



Carolyn Pokorny
MTA Inspector General

Office of the Inspector General
Metropolitan Transportation Authority
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March 11, 2020

Sarah E. Feinberg
Interim President
MTA New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

**Re: CPM Project Administrator's
Unethical Conduct
MTA/OIG #2020-06**

Dear Ms. Feinberg:

The Office of the MTA Inspector General (OIG) has substantiated allegations that a New York City Transit (NYC Transit) Capital Programs Management (CPM) Project Administrator (Project Administrator), represented MTA employees in his “side job” as a real estate broker, against MTA’s instruction that his employer for this outside activity could not represent the MTA or its employees. In addition, the OIG found that the Project Administrator inappropriately shared confidential information with others on at least two Consultant Construction Management (CCM) contract selection committees. Also, the Project Administrator made false and misleading statements to the OIG about the help he sought from an MTA employee—who was also his real estate client¹—to transfer positions within NYC Transit.

We recommend that the Project Administrator be disciplined, up to and including termination. The Project Administrator’s conduct also appears to violate the New York State Public Officers Law. Accordingly, we are forwarding this matter to the New York State Joint Commission on Public Ethics (JCOPE) for any action as it may deem appropriate.

I. BACKGROUND

In 1994, NYC Transit hired the Project Administrator as an Associate Engineering Technician, assigned to Engineering Services, CPM. In 2003, NYC Transit approved his request to engage in outside activity as a real estate broker on the condition that he do so only on weekends and that the brokerage company he worked for could not conduct business with NYC Transit. In 2005, the Project Administrator transferred to MTA Capital Construction, Security

¹ On March 11, 2020—the date of this letter—that employee pled guilty to one count of obstruction of justice, a federal offense, and is awaiting sentencing before the United States District Court for the Southern District of New York. *See* note 2.

and Special Projects. In 2007, he was hired as an Associate Project Manager, Level III, in Capital Programs, Department of Subways. In 2014, when he was promoted to Project Administrator, NYC Transit approved his outside activity with the same conditions, as well as the added restriction, that the brokerage company could not conduct business with the MTA and its employees. In February 2015, the Project Administrator was assigned to the Recovery & Resiliency Program (the Program).

II. INVESTIGATION

A. The Project Administrator Represented MTA Employees as a Real Estate Broker

The OIG's interviews and review of emails showed that the Project Administrator represented several MTA employees as a real estate broker. The Project Administrator admitted to OIG that in 2012, he had represented an MTA colleague—a project manager (PM) in the Recovery & Resiliency Program at CPM—in a home purchase. He alleged that the PM learned that he was a realtor through a shared acquaintance, who is not an MTA employee. When the Project Administrator and the PM saw each other at a social function, the PM asked him to help him buy a home. There are emails suggesting that the PM asked the Project Administrator to waive his broker's fee. The Project Administrator denied that he ever agreed to waive his broker's fee and provided documentary proof that he obtained a broker's fee.

The Project Administrator also admitted to OIG that he had brokered the sale of two other NYC Transit employees' homes. He admitted that he brokered a home sale for a Construction Manager at MTA Capital Construction, but alleged that the Construction Manager happened to walk into an open house the Project Administrator was hosting. He further admitted that he showed homes to a fourth MTA employee. That employee confirmed that the Project Administrator showed him homes about 17 years ago, but that he purchased the home directly from the developer, and not through the Project Administrator.

The Project Administrator stated that he only worked as a realtor at night and on weekends. He insisted that he did not use NYC Transit equipment, such as phones, computers, fax machines, or copier/printers to conduct his real estate business. The OIG did not find evidence that he had. However, the records revealed that the Project Administrator and the PM participated in a phone call to negotiate the PM's real estate purchase during work hours in the PM's office.

In addition, the Project Administrator grossly underestimated his outside income on his 2014 application for dual employment. He reported an expected income of \$15,000 from his outside activity, while reporting an outside income of between \$50,000 to \$70,000 on his 2012 Financial Disclosure Statement filed with JCOPE.

B. The Project Administrator's Transfer from Department of Subways to CPM

On July 21, 2014, CPM published a job vacancy for Project Engineers, Architects, or Administrators in the Office of Engineering Services. NYC Transit's hiring records showed that on August 19, 2014, the Project Administrator submitted his resume through the BSC website in response to the job vacancy notice. The Project Administrator was interviewed by two engineers in the Office of Engineering Services, and was one of two candidates selected for the Project

Administrator position in October 2014. On February 23, 2015, the Project Administrator started his new position in the Office of Engineering Services and the very same day the Chief Electrical Engineer assigned him to work in the Program, under the PM's supervision. This PM was the same person the Project Administrator represented in a real estate transaction in 2012.

C. The Project Administrator was Untruthful with the OIG

The Project Administrator was not candid with the OIG about reaching out to the PM for help to transfer to the CPM. There were emails between the Project Administrator and the PM that reveal the Project Administrator sought the PM's help to transfer to CPM on at least two occasions. As early as November 2013, the Project Administrator sent the PM an email expressing his interest in moving into the PM's area as a Project Administrator. In July 2014, NYC Transit posted a Job Vacancy Notice for a Project Administrator. On August 18, 2014, the Project Administrator sent the PM a copy of his resume asking for his comments, and wrote, "Whatever happens, I really appreciate your effort in trying to get me in your department." The Project Administrator submitted his resume the next day.

Yet, during his interview with the OIG, the Project Administrator denied that the PM had any involvement in hiring him into the Program and said that the Chief Electrical Engineer hired him and then assigned him to work in the Program under the PM's supervision. He did admit that he had discussions with the PM about jobs but claimed nothing came of those discussions. However, the Project Administrator was not candid about telling the OIG that he asked the PM to review his resume for a position that ultimately led to his being assigned to the PM. During his first interview with OIG staff, the Project Administrator did not reveal that he had sought the PM's assistance to transfer to CPM. Only when confronted with his email exchanges with the PM did the Project Administrator admitted that he approached the PM twice, once in 2013 and again in 2014, about jobs, but told investigators that nothing had come of it.

The OIG interviewed the Chief Electrical Engineer about the Project Administrator's transfer from the Department of Subways to CPM. The Chief Electrical Engineer did not recall how the Project Administrator's transfer to CPM came about. The Chief Electrical Engineer stated that he assigned the Project Administrator to the Program because there was a need for someone with electrical engineering experience. The Chief Electrical Engineer stated that the Project Administrator was assigned to him at the time and the Chief Electrical Engineer decided to assign him to the Program.

In addition, the Program Administrator minimized his outside work as a realtor to the OIG. While he told the OIG that his wife does most of the work and that he helps her in the evening and on weekends, his statements to OIG are contradicted by his Annual Financial Disclosure Forms which reveal that he earns twice as much from the real estate business as his wife.

D. The Project Administrator Inappropriately Disclosed Confidential Information

As a part of his duties under the Program, the Project Administrator became a member of CCM selection committees. The committees' purposes are to evaluate written proposals, select proposers to make oral presentations, and then vote for their choice of CCM. All members are required to certify a form called the "Certification of Participants in the Selection, Negotiation,

Award or Administration of Contracts,” which states that members understand that they: will not discuss or reveal any information concerning these selection proceedings to anyone who is not also participating in the same selection, and then only to the extent that such information is required in connection with such proceedings on a need to know basis.

Further, at the bottom of the certification is an acknowledgement that the committee member “fully realizes that any violation of Authority rules and regulations or applicable statutory provisions may subject me to discipline and or expose me to civil or criminal penalties.”

The Senior Procurement Manager, Department of Material at NYC Transit, who managed the Request For Proposals for which the Project Administrator served on the selection committees, confirmed with OIG that the certification signed by all members of a selection committee includes a prohibition from discussing the deliberations of the selection committee outside of the committee members. This prohibition includes communication with their supervisor or with the project management team that will be overseeing the contract.

On July 21, 2015, the Project Administrator sent emails to his supervisor, the PM², and a NYC Transit Design Manager (the Design Manager), disclosing the final pick for a particular project. Three days later, on July 24, 2015, the Project Administrator sent the PM and the Design Manager an email disclosing four companies the selection committee picked to make oral presentations on another project.

In late August 2015, the Project Administrator reached out to the PM via email and shared that a CCM selection committee would hear oral presentations the next day from four companies, but that the committee had already narrowed the choice to two companies. The Project Administrator further shared the committee members’ opinions of both companies’ proposals, including specific reservations about each, and then asked, “Please let me know your opinions and I’ll pass on your recommendations to the others in the committee.” Oral presentations were held by the selection committee on September 1, 2015, from 2p.m. to 4 p.m. The Project Administrator scheduled a 5p.m. to 6 p.m. meeting with managers the same day with the note, “As per [the PM], this meeting is arranged to discuss the oral presentation and seek the path forward in selections.” The next day, the Project Administrator sent his scoring sheets for this selection committee to the NYC Transit Procurement Specialist in charge of the selection committee.

While the Project Administrator admitted that he had signed the certification, he alleged that he thought it only prohibited him from sharing the information outside of NYC Transit. He admitted that he shared the information with the PM, the Design Manager, an NYC Transit

² Shortly before this time, the PM had set up a separate company that was awarded a subcontract with a Consultant Construction Management (CCM) company working under the PM’s supervision. The CCM was one of the proposers on the two selection committees on which the Project Administrator shared the selection committee’s deliberations and sought guidance from the PM. As noted above, on March 11, 2020, the PM pled guilty to one count of obstruction of justice, a federal offense, and is awaiting sentencing before the United States District Court for the Southern District of New York. *See* note 1.

Construction Administrator, and an NYC Transit Construction Manager. He also admitted that he had made a mistake by sharing the information, and explained that he shared information and sought the opinions of his managers because they had been working in the area longer and knew the work of the proposers better than him.

III. POLICIES AND ANALYSIS

A. MTA All-Agency Code of Ethics

1. *§ 1.07: Cooperation with Audits and Investigations*

The MTA All-Agency Code of Ethics Section 1.07 states, in pertinent part that “employees must cooperate fully and honestly with audits and investigations conducted by the MTA Inspector General, ... or other governmental agencies”. The failure to so cooperate will subject an Employee to appropriate disciplinary penalty, up to and including dismissal.

Here, the Project Administrator failed to fully and honestly answer the OIG questions about whether he sought the PM’s assistance in getting transferred to the Program. It was only when he was confronted with emails that detailed his outreach to the PM that the Project Administrator admitted he had done so. During his first interview with OIG staff, the Project Administrator did not reveal that he had sought the PM’s assistance to transfer to CPM. It was only when confronted with email exchanges between himself and the PM, the Project Administrator admitted that he approached the PM twice, once in 2013 and again in 2014, about jobs, but told investigators that nothing had come of it. In addition, the Program Administrator minimized his outside work as a realtor to the OIG. While he told the OIG that his wife does most of the work and that he helps her in the evening and on weekends, his statements to OIG are contradicted by his Annual Financial Disclosure Forms which reveal that he earns twice as much from the real estate business as his wife. His lack of candor violates section § 1.07 of the Code of Ethics.

2. *§ 4.02: Public Trust*

The MTA All-Agency Code of Ethics Section 4.02 states, in pertinent part, that 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. Further, employees shall avoid even the appearance that they can be improperly influenced in the performance of their official duties or induced to violate the public trust or impair their independence of judgment in the exercise of their official duties.

Here, the Project Administrator’s conduct as it pertains to the PM violates these proscriptions. The Project Administrator acted as a broker for the purchase of the PM’s home. The Project Administrator then prevailed upon the PM for assistance in getting promoted. After the Project Administrator was assigned to the PM’s area, the Project Administrator shared confidential selection committee information for at least two separate selection committees. The totality of the Project Administrator’s actions creates a real risk that he is acting in his own interest in violation of the public trust.

3. § 4.03: Confidential Information

The MTA All-Agency Code of Ethics Section 4.03 states, in pertinent part, that 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.

Here, the Project Administrator was instructed that as a member of a selection committee he was not to share any information concerning the selection process with anyone not on the committee. The confidentiality certification that he signed stated that discussion of committee proceedings should be limited to committee members on a need to know basis. At the bottom of the certification is an acknowledgement that the committee member “fully realizes that any violation of Authority rules and regulations or applicable statutory provisions may subject me to discipline and or expose me to civil or criminal penalties.” Sharing confidential selection committee information outside the committee creates a risk that the PM and others who were not privy to the information might share information with a favored proposer, allowing that proposer to tailor their oral presentations to address the selection committee’s concerns, thereby providing an unfair advantage in the selection process.

B. NYC Transit Rules and Regulations

1. Rule 12: Code of Ethics

Rule (12) (a) (4) provides that no NYC Transit employee shall disclose confidential information, without proper authorization or use confidential information to further his/her personal interests. And Rule 12 (a)(10) states, in pertinent part, that no NYC Transit employee [s]hall pursue a course of conduct which will raise suspicion that among the public that he/she is likely to be engaged in acts that are in violation of his/her trust.

Here, as noted above, the Project Administrator improperly shared confidential selection committee information with his manager and others.

2. NYC Transit Policy for Dual Employment 4.23.2 (issued 4/19/2000)

The NYC Transit application for Dual Employment clearly states that employees “have a continuing obligation to disclose non-work related business relationships with fellow NYC Transit employees or any other MTA Agency employees.”

Here, the Project Administrator represented at least 3 NYC Transit employees and an MTA Capital Construction employee in real estate transactions, in violation of the terms of his outside activity authorization. He indicated that the company he worked for did not do business with MTA employees, which he knew was not true since he had represented at least four MTA employees in real estate transactions. Disclosure of his prior work for MTA employees may have affected the decision to renew his approval or his transfer to work under the PM. The Project Administrator also grossly under represented his outside income in 2014, claiming he would make \$15,000, while reporting outside income of between \$50,000 to \$70,000 on his 2012 Financial Disclosure Statement. Although the Project Administrator obtained approval for his

outside employment, he did not truthfully complete the form, as required by NYC Transit Policy/Instruction for Dual Employment 4.23.2 (issued 4/19/00).

C. New York State Public Officers Law

1. § 74(3)(d)

Public Officers Law § 74(3)(d) states, in pertinent part, that “no officer or employee of a state agency... 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 nongovernmental purposes.”

As noted above, the Project Administrator used his official position to secure unwarranted privileges to the PM when he shared confidential selection committee information to the PM and others who were not privy to the information.

2. § 74(3)(h)

Public Officers Law § 74(3)(h) states, in pertinent part that an officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.

As noted in the above discussions of the MTA Code of Ethics § 4.02 (a) and the NYC Transit Rules & Regulations Rule 12 (a)(10), the totality of the Project Administrator’s conduct as it pertains to the PM raises suspicion that his conduct violates the public trust.

IV. FINDINGS

1. The Project Administrator violated § 1.07 of the Code of Ethics.
2. The Project Administrator failed to comply with the required disclosures when he filed for, and received, approval for outside activities in violation of NYC Transit Policy for Dual Employment 4.23.2.
3. The Project Administrator violated § 4.02(2) of the Code of Ethics and Transit Rules & Regulations, Code of Ethics 12 (a)(4) and (a)(10).
4. The Project Administrator violated New York State Public Officers Law §§ 74(3)(d) and (h).

V. RECOMMENDATION

We recommend that Project Administrator be disciplined, up to and including termination.

As always, we appreciate your continued courtesy and cooperation. Please advise our office within 30 days of any action you intend to take and the result of any action taken. Should you have any questions, or need additional information, please contact Executive Deputy Inspector General for Legal Pei Pei Cheng-de Castro at (212) 878-0072.

Very truly yours,

/S/

Carolyn Pokorny

cc: David Farber, General Counsel, NYC Transit
Kim Moore-Ward, Vice President, Office of Labor Relations, NYC Transit
Monica Stamm, General Counsel, JCOPE



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Agency Response
to
MTA/OIG #2020-06

CPM Project Administrator's Unethical Conduct

On September 15, 2020, the New York City Transit (NYC Transit) provided a response to the Office of the MTA Inspector General (OIG)'s investigation and report. NYC Transit sought to terminate the CPM Project Administrator. Due to the fact that the wrongful conduct was discovered after the expiration of the statute of limitations, NYC Transit and the CPM Project Administrator then reached and entered into a settlement agreement with the CPM Project Administrator, who agreed to a penalty of a 30-day suspension without pay and a final warning that any and all future violations may result in his termination. The 30-day suspension approximately accounts for \$14,660 in lost salary.