. Graves), and on both occasions found him to be evasive and his statements not credible.

For example, Feizbakhsh denied having received Ms. Michelena's resume before it was received from Rotator, even though Mr. Michelena admitted that he gave it to Feizbakhsh much earlier in the process. Feizbakhsh also admitted that he might have suggested to Lindner that Lindner look at the resume, but claimed that was only after Rotator had forwarded it, which seems entirely inconsistent with Lindner's statements and actions regarding his posting and reopening of Work Order #121, as well as Lindner's key role in the chain of events intended to trigger the submission of the resume by Rotator. Additionally, Feizbakhsh's claims are inconsistent with Mr. Michelena's statement that Lindner, whom he did not know, approached him and told him that he knew his daughter was looking for work, that the Work Order was #121, and that it would be reposted. Finally, Feizbakhsh admitted that he wrote the handwritten list of staffing firms that Mr. Michelena passed along to his daughter, yet Feizbakhsh claimed to have no idea why he wrote it or to whom he gave it.

³ Andres's contract as a Job Shopper was up for renewal. He disclosed on his application that Caitlin was a NYC Transit employee, assigned to the same group that would be hiring him, which triggered Ms. Graves review.

ANALYSIS OF APPLICABLE LAWS AND ETHICAL RULES

To ensure that public servants perform their governmental duties diligently, competently, and fairly, including their role in the hiring of others, they are subject to state laws and agency rules defining applicable requirements and ethical behavior. These laws and rules include the New York State Public Officers Law Code of Ethics (POL) and the MTA All-Agency Code of Ethics

For its part, the MTA Code of Ethics contains rules applicable here regarding public trust (§4.02[(a)(c)]) and confidential information (§4.03). Similarly, the POL contains a rule regarding conflicts of interest and standards for applying it (§74[2][3(c)(d)(f)(h)]) that address issues relating to confidential information and public trust. Given their essential similarity we have grouped and analyzed the pertinent parts of all of these provisions together below. Additionally, further below, we set forth and analyze the applicability of the MTA Code of Ethics rule regarding cooperation with audits and investigations (§1.07).

MTA Code of Ethics §4.02 Public Trust

- (a) Employees shall not engage in a course of conduct that will raise suspicion among the public that they are likely to be engaged in acts that are in violation of the public trust. Employees shall avoid even the appearance that they can be improperly (1) influenced in the performance of their official duties or (2) induced to violate the public trust or impair their independence of judgment in the exercise of their official duties.
- (b) Employees shall not use or attempt to use their official position to secure unwarranted privileges or exemptions for themselves or others.
- (c) Employees shall not by their conduct give reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship, rank, position, or influence of any party or person.

MTA Code of Ethics §4.03 Confidential Information

Employees shall not disclose Confidential Information without the permission of the General Counsel of the MTA Agency at which such individual is employed for any purpose, or use such information to further their personal interests.⁴

Public Officers Law Code of Ethics §74:

(2) Rule with respect to conflicts of interest. No officer or employee of a state agency . . . should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

(3) Standards.

(c) No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

(d) No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

(f) An officer or employee of a state agency . . . should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

⁴ MTA Code of Ethics §1.01 defines “Confidential Information” as follows:

Confidential Information means information, whether or not set forth in writing, that is available to an Employee only because of such Employee’s position within an MTA Agency and which is treated by such MTA Agency as being confidential or which the Employee has reason to believe is confidential. Information does not have to be formally labeled “confidential” to be confidential.

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(h) An officer or employee of a state agency . . . should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

OIG Analysis:

MTA Code of Ethics

Public Trust

In manipulating the NYC Transit Job Shopper selection process for the purpose of hiring Caitlin Michelena, apparently in furtherance of their personal interests, Lindner and Feizbakhsh used their official position to secure unwarranted privileges for Caitlin Michelena and gave reasonable basis for the impression that Caitlin and/or Andres Michelena unduly enjoyed their favor.

Confidential Information

Lindner, apparently in furtherance of his personal interests, wrongfully provided Andres Michelena with confidential information consisting of advance information about Work Order #121.

Public Officers Law Code of Ethics

Public Trust/Confidential Information

For the reasons stated above, most significantly providing confidential information without authorization; giving a reasonable basis for the impression that Caitlin and/or Andres Michelena unduly enjoyed their favor; using their official positions to secure unwarranted privileges for Ms. Michelena, namely advantages in the Job Shopper selection process; and pursuing a course of conduct that would raise suspicion among the public that they were likely to be engaged in acts that were in violation of their trust, Lindner and Feizbakhsh appear to have violated POL §74.

MTA Code of Ethics: Cooperation with Audits and Investigations

MTA Code of Ethics §1.07 (Cooperation with Audits and Investigations) provides as follows:

Employees must cooperate fully and honestly with audits and investigations conducted by the MTA Inspector General, Joint Commission on Public Ethics, Auditor General, Chief Compliance Officer, Agency Ethics Officer, or other governmental agencies. Failure to so cooperate will subject an Employee to appropriate disciplinary penalty, up to and including dismissal.

OIG Analysis:

By providing untruthful, misleading, and/or incomplete information in connection with investigations conducted by the NYC Transit Ethics Officer, and/or the MTA Inspector General, Lindner, Feizbakhsh, and Caitlin Michelena failed to cooperate fully and honestly with such investigations.

FINDINGS

1. Lindner and Feizbakhsh manipulated the NYC Transit Job Shopper selection process for the purpose of hiring Caitlin Michelena, apparently in furtherance of their personal interests, and in doing so used their official position to secure unwarranted privileges for Caitlin Michelena, and gave reasonable basis for the impression that Caitlin and/or Andres Michelena unduly enjoyed their favor, in violation of MTA Code of Ethics §4.02 (Public Trust).
2. Lindner, apparently in furtherance of his personal interests, wrongfully provided Andres Michelena with advance information about Work Order #121, which constituted “Confidential Information” within the meaning of MTA Code of Ethics §1.01, in violation of MTA Code of Ethics §4.03 (Confidential Information).
3. The above findings establish that Lindner “engaged in additional misconduct unbecoming an Authority manager” within the meaning of the Kivlehan Decision.
4. Lindner, Feizbakhsh, and Caitlin Michelena provided untruthful, misleading, and/or incomplete information in connection with investigations conducted by the NYC Transit Ethics Officer, and/or the MTA Inspector General, thereby failing to cooperate fully and honestly with such investigations in violation of MTA Code of Ethics 1.07 (Cooperation with Audits and Investigations).

REFERRALS TO JCOPE

Based on our investigation, including the factual findings and legal analysis reflected above, we will refer this matter to the New York State Joint Commission on Public Ethics (JCOPE), in accordance with its jurisdiction, for such review as it may deem appropriate, given our determination that Lindner and Feizbakhsh appear to have violated POL §74(3)(c)(d)(f)(h).

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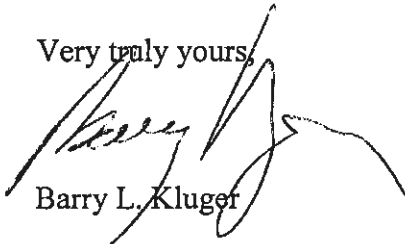
RECOMMENDATIONS

Based on our investigation, including the factual findings and legal analysis reflected above, we recommend the following:

1. William Lindner should be disciplined by termination.
2. Caitlin Michelena should be disciplined, up to and including termination.
3. Eddie Feizbakhsh should be disciplined, up to and including termination.

Please notify us following your determination with respect to each of these recommendations for discipline, as to the discipline, if any, that NYC Transit has imposed. As always, we appreciate your continued courtesy and cooperation. Should you have any questions, or need additional information, please feel free to contact me or Deputy Inspector General for Legal and Investigations Demetri Jones at (212) 878-0279.

Very truly yours,



Barry L. Kluger