

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

x

In the Matter of

JESSICA TISCH

COIB Case No. 2017-693

OATH Index No. 528/21

Respondent.

x

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

Upon consideration of all the evidence presented in this matter, and of the full record, and all papers submitted to, and rulings of, the Office of Administrative Trials and Hearings (“OATH”), including the Report and Recommendation (the “Report”) of OATH Administrative Law Judge (“ALJ”) Faye Lewis dated May 27, 2021, in the above-captioned matter, and upon consideration of the comments to the Report submitted by the parties, the Conflicts of Interest Board (the “Board”) hereby adopts in full the findings of fact and conclusions of law contained in the Report, which finds that Respondent violated Charter Section 2604(b)(3) by supervising and taking official actions that benefitted a person who had an outstanding debt to her. The Report also finds that, as a matter of law, Respondent did not violate Charter Section 2604(b)(14), which finding the Board adopts. The Report recommends that the Board impose a fine of \$2,000, which recommendation the Board adopts.

Without limiting the foregoing, and in summary of its findings and conclusions, the Board notes the following:

The Report finds, and neither party contests, that between October 2013 and January 2015, Respondent loaned a former colleague with whom she had remained friends (the “Individual”) a total of \$75,000, for which the Individual signed promissory notes. At the time, the Individual was not a City employee, while Respondent was an employee of the New York City Police Department (“NYPD”). NYPD hired the Individual in August 2015. Respondent had no role in the Individual’s hiring. In January 2017,

Respondent requested that NYPD transfer the Individual to her supervision, a request that NYPD granted. By May 2017, Respondent requested that her accountants begin the process of formally forgiving the loans; a portion was forgiven retroactive to December 31, 2016, and all loans were forgiven as of January 1, 2018, during which time Respondent remained the Individual's supervisor. The Report finds that for approximately one year, Respondent supervised the Individual while outstanding loans existed between them, during which time Respondent approved a title change and pay increase for the Individual.

The First Cause of Action: Charter Section 2604(b)(3)

Petitioner's first cause of action charged Respondent with supervising and taking official actions that benefitted a person who had an outstanding debt to her, in violation of Charter Section 2604(b)(3), which states: "No public servant shall use or attempt to use his or her official position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant."

The Report sustains this cause of action, finding that Respondent supervised and took actions to benefit the Individual, a person "associated" with Respondent within the meaning of Charter Section 2601(5) by virtue of her "business or other financial relationship" with the Individual. The Report correctly concludes that "a logical and commonsense interpretation" of the term "financial relationship" in Charter Section 2601(5) "is that it includes 'outstanding loans.'" Although the ALJ credits Respondent's testimony that she never intended for the loans to be repaid, the ALJ nonetheless concludes that Respondent was aware that she was in a financial relationship with the Individual because the loans were identified as loans on Respondent's annual financial disclosure.

The Report correctly finds that Respondent took official action to benefit the Individual, specifically by requesting the Individual's transfer to become her subordinate and by approving a title change and salary increase for the Individual. To support this interpretation of Charter Section 2604(b)(3), the Report cites *COIB v. Tatum*, OATH Index No. 2891/10 (2010), *adopted*, COIB Case No. 2009-467 (2011) (New York City Department of Education ("DOE") School Custodian fined \$20,000 for hiring as her DOE subordinate a contractor whom she had also hired to perform work on her residence, in violation of Charter Section 2604(b)(3)); *COIB v. Beza*, COIB Case No. 2009-024 (2009) (New York City Human Resources Administration ("HRA") Eligibility Specialist fined \$7,500, forgiven due to financial hardship, for processing the recertification of food stamps benefits for the HRA client who resided with her and served as her child care provider, in violation of Charter Section 2604(b)(3)); *COIB v. Turner*, COIB Case No. 1999-200 (2000) (HRA Commissioner fined \$6,500 for, among other violations, renting an apartment to his HRA subordinate, in violation of Charter Section 2604(b)(3)); and *COIB v. Hagler*, OATH Index No. 581/15 (2015), *modified on penalty*, COIB Case No.

2013-866 (2015) (Executive Director at New York City Health + Hospitals Corporation (“Health + Hospitals”) fined \$3,000 for authorizing a 10% pay raise for his brother, who was under the Executive Director’s indirect supervision for nine years, in violation of Charter Section 2604(b)(3)).

In sustaining this charge, the ALJ recognized that Charter Section 2604(b)(3) “is broadly written” and “does not require that an employee use her official position to obtain a wrongful benefit for an associated person, only that she use her official position to obtain a *benefit* for the associated person.” She “credited Tisch’s and [the Individual’s] testimony that [the Individual’s] transfer ... was based on merit and that the 12 percent raise was standard for a change in title and substantial increase in responsibilities.” The ALJ thus found that “this case is far different from a case such as *Tatum*, where the person hired to clean the school did not actually work in the school on the days indicated on his timecards.” Rather, “there is no indication that the public was disserved by [the Individual’s] transfer, promotion, or salary increase.”

The Second Cause of Action: Charter Section 2604(b)(14)

Petitioner’s second cause of action charged Respondent with violating Charter Section 2604(b)(14), which states: “No public servant shall enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.” The Report dismisses this cause of action, finding that, as a matter of law, Respondent did not violate Charter Section 2604(b)(14) because Respondent and the Individual did not “enter into” their financial relationship while they were superior and subordinate. The Board agrees with the Report that, under these facts, Respondent did not violate Charter Section 2604(b)(14).

Penalty

In recommending a fine of \$2,000, the Report considers the \$3,000 fine imposed in *Hagler* and determines that the duration of the violation in *Hagler* (approximately nine years) was much longer than the duration of the violation here (approximately one year). In her Report, the ALJ further states her “that Tisch did not intentionally violate [Charter Section 2604(b)(3)]. However, [Tisch] should have been aware that while [the Individual’s] loans were still outstanding, requesting a transfer with a salary increase would constitute a violation.”

Petitioner, in seeking a fine of \$4,000 to address Respondent’s violation of Charter Section 2604(b)(3), argues that Respondent’s course of conduct was more serious than in *Hagler* because “her supervision of [the Individual] was more deliberate and direct and ... she took multiple personnel actions to advance [the Individual’s] career in addition to effectuating a salary increase.” The ALJ, however, reasonably recognizes that Respondent’s personnel actions “were all part of a process to effectuate [the Individual’s] permanent transfer.”

Accordingly, the Board adopts the Report's recommended penalty of \$2,000.

Having found the above-stated violations of the City Charter, and having consulted with the Mayor as required by Charter Section 2603(h)(3), the Board determines that the penalty shall be a fine of \$2,000.

WHEREFORE, IT IS HEREBY ORDERED, pursuant to Charter Section 2606(b), that Respondent be assessed a civil penalty of \$2,000 to be paid to the Conflicts of Interest Board within 30 days of service of this Order. Respondent has the right to appeal this Order to the Supreme Court of the State of New York by filing a petition pursuant to Article 78 of the Civil Practice Law and Rules.

The Conflicts of Interest Board



By: Jeffrey D. Friedlander, Chair

Nisha Agarwal
Fernando A. Bohorquez, Jr.
Wayne G. Hawley

Dated: January 5, 2022

cc: David N. Kelley
Kaitlyn Walsh
Counsel for Respondent
Dechert LLP
Three Bryant Park
1095 Avenue of the Americas
New York, New York 10036

Administrative Law Judge Faye Lewis
Office of Administrative Trials and Hearings
100 Church Street
New York, New York 10007