

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

X

In the Matter of

John Begley
NicoleAnn Dawson
Naeem Janjua
Adeshola Laguda
Kenneth Lau
Katherine Lawrence
Archibald Mbatt
Annfiera Jarvis McPherson
Yalin Qiu

FD Order No. 2014-1

X

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
ON MOTION FOR RECONSIDERATION**

On November 7, 2013, pursuant to a delegation by the Board, the Executive Director of the Conflicts of Interest Board (“COIB” or “the Board”) granted on default each of the above captioned Department of Citywide Administrative Service (“DCAS”) employee’s appeal of the designation as a required filer of an annual disclosure report for calendar year 2012 pursuant to Administrative Code §12-110(c)(2) and Financial Disclosure Appeals Process §§ B(5) and (E)(5).¹ On January 9, 2014, DCAS filed a “motion for reconsideration” requesting that the Board change its determination. On January 30, 2014, DC 37 responded, challenging DCAS’s authority to make such a motion and argued that the decision was proper.

The Financial Disclosure Appeals Process (“Appeals Process”), which was entered into upon agreement between the City, the Board, and DC 37, provides a procedure for an employee to contest the agency’s designation of that employee as a required filer of an annual disclosure report. The employee may appeal the designation to the agency head, and, if that appeal results in an unfavorable decision, to the Board.² If certain requirements are not met, the appeal is to be granted on default.³

¹ See FD Order 2013-4 (November 7, 2013).

² Appeals Process §§ B, D.

³ For example, if the agency head or designee fails to meet the 14-day deadline to render a decision after the employee has submitted a written statement or if the agency head or designee fails, upon request of the employee, to meet with the employee and his or her representative, the appeal “shall be granted on default.” *Id.* at §§ B5, 6. In addition, an employee’s failure to submit a written statement in support of the appeal or request a meeting with the agency head in

Pursuant to the Appeals Process, a grant of any appeal on default “shall apply to that filing year only and shall not be a determination on the merits.”⁴ Accordingly, agencies have the opportunity to designate the employee as a required filer of an annual disclosure report again the following year.⁵ The Appeals Process does not provide any other procedure to contest the grant of appeal on default.⁶

In the instant matter, the Board granted the above-captioned DCAS employees’ appeals on default because of the agency’s failure to provide the employees with the full 14-day period for submission of written documents in support of their appeal.⁷ Pursuant to the Appeals

writing shall waive the right to appeal absent a showing of good cause. *Id.* at §§ B4. Similarly, an appeal to the Board may result in a summary finding against either party, the employee or the agency, where the appeal fails to timely provide additional information requested by the Board. *Id.* at § B7.

⁴ *Id.* at § E5.

⁵ For example, the Board granted on default the appeals of numerous DCAS employees on the agency’s failure to set forth its reasons for the denials of their appeals of their designation as required filers of annual disclosure reports for calendar year 2010. FD Order No. 2012-1 (April 19, 2012) http://www.nyc.gov/html/conflicts/downloads/pdf2/fd%20docs/coib_fd_order_2012-1.pdf. The following year, DCAS again designated the employees as required filers, the employees appealed, and the Board rendered a decision on the merits. FD Order No. 2013-1 (April 10, 2013) http://www.nyc.gov/html/conflicts/downloads/pdf2/fd%20docs/board_fd_order_2013-1.pdf.

⁶ When the Board decides an appeal on the merits, its determination is final. Appeals Process § D13. If the Board grants the appeal, the employee is excused from the filing requirements “until or unless the employee’s title, position duties, or responsibilities change such that he or she should be a required filer.” *Id.* at §§ D14; 8A. *See also* *Id.* at § E4. If the Board denies the appeal, the employee is required to file an annual disclosure report. *Id.* at § D15. Of course this final determination can be, and has been, challenged in an Article 78 proceeding. *See Matter of Tirado* (July 1, 2010) http://www.nyc.gov/html/conflicts/downloads/pdf2/fd%20docs/decision_art78_fd_appeal_compt_roller_off.pdf.

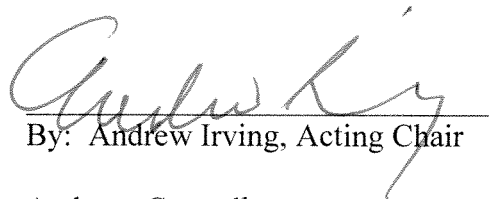
⁷ *See* FD Order 2013-4 (November 7, 2013). Appeals Process § B(4). The Board has previously held that an agency must afford the employee the full 14-day period from the date the notice of appeal is filed to submit a written statement in support of the appeal, and that failure to do so results in an appeal being granted on default. *Matter of DeLisi*, FD Order 2013-2 (August 22, 2013) http://www.nyc.gov/html/conflicts/downloads/pdf2/fd%20docs/board_fd_order_2013-2.pdf; *Matter of Acito, et. al.*, FD Order 2012-2 (August 28, 2012) http://www.nyc.gov/html/conflicts/downloads/pdf2/fd%20docs/coib_fd_order_2012-2.pdf. In arguing that these matters should have been remanded, as in *Acito*, rather than granted on default, as in *DeLisi*, DCAS ignores the fact that *Acito* clearly set forth when the 14-day period commenced, and primarily addresses the remedy imposed for its violation. As the Board noted in *DeLisi*, its decision in *Acito* was rendered and distributed well before the filing period for 2012 annual disclosure reports. *Id.* at 3. Therefore, DCAS was on notice of how to calculate the 14-day period and that the failure to provide the full 14-day period to an employee to submit written statements in support of an appeal would be deemed a violation of the Appeals Process.

Process, DCAS's sole remedy is to place these employees' names on the list of required filers for calendar year 2013.

The Appeals Process does not grant any party the right either to appeal from or to move to reconsider the Board's determination of an appeal, whether on default or on the merits. Accordingly, for the foregoing reasons, DCAS's motion for reconsideration is dismissed.⁸

WHEREFORE, pursuant to the Financial Disclosure Appeals Process, the Board dismisses DCAS's motion for reconsideration.

The Conflicts of Interest Board



By: Andrew Irving, Acting Chair

Anthony Crowell
Burton Lehmann
Erika Thomas-Yuille

Dated: March 14, 2014

cc: John Begley
NicoleAnn Dawson
Naeem Janjua
Adeshola Laguda
Kenneth Lau
Katherine Lawrence
Archibald Mbatt
Annfiera Jarvis McPherson,
Yalin Qiu
Shameka Boyer, Deputy Commissioner for Administration, DCAS
Russell Ann Nobles, General Counsel, DCAS
Thomas Cooke, DC37

⁸ The Board notes that DCAS has previously requested that additional steps be added to the Appeals Process. When appeals addressing 2011 annual disclosure reports were pending and even before any hearings were held, DCAS requested a procedure by which to comment on a negative recommendation. Because comments would be received before any final decision by the Board, the request was granted and DCAS and DC 37 each was provided with the opportunity to submit a written response to the arbitrator's recommendation.