



Ken Burke, CPA

CLERK OF THE CIRCUIT COURT AND COMPTROLLER
PINELLAS COUNTY, FLORIDA

Clerk of the County Court
Recorder of Deeds
Clerk and Accountant of the Board of County Commissioners
Custodian of County Funds
County Auditor

Division of Inspector General

510 Bay Avenue
Clearwater, FL 33756
Telephone: (727) 464-8371
Fax: (727) 464-8386
Fraud Hotline: (727) 45FRAUD (453-7283)
Clerk's website: www.mypinellasclerk.org

REPORT NO. 2018-31

November 28, 2018

The Honorable Chairman and Board Members
of the School District of Palm Beach County
3300 Forest Hill Blvd., Suite C-316
West Palm Beach, FL 33406

RE: Investigation Of A Complaint Filed With The Palm Beach County School District (PBCSD) On May 5, 2018, Alleging The Palm Beach County School Board Inspector General Violated His Contract By Conducting Business Unrelated To His Role As Inspector General

Pursuant to the Interlocal Agreement Provision of Inspector General Services between the School Board of Palm Beach County, Florida, and the Office of the Clerk of Circuit Court and Comptroller of Pinellas County, Florida, the Division of Inspector General (we) received allegations of fraud, waste, and abuse.

The Complainant alleged the PBCSD Inspector General (IG, Respondent):

- Violated his contract by conducting business unrelated to his role as Inspector General for the PBCSD.

The Complainant provided documentation to assist with the investigation:

- A Town Crier "Letter to the Editor," dated April 26, 2018.
- A Florida Bar member profile, downloaded on April 26, 2018.
- United States Department of Agriculture subsidy information for Silver Lake Enterprises, Inc.
- The Respondent's statements of financial interests for 2013 and 2011.
- A resignation note as Managers of Dancing Crane Farms, LLC, signed by the Respondent on March 15, 2012.
- A letter dated April 23, 2014, regarding an investigation of a complaint regarding the PBCSD Office of Inspector General.

To determine whether the allegation was substantiated, we reviewed policies, procedures, and any other records deemed appropriate. We also conducted interviews of staff and other parties, as needed. Our investigation was performed according to the *Principles and Standards for Offices of Inspector General* and *The Florida Inspectors*

General Standards Manual from The Commission for Florida Law Enforcement Accreditation.

The Division of Inspector General uses the following terminology for the conclusion of fact/finding(s):

- **Substantiated** – An allegation is substantiated when there is sufficient evidence to justify a reasonable conclusion that the allegation is true.
- **Unsubstantiated** – An allegation is unsubstantiated when there is insufficient evidence to either prove or disprove the allegation.
- **Unfounded** – An allegation is unfounded when it is proved to be false or there is no credible evidence to support it.

The Division of Inspector General's investigation of the allegation has determined that the allegation noted above is **substantiated**. Our analysis of the complaint, our findings, and recommendations are presented herein.

We appreciate the cooperation shown by the staff of The School District of Palm Beach County during the course of this investigation.

Respectfully Submitted,



Hector Collazo Jr.
Inspector General/Chief Audit Executive

cc:

Ken Burke, CPA
Pinellas County Clerk of the Circuit Court and Comptroller
Ex Officio County Auditor

Dr. Donald E. Fennoy II, Ed.D., Superintendent
School District of Palm Beach County

Lung Chiu, Inspector General
School District of Palm Beach County
Office of Inspector General

Allan Keith Harris



A. THE COMPLAINT

On May 7, 2018, we received a complaint sent to the PBCSD Board related to the PBCSD Inspector General. The Complainant alleges the Respondent violated his contract by conducting business unrelated to his role as Inspector General for the PBCSD. The complaint refers to the Respondent's Form 1, Statement of Financial Interests, and also mentions two entities the Respondent is potentially associated with:

- Dancing Crane Farms, LLC
- Silver Lake Palm Beach, LLC

B. BACKGROUND

Understanding what is required of the PBCSD Inspector General and of the PBCSD Board.

We obtained the Respondent's current and previous contracts with the PBCSD; the Respondent became the Inspector General in August 2012. Upon review of the Respondent's current contract, we identified provisions addressing outside activities, and the Inspector General's filing requirements under Section 3, titled DUTIES:

"c. The Inspector General shall be permitted to undertake writing, teaching, and speaking engagements, provided that these activities are in furtherance of his role as Inspector General and do not conflict with or interfere with the performance of his duties as Inspector General. The Inspector General shall be permitted to serve on community or family-related business boards provided that these activities do not conflict with or interfere with his duties as Inspector General. Such activities shall be approved in advance by the Board Chair. The Inspector General shall not engage in consulting work for compensation outside of his employment with the School Board. The Board Chair, or in his or her absence, the Board Vice-Chair, shall serve as the Inspector General's administrative superior for purposes of compliance with the provisions of Board policy 3.80.

d. The Inspector General agrees to file any documents required for the SDPBC's personnel files and for payroll purposes. The Inspector General shall file within thirty (30) days of the approval of this Contract and annually thereafter by July 1st, with the Palm Beach County Supervisor of Elections, the Commission on Ethics, Form 1, Statement of Financial Interests..."

The filing of the Statement of Financial Interests is a statutory requirement. The intent of the legislature is to ensure public officers have no conflict of interest in the performance of their role. Florida Statute (F.S.) 112.311(1) states:

“It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.”

The Florida Commission on Ethics (the Commission) is charged with creating the list of required filers; to do so, the Commission necessitates the help of every Florida government agency in order to compile a complete list. F.S. 112.3145(7) states:

“Forms for compliance with the disclosure requirements of this section and a current list of persons subject to disclosure shall be created by the commission and provided to each supervisor of elections...”

(a)1. ...In compiling the list, the commission shall be assisted by each unit of government in providing, at the request of the commission, the name, address, and name of agency of, and the office or position held by, each state officer, local officer, or specified state employee within the respective unit of government.”

Should a required filer not comply with the aforementioned mandate, F.S. 112.3145(7) states:

“(f) Any person who is required to file a statement of financial interests and whose name is on the commission’s mailing list but who fails to timely file is assessed a fine of \$25 per day for each day late up to a maximum of \$1,500; however, this \$1,500 limitation on automatic fines does not limit the civil penalty that may be imposed if the statement is filed more than 60 days after the deadline and a complaint is filed, as provided in s. 112.324.”

Upon review of the Respondent’s employment contract and applicable statutes, we determined that:

With regard to outside business:

- The Inspector General can undertake writing, teaching, and speaking engagements. He can also serve on community or family-related business boards provided that these activities do not conflict with or interfere with his duties.
- The Inspector General must obtain approval from the Board Chair prior to getting involved in the aforementioned activities.
- The Inspector General cannot engage in consulting work for compensation outside of his employment with the PBCSD.
- The PBCSD Board Chair must pre-approve the Inspector General’s outside business activities.

With regard to statutorily required filings:

- The Inspector General is to file Form 1, Statement of Financial Interests, with the Palm Beach County Supervisor of Elections.
- The PBCSD, as a government unit, is to provide the Commission with a list of employees statutorily required to file a financial disclosure form. That list enables the Commission to assess a fine to listed required filers who fail to file the form.

C. ANALYSIS, FINDINGS, AND CONCLUSIONS

1. Determining if the Respondent has complied with contractually and statutorily mandated filing requirements.

We searched for the Respondent's Statements of Financial Interests on the Palm Beach County Supervisor of Election (PBC SOE) website; we looked for filings during his tenure (2012 - present) as the PBCSD Inspector General. We obtained all of the Respondent's filings except for the year 2016. We interviewed the Respondent and inquired about the 2016 filing. The Respondent indicated he had filed every year and kept a copy of every filing; however, he could not locate his 2016 filing. We contacted the PBC SOE to request confirmation on the Respondent's 2016 filing; the PBC SOE had a record of all of the Respondent's filings except for the year 2016.

We also communicated with the individual in charge of maintaining the list of required financial disclosure filers for the PBCSD, the Financial Disclosure Coordinator. We inquired whether or not the Respondent is on the list of filers submitted to the Commission as required by F.S. 112.3145(7), which states:

"(a)1. ...In compiling the list, the commission shall be assisted by each unit of government in providing, at the request of the commission, the name, address, and name of agency of, and the office or position held by, each state officer, local officer, or specified state employee within the respective unit of government."

The Financial Disclosure Coordinator stated that the Respondent is not on the list.

Conclusion:

With regard to the Respondent's filing of his Form 1, Statement of Financial Interests, we identified two findings, which are addressed in more detail in the section titled "RECOMMENDATIONS ON FINDINGS" below.

Findings:

- There is no record of the Respondent filing a Statement of Financial Interests for the year 2016.
- The Respondent is not on the list of filers submitted to the Florida Commission on Ethics.

2. Identifying the Respondent's outside business affiliations and his role in them.

On the Respondent's available Statements of Financial Interests, we noted three entities listed as secondary sources of income:

- *"Silver Lake Ent. Inc.*
- *Silver Lake Palm B LLC*
- *Golden Harvest"*

We searched the Florida Division of Corporations (the Division) for the Respondent's name and home address. We identified eight entities, including the three listed above, using either the Respondent's name and/or address:

i. Silver Lake Enterprises, Inc.

In the records available through the Division, the Respondent is not listed as one of the officers of the entity; however, we obtained a LexisNexis business report on the entity, which lists the Respondent as one of the "Prior Executives." According to the report, the Respondent served as Secretary; no dates found. We attempted contacting the number listed on the report without success.

In response to our inquiries, dated August 24, 2018, the Respondent stated he has been a silent shareholder in the entity from 1998 to date, and per contract, he is not required to obtain permission from the PBCSD Board to be a shareholder. We asked the Respondent if he had contact information for the entity; he responded he would put us in contact with the entity.

On August 29, 2018, we received a call from the President and principal shareholder of the entity who stated the Respondent is not a board member for Silver Lake Enterprises, Inc. The aforementioned caller is the Respondent's former employee (direct report) at the PBCSD Office of Inspector General (OIG) and longtime business partner. Given the appearance of a potential conflict of interest, we could not rely on the caller's statement.

Conclusion: In regard to Silver Lake Enterprises, Inc., we found insufficient evidence to support or refute the allegation that the Respondent, "Violated his contract by conducting business unrelated to his role as Inspector General for the PBCSD," through his involvement with the entity.

ii. Silver Lake Palm Beach, LLC

In the records available through the Division, the Respondent is listed as one of the managing members of the entity from 2004 through 2012. During that time frame, the Respondent's home address was listed as the primary address for the entity; however, as of the 2013 filing, the address was changed. We consulted with the Pinellas County Attorney's Office who explained the term managing

member(s) found on the Division form does not necessarily mean the individuals are on the entity's board or that there is even a board.

We also obtained a LexisNexis business report on the entity, which lists the Respondent as one of the "Prior Executives." According to the report, the Respondent was an Officer of the entity. We attempted contacting the number listed on the report without success.

In response to our inquiries, dated August 24, 2018, the Respondent stated he has been a silent shareholder in the entity from 1998 to date, and per contract, he is not required to obtain permission from the PBCSD Board to be a shareholder. We asked the Respondent if he had contact information for the entity; he responded he would put us in contact with the entity.

On August 29, 2018, we received a call from the President and principal shareholder of the entity who stated the Respondent is not a board member for Silver Lake Palm Beach, LLC. The aforementioned caller is the Respondent's former employee (direct report) at the PBCSD OIG and longtime business partner. Given the appearance of a potential conflict of interest, we could not rely on the caller's statement.

Conclusion: In regard to Silver Lake Palm Beach, LLC, we found insufficient evidence to support or refute the allegation that the Respondent, "Violated his contract by conducting business unrelated to his role as Inspector General for the PBCSD," through his involvement with the entity.

iii. Golden Harvest Enterprises, Inc.

We found no record of this entity on the Division's website. We obtained a LexisNexis business report on the entity, and found no names listed under the fields "Business Contacts" and "Executives." We attempted contacting the number listed on the report without success.

In response to our inquiries, dated August 24, 2018, the Respondent stated he has been a silent shareholder in the entity from 1998 to date, and per contract, he is not required to obtain permission from the PBCSD Board to be a shareholder. We asked the Respondent if he had contact information for the entity; he responded he would put us in contact with the entity.

On August 29, 2018, we received a call from the President and principal shareholder of the entity who stated the Respondent is not a board member for Golden Harvest Enterprises, Inc. The aforementioned caller is the Respondent's former employee (direct report) at the PBCSD OIG and longtime business partner. Given the appearance of a potential conflict of interest, we could not rely on the caller's statement.

Conclusion: In regard to Golden Harvest Enterprises, Inc., we found insufficient evidence to support or refute the allegation that the Respondent, “Violated his contract by conducting business unrelated to his role as Inspector General for the PBCSD,” through his involvement with the entity.

iv. Dancing Crane Farms, LLC

In the records available through the Division, the Respondent was listed as one of the managing members of the entity from 2006 through 2013. During that time frame, the Respondent’s home address was listed as the primary address for the entity; however, as of the 2013 filing, the address was changed. We obtained a LexisNexis business report on the entity, and the Respondent is not listed as an “Executive” for Dancing Crane Farms, LLC. We attempted contacting the number listed on the report without success.

In response to our inquiries, dated August 24, 2018, the Respondent stated he was a silent shareholder in the entity from 1998 through 2005. We asked the Respondent if he had contact information for the entity; he responded he would put us in contact with the entity.

On August 29, 2018, we received a call from the President and principal shareholder of the entity who stated the Respondent is not a board member for Dancing Crane Farms, LLC. The aforementioned caller is the Respondent’s former employee (direct report) at the PBCSD OIG and longtime business partner. Given the appearance of a potential conflict of interest, we could not rely on the caller’s statement.

Conclusion: In regard to Dancing Crane Farms, LLC, we found insufficient evidence to support or refute the allegation that the Respondent, “Violated his contract by conducting business unrelated to his role as Inspector General for the PBCSD,” through his involvement with the entity.

v. Palm Beach Golden Keys Investments, Inc.

In the records available through the Division, the Respondent was listed as the registered agent of the entity from 2004 through 2009; his home address was listed as the primary address for the entity. This entity is listed as inactive on the Division’s website as of September 24, 2010.

In response to our inquiries, dated August 24, 2018, the Respondent stated he was a registered agent from 2004 through 2009, and per contract, he is not required to obtain permission from the PBCSD Board to be a shareholder.

We obtained a LexisNexis business report on the entity, and the Respondent is listed as a registered agent. We could not locate a contact number for the entity. Per our consultation with the Pinellas County Attorney’s Office, being a

registered agent of an entity does not necessarily imply the individual is on the board or not.

Conclusion: In regard to Palm Beach Golden Keys Investments, Inc., we found insufficient evidence to support or refute the allegation that the Respondent, “Violated his contract by conducting business unrelated to his role as Inspector General for the PBCSD,” through his involvement with the entity.

vi. Rich Harbor, Inc.

In the records available through the Division, the Respondent was listed as the registered agent of the entity from 2003 through 2010. This entity is listed as inactive on the Division’s website as of September 23, 2011.

In response to our inquiries, dated August 24, 2018, the Respondent stated he was a registered agent from 2005 through 2010; his involvement was “*not during time [he] served as Inspector General.*”

We obtained a LexisNexis business report on the entity, and the Respondent is listed as a registered agent. We could not locate a contact number for the entity. Per our consultation with the Pinellas County Attorney’s Office, being a registered agent of an entity does not necessarily imply the individual is on the board or not.

Conclusion: In regards to Rich Harbor, Inc., we found insufficient evidence to support or refute the allegation that the Respondent, “Violated his contract by conducting business unrelated to his role as Inspector General for the PBCSD,” through his involvement with the entity.

vii. Miami Chapter of Buddha’s Light International Association, Inc.

In the records available through the Division, the Respondent is listed as the registered agent from 2003 through 2009. This entity is listed as inactive on the Division’s website as of September 24, 2010.

In response to our inquiries, dated August 24, 2018, the Respondent stated he has been the President and a member of the board of directors for the entity from 2003 to present. He also stated he is not required to obtain prior PBCSD Board approval “*as this is [his] religious temple.*”

We consulted with the Pinellas County Attorney's Office who explained:

"The contract does not mention religious boards, and including them in the term 'community' would likely be an overly broad interpretation. Additionally, a government agency can't limit the IG's personal religious practice, and if serving on a religious board is part of his religious practice, the contract would likely not be enforceable as to that issue. Ultimately, whether the board of a religious organization is a 'community business board' as contemplated by the contracting parties is a legal contractual interpretation that would need to be made by a judge, if the parties disagree."

Conclusion: In regards to the Miami Chapter of Buddha's Light International Association, Inc., we found no evidence to support the allegation that the Respondent, "Violated his contract by conducting business unrelated to his role as Inspector General for the PBCSD," through his involvement with the entity.

viii. International Cultural & Arts Exchange Foundation, Inc.

In the records available through the Division, the Respondent was listed as the President of the entity at its inception on December 15, 2014, which is about two years after the Respondent became the Inspector General. Subsequently, the 2015 filing shows another individual as the new President as of March 23, 2015.

In response to our inquiries, dated August 24, 2018, the Respondent stated he was the President for the entity at inception in 2014 to facilitate incorporation; however, he resigned shortly thereafter.

Conclusion: In regards to International Cultural & Arts Exchange Foundation, Inc., we determined the Respondent should have obtained approval from the PBCSD Board Chair prior to becoming the President for the entity.

Overall Conclusion:

The allegation that the Respondent violated his contract by conducting business unrelated to his role as Inspector General for the PBCSD, is **substantiated**. We identified the following finding, which is addressed in more detail in the section titled "RECOMMENDATIONS ON FINDINGS" below.

Finding:

- The Respondent did not obtain approval from the PBCSD Board Chair prior to becoming a board member for International Cultural & Arts Exchange Foundation, Inc. as required by his employment contract.

D. RECOMMENDATIONS ON FINDINGS

1. There Is No Record Of The Respondent Filing A Statement Of Financial Interests For The Year 2016.

During our investigation, we obtained from the PBC SOE website, all of the Respondent's Statements of Financial Interests filed during his tenure as Inspector General for the PBCSD, except for the year 2016.

The Respondent became the PBCSD Inspector General in August 2012. We contacted the PBC SOE to inquire about the Respondent's Statements of Financial Interests filings; the representative stated they have all of the Respondent's filings except for the year 2016. We asked the Respondent to produce his filing for 2016; while he had all of the other filings for his tenure as the PBCSD Inspector General, he could not locate his filing for the year 2016. The Respondent's current employment contract states:

"3. DUTIES....

d. The Inspector General agrees to file any documents required for the SDPBC's personnel files and for payroll purposes. The Inspector General shall file within thirty (30) days of the approval of this Contract and annually thereafter by July 1st, with the Palm Beach County Supervisor of Elections, the Commission on Ethics, Form 1, Statement of Financial Interests."

Consequently, the Respondent was not in compliance with his employment contract for the year 2016.

We recommend the PBCSD Inspector General consistently file his Statement of Financial Interests with the appropriate agency as mandated by the employment contract.

We recommend the PBCSD Board Chair ensure the PBCSD Inspector General complies with the provisions of the employment contract.

2. The PBCSD Inspector General Is Not On The List Of Filers Submitted To The Florida Commission On Ethics.

During our investigation, we communicated with the current Financial Disclosure Coordinator (Coordinator) for the PBCSD, who is in charge of compiling the list of filers to provide to the Commission. The Coordinator stated the PBCSD Inspector General should be on the list of filers; however, his name was never added. Nevertheless, it should be noted the PBCSD Inspector General has been compliant throughout his tenure, except for the year 2016.

F.S. 112.3145(7) states:

“Forms for compliance with the disclosure requirements of this section and a current list of persons subject to disclosure shall be created by the commission and provided to each supervisor of elections...”

(a)1. ...In compiling the list, the commission shall be assisted by each unit of government in providing, at the request of the commission, the name, address, and name of agency of, and the office or position held by, each state officer, local officer, or specified state employee within the respective unit of government.”

The aforementioned statement can also be found in F.S. 112.3144(5)(a). The intent of the legislature is to ensure public officers have no conflict of interest in the performance of their role. F.S. 112.311(1) states:

“It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.”

Per F.S. 112.320, the role of the Florida Commission on Ethics is:

“...to serve as guardian of the standards of conduct for the officers and employees of the state, and of a county, city, or other political subdivision of the state, as defined in this part, and to serve as the independent commission provided for in s. 8(f), Art. II of the State Constitution.”

Without a complete list from each agency, the Commission cannot effectively fulfill its role; therefore, it is imperative each agency's designated coordinator provide a complete list of required filers to the Commission timely.

Under Florida Law, there are statutory penalties for failure to file a required financial disclosure form. It should be noted, that while the PBCSD Inspector General employment contract includes a provision requiring the Respondent to file an annual

Form 1, Statement of Financial Interests, it does not establish additional contractual penalties for non-compliance with this provision. Additionally, the contract is silent on whether failure to file the form for a single year constitutes a material breach.

We recommend the PBCSD Financial Disclosure Coordinator:

- Review and update the agency's list of filers to include the PBCSD Inspector General, and any other filers that may have been missed.
- Ensure the list is complete prior to submission to the Commission.

We recommend the PBCSD Board review and update the PBCSD Inspector General's employment contract to address any consequences for non-compliance with the filing provision of the agreement.

3. The Respondent Did Not Obtain Approval Prior To Becoming A Board Member For An Entity As Required By The Employment Contract.

In response to our inquiry regarding affiliated entities, the Respondent stated he was the President for International Cultural & Art Exchange Foundation, Inc. at inception on December 15, 2014, to facilitate its incorporation. He resigned shortly thereafter; nevertheless, he stated he did not obtain approval from the PBCSD Board Chair prior to becoming the President of the entity.

The records available through the Division of Corporations corroborate the Respondent's statement; the inception document shows the Respondent listed as the President of the entity at its inception on December 15, 2014. The 2015 filing shows another individual as the new President as of March 23, 2015.

The PBCSD Inspector General's employment contract states:

"The Inspector General shall be permitted to undertake writing, teaching, and speaking engagements, provided that these activities are in furtherance of his role as Inspector General and do not conflict with or interfere with the performance of his duties as Inspector General. The Inspector General shall be permitted to serve on community or family-related business boards provided that these activities do not conflict with or interfere with his duties as Inspector General. Such activities shall be approved in advance by the Board Chair. The Inspector General shall not engage in consulting work for compensation outside of his employment with the School Board."

The Respondent's involvement in certain outside business activities could place him in a situation of conflict of interest. Obtaining prior approval mitigates the risk for both the Respondent and the PBCSD.

We recommend the Inspector General comply with the employment contract and obtain approval from the PBCSD Board Chair prior to serving on a community or family-related business board.

We recommend the PBCSD Board provide employment contract oversight in order to ensure compliance by the PBCSD Inspector General.