



The City of New York
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**DOI FINDS FORMER SALES REPRESENTATIVE OF SOFTWARE COMPANY FORGED
CITY OFFICIAL'S SIGNATURE ON PROPOSED LICENSE AGREEMENT**

ROSE GILL HEARN, Commissioner of the New York City Department of Investigation (DOI), today released a report of an investigation that found that a sales representative of BMC Software, Inc. forged the signature of a City official onto a proposed licensing agreement during negotiations with the City Department of Information Technology and Telecommunications (DoITT) for acquisition of BMC software. DOI investigated the matter following a referral from DoITT. DOI substantiated that a BMC employee, now terminated by BMC as a result of this investigation, caused the signature of a DoITT Deputy Commissioner to be superimposed onto a document BMC needed in connection with the sale to DoITT of software worth millions of dollars.

DOI Commissioner Rose Gill Hearn said, "Forging a City official's signature on a document to suit the needs of a company doing business with the City will result in a referral for prosecution and ongoing scrutiny of the company's activities with the City. DOI will continue to pursue any wrongdoing by IT vendors who might attempt to dupe the City in any way, assisted, as in this case, by DoITT's vigilance."

DOI's investigation, which included interviews of DoITT and BMC personnel and review of numerous documents, substantiated that the sales representative for Houston-based BMC forged the DoITT Deputy Commissioner's signature onto the proposed agreement. BMC terminated the sales representative's employment and cooperated with DOI's investigation. DOI is recommending that a monitor be appointed at BMC's expense to oversee and review BMC's engagement with DoITT regarding the transaction at issue. The appointment of a monitor will ensure that BMC, as is expected of any City vendor, is conducting its affairs with integrity and transparency. DOI will determine with DoITT the specifics of the monitorship. DOI also referred its findings of the investigation, which is ongoing, to the Office of New York County District Attorney Cyrus R. Vance, Jr. A copy of DOI's report is attached.

Commissioner Gill Hearn thanked DoITT Commissioner Carole Post and her staff for their assistance in this investigation.

The investigation was conducted by DOI's Office of Inspector General for DoITT, in particular, Inspector General Michael Siller.

DOI is one of the oldest law-enforcement agencies in the country. The agency investigates and refers for prosecution City employees and contractors engaged in corrupt or fraudulent activities or unethical conduct. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City.

DOI's press releases can also be found at twitter.com/doinews
Get the worms out of the Big Apple. To report someone ripping off the City, call DOI at (212) 825-5959.



The City of New York
Department of Investigation

ROSE GILL HEARN
COMMISSIONER

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August 31, 2011

Carole Post
Commissioner
New York City Department of
Information Technology & Telecommunications
75 Park Place
New York, New York 10007

Re: BMC Software

Dear Commissioner Post:

DOI has substantiated an allegation that an employee of BMC Software ("BMC"), an IT company with which DoITT is currently in negotiations in connection with a planned software upgrade, forged the signature of a DoITT Deputy Commissioner on a contract that DoITT was contemplating entering into with BMC. Although this matter involves a contemplated new contract, BMC is an existing DoITT vendor. DOI opened this investigation after DoITT referred the allegation to DOI.

I. Background

The following is a summary of the facts learned during the course of this investigation and does not include all of the facts learned during this investigation.

In April 2011, DoITT advised DOI that the signature of DoITT Deputy Commissioner Brett Robinson had apparently been forged onto an "Enterprise License Order" ("ELO") agreement that DoITT was then in the process of negotiating with BMC. According to DoITT, on March 31, 2011, Robinson had signed on behalf of DoITT a document called a "Term Sheet," summarizing the terms of DoITT's contemplated software upgrade transaction with BMC, pursuant to which DoITT would procure licenses for the use of BMC software products and related technical support. DoITT alleged that on April 19, 2011, after BMC had mailed to DoITT what purported to be a fully executed copy of the ELO document, DoITT discovered that the ELO contained what appeared to be a facsimile of Robinson's signature that had been affixed to the Term Sheet, although Robinson had never in fact signed the ELO.

II. DOI's Investigation

DOI's investigation included, but was not limited to, discussions with DoITT personnel, interviews of BMC personnel and review of numerous emails and other documents.

A. The ELO Transaction

According to Robinson, the purpose of the proposed ELO transaction was to provide the City with unlimited access to and quantities of BMC manufactured software, primarily BMC's Remedy and Blade Logic products. DoITT would pay BMC \$8.5 million for the necessary licenses for such software. According to various BMC personnel with whom DOI spoke, DynTek Corporation ("DynTek") and Column Technologies ("Column") had been involved in the transaction as resellers. (See below at fn. 6.)

B. Carmela Martino

Carmela Martino was a BMC account executive/manager who was part of the BMC sales team negotiating the ELO transaction with DoITT. DOI was advised on April 26, 2011 by BMC's attorney, Christopher Gunther, that as part of an internal BMC investigation of the forged signature, Martino told him that she had picked up the ELO document at DoITT's Two Metrotech facility on March 31, 2011, put it in her bag and took it home. According to Gunther, Martino said that when she got home, she took the document out of her bag and realized it was a document necessary to close the deal. Gunther said that Martino claimed that nobody gave her the document but rather she had just gathered up work papers that people sometimes leave for her and put them in her bag. Gunther said that Martino told him that when she took the ELO document out of her bag it was signed by Robinson; she then scanned the document on her home scanner, put it on her thumb drive and transferred it to her company laptop; she then emailed the document from the laptop to her supervisor, Cristina Martinez, who forwarded it on to others in the company. According to Gunther, Martino claimed she could not find the thumb drive.

On April 27, 2011, the day after speaking with Gunther, DOI received a call from Christopher Adams, an attorney representing Martino. Adams said that Martino wanted to clarify some things she had told BMC's lawyers, which Adams said Martino had been directed to say by Martinez. DOI interviewed Martino on May 2, 2011 and again on June 23, 2011, both times during which she was represented by Adams. As discussed in detail below, Martino admitted that she was the one who forged Robinson's signature on the ELO.

Martino testified under oath that she had worked for BMC in a sales capacity since the end of October 2009, reporting directly to Martinez. Martino stated that her compensation, as well as that of Martinez and others at BMC involved in the ELO transaction, is based in part on commissions. Martino stood to receive a six-figure commission from the ELO transaction had the deal closed by March 31, 2011, the end of BMC's Fiscal Year. According to Martino, the agreed upon \$8.5 million price of the deal was contingent on a Term Sheet being signed and returned by DoITT by March 31, 2011.

Martino said her understanding of the difference between the Term Sheet and the ELO was "very fuzzy." She said she had sent the draft ELO to DoITT Deputy Commissioner Michael Bimonte around March 10th or March 11th, telling him that BMC needed the ELO signed to complete the deal, and Bimonte replied that he would forward the ELO to DoITT legal to handle.

Martino said that DoITT legal had a “ton” of changes to the ELO, and Martinez was going back and forth with DoITT personnel on all the changes. Martino said that approximately one week later, i.e., March 17th, DoITT personnel told her that DoITT would not be using the ELO, and that DoITT would come up with a Term Sheet. Martino testified, and emails DOI reviewed confirm, that there was extensive back and forth between and among DoITT and BMC concerning terms to incorporate into the ELO and the Term Sheet.

Martino acknowledged that Robinson’s purported signature on the ELO was a “copy” that she placed onto the document. In explaining her role in forging Robinson’s signature, Martino said she left DoITT’s MetroTech offices at approximately 5:30 p.m. on March 31, 2011, and began driving home, when she received an email at 5:45 p.m. from Robinson’s office containing the Term Sheet that Robinson had actually signed. Based on emails that DOI reviewed, it appeared that Martino had been anxiously waiting for DoITT’s signature on the Term Sheet all day, due to the March 31st deadline by which BMC needed the deal closed. Martino said she forwarded the email containing the signed Term Sheet first to Martinez and then Mark Roberts, Martinez’s supervisor, and then called Martinez and asked to meet with her. Martino said that Martinez told Martino to meet her at an address on the West Side of Manhattan, an apartment leased to DynTek’s President and CEO, Ron Ben-Yishay.

Martino said she arrived at the DynTek apartment sometime between 5:55 and 6:10 p.m. and that when she arrived, Martinez told her that she had been working with DynTek and Column all day on the ELO deal. Martino testified that Martinez told her that they still needed a signed ELO, and that the signed Term Sheet was not good enough to book the agreement internally at BMC. Martino said that Martinez told her to put Robinson’s signature on the ELO document and give it back to her. Martino, who had received the unsigned ELO via email from Mark Roberts, said she understood Martinez to be directing her to cut and paste Robinson’s signature from the Term Sheet, rather than try to contact Robinson and obtain his legitimate signature on the ELO.

Martino testified that in response to Martinez’s instructions, she said “OK,” explaining to DOI that she was “uncomfortable.” Martino testified that she “booted up” her laptop, then called a relative and asked if the relative could take a signature off one document and put it on another using an Apple computer. Martino said that her relative responded affirmatively and that she then emailed the unsigned ELO to the relative with the instructions, “Make it happen.” She said that her relative then cut and pasted Robinson’s signature from the Term Sheet onto the blank signature block on the ELO and emailed the “signed” ELO back to Martino. Martino testified that she deleted her relative’s email because she panicked about the incident. Martino said that after receiving the altered ELO from her relative, she forwarded it to Martinez in an email which she also has since subsequently deleted out of panic. BMC produced an email to DOI, which DOI showed to Martino, who confirmed that it contained the forged ELO. Martino testified that it took approximately fifteen minutes in total between receiving the unsigned ELO, getting the direction to alter the ELO, and the actual alteration of the ELO.

According to Martino, Martinez was sitting next to her on the same chair during the entire conversation with her relative. Martino said that when she received the altered ELO back from her relative, Martinez told her, “Great, we’re good to go now.” According to Martino, Martinez told her that the altered ELO would only be used internally within BMC in order to book the order, and that the document would not leave BMC. Martino said that booking the deal would have triggered commissions for those entitled to them according to their compensation plans. Martino explained that the sales team had set sales performance goals, and that failing to achieve those goals could

result in write-ups, warnings and possible termination. Martino said that after she altered the ELO, she left Ben-Yishay's apartment around 8:30 p.m.

Martino said that she and Martinez received an email from Mark Roberts on April 1st, asking Martino to fill in Robinson's printed name, title and the date beneath Robinson's purported signature on the ELO, and to send the document back to Roberts's e-fax. Martino said that after Roberts said BMC needed Robinson's signature block filled in, she emailed the document to her relative, who then transferred the signature block information beneath Robinson's altered signature in the same fashion as the signature had been transferred, i.e., by "cutting and pasting" it. Martino said that after her relative altered the document, she printed it and faxed it to Roberts.¹ Martino said she did not tell Roberts how she had obtained Robinson's signature on the document and stated that she did not tell anyone at DoITT about what she had done.

Martino said that the next time she spoke with Martinez about the ELO was on April 19th, when she received a call at home from Martinez, who seemed "frantic." According to Martino, Martinez said she had received a call from Bimonte who said that he had the ELO with Robinson's apparent signature. Martino said that Martinez told her that someone in BMC's back office had mistakenly mailed the ELO to DoITT, so that Martino needed to go to DoITT's offices, get the ELO back and tell DoITT that it was a "mistake." Martino said that she met with Bimonte, who told her that "it's not Brett's signature" on the ELO, that the signature looked like an exact copy rather than a genuine signature, and that the matter was with Commissioner Post. Martino said she called Martinez after she left Bimonte's office, without the ELO document, and repeated what Bimonte had told her.

Martino said during a conversation with Martinez on April 19th or the 20th, Martinez came up with a story for Martino to explain how the document had been obtained, i.e., that Martino had happened to pick the document up from a desk somewhere at DoITT during a hectic period when she was being screamed at and that she shuffled up documents and put the ELO in her bag. Martino said Martinez told her to say that she, Martino, "could have found it [the ELO] anywhere." With regard to the forgery, Martino acknowledged that, "in my gut, I knew that it wasn't right," but that Martinez guaranteed to her that the ELO was only going to be used internally, and that after a week of "constant barrage by the customer," and not sleeping, she just wanted to get out of the DynTek apartment and do whatever she had to do "to make this thing end." Martino said that Martinez would have "gone crazy" and gotten very angry if Martino had refused to alter the ELO.

Subsequently, Martino said she met with Martinez on April 21st, at a restaurant in the Paramus Mall in New Jersey. Martino said that Martinez was worried that their cellphones were being recorded, and had called Martino from her home telephone to Martino's home telephone. According to Martino, she told Martinez that she was worried, and Martinez replied: "Don't worry, just stick with the story, this is when you see someone's true colors," and that she would back Martino up the whole way. Martino said that Martinez told her that she would soon be visiting family in Rochester, and gave Martino her mother's telephone number in case she wanted to call. Martino said that later on April 21st, she received messages from BMC Vice President Kenneth Mellett, asking Martino to call him, and also received a call from BMC internal counsel Patrick Tagtow. Martino said she called Martinez for advice, and Martinez told her that she should tell Tagtow the exact same story that they had discussed earlier - i.e., that she had found the ELO on

¹ Martino said that her relative had no knowledge about the events surrounding the document and she has not explained it to the relative.

someone's desk at DoITT, and upon discovering it in her bag, scanned it and sent it to Martinez. Martino testified that Martinez also suggested that, if questioned, they would say that their laptops had been stolen. Martino said she spoke to Tagtow on April 21st. She said when Tagtow asked her how she got a copy of the executed ELO, she replied with the same story that she had discussed with Martinez, i.e., that it wound up in her bag. Martino said that she later repeated the same story to Tagtow again and to Gunther. Martino said that Mellett asked her whether she had fabricated the document and she told him she had not.

On June 23, 2011, Martino told DOI that she had been terminated from BMC as of June 21, 2011, for the ostensible reason that she had failed to cooperate with BMC's internal investigation and DOI's investigation.²

C. Martinez

DOI interviewed Martinez, BMC's Northeast Regional Manager for State and Local Government Education, on May 16, 2011. Although Martino implicated Martinez in the forgery of Robinson's signature, Martinez denied any role in or knowledge of the forgery. She testified that she has dealt with DoITT throughout her six year tenure with BMC. She said that Martino, who had at that point reported to her for 12-18 months, had primary account responsibility for, and was involved in the day-to-day negotiations of, the ELO transaction. Martinez said the idea for the Term Sheet originated with DoITT, which drafted the document sometime around mid-March 2011. She stated that the Term Sheet, which she said was reflective of a transaction broader than the ELO, was to lock down what was going to be in a formal contract that would eventually be negotiated between the City and DynTek. She said that to the extent the Term Sheet refers to a deal between DoITT and BMC, that this is a mistake. Martinez said that it was her understanding that to close and book the deal, BMC needed both the Term Sheet and the ELO signed by DoITT. Martinez said that around March 31st, the date the deal was supposed to close, there was confusion on the DoITT side regarding the need for the Term Sheet versus the ELO in order for the transaction to be booked.³

Martinez confirmed that the Term Sheet with Robinson's signature was sent by DoITT to Martino on the afternoon of March 31st and that Martino then forwarded the document to her. She said she understood that at the time she received Martino's email with the Term Sheet that DoITT had sent both the Term Sheet and the ELO because the subject line of the email was "BMC ELO." She claimed, however, that she did not read the attachment at the time she received it. Martinez said that during the day on March 31st, she had been with Ben-Yishay at an apartment on the West Side and had spent the day on conference calls with DynTek and Column. She said that Martino called her after receiving the email from DoITT with the Term Sheet and said "where are you?" and "I am going to come and see you." Martinez said that Martino arrived at the apartment at around 6:00 p.m. Martinez said that to the best of her recollection, Martino arrived before they received the executed

² DOI did not make any representations to BMC's attorneys one way or another regarding whether or not Martino was cooperating with our investigation, and Martino told DOI that she herself made no such representations to BMC.

³ Neither Robinson nor Barbara Lederman, DoITT's ACCO, were aware of DynTek's specific role in the ELO transaction. Robinson told DOI that he understood that the Term Sheet would be acceptable to BMC to hold the price. He also surmised that having a Term Sheet would enable BMC to book the revenue from the deal. DOI is advised by DoITT that the use of a term sheet for such a purpose is not uncommon in the IT industry.

ELO but right around the time Martino received the email from DoITT with the Term Sheet. Martinez said that after Martino arrived, she realized that they had only the Term Sheet so she instructed Martino to figure out what happened. She said she assumed the fact that they did not have a signed ELO was an oversight and that someone had forgotten to include it in DoITT's email. Martinez said that Martino left at around 6:45 p.m. to go get the rest of the documentation, i.e., the signed ELO.

Martinez denied telling Martino to "go get the signature." According to Martinez, she told Martino, "We don't have all the documentation; you need to figure out where this other document is." Martinez testified that, while she could not recall her exact words, the instructions she probably gave Martino were, "We also need the ... ELO signed; make some phone calls; do what you need to do to go ahead and find where that document is and make sure that gets forwarded over as well," and, "We have a piece of paperwork that's missing; find out why it's missing." Martinez said that Martino appeared to understand her instructions. Martinez said that to the best of her recollection she told Martino to get the signed ELO document and that Martino then left to do so. Martino, in her testimony, said that remained in the apartment and secured the "signature" after several calls and emails on her laptop, as previously discussed. Thus, Martinez's testimony is at odds with Martino's testimony, wherein Martino testified that Martinez was at her side in the DynTek apartment while Martino orchestrated the forgery of Robinson's signature.⁴ Moreover, Martinez said that when Martino was in the apartment, she did not notice Martino sending or receiving emails or making phone calls.

Martinez said that she did not speak to Martino on March 31st to ascertain what she did to get the signature on the ELO but that as of around 8:00 p.m. on March 31st it was her understanding that everything had been worked out and DoITT had signed the ELO. She stated that she did not recall Martino calling to tell her they had Robinson's signature on the ELO but recalled that sometime around 7:00-8:00 in the evening of the March 31st she received an email from Martino saying "executed attachment," which she then forwarded on to Roberts.

Martinez acknowledged receiving an email from Roberts on April 1st, requesting that Robinson's signature information be filled in on the ELO. She said this email was really directed more to Martino who was onsite at DoITT that day. She said she spoke to Martino who said she would get the rest of the information filled out and would fax the document to Roberts, which she understands Martino did. She said she did not understand the mechanics of how Martino got the signature block filled in.

Martinez said that on April 19th she received a call from Bimonte saying he "needed to talk to us about the documentation." She said that because she was working on other projects at the time she sent Martino to speak to Bimonte. Martinez said that Martino related how Bimonte had told her that there was a problem with the signature on the ELO. Martinez said that in response, she made an appointment to see Bimonte on April 20th and at that time Bimonte informed her that the ELO, which he said had been sitting on various people's desks at DoITT for a couple of weeks, did not contain Robinson's signature and that he did not sign it. Martinez said she doesn't believe she even looked at the ELO until April 19th when she got the call from Bimonte.

⁴ Martino maintained that she was in the apartment with Martinez until around 8:30 p.m. A parking receipt Martino produced to DOI indicates that she picked up her car from a garage across the street from the apartment at 8:35 p.m.

Martinez said that looking at the ELO document it appeared that Robinson's signature was cut and pasted from the Term Sheet onto the ELO although she claimed she did not know or have an opinion as to how this was done or who was responsible. Martinez said she "absolutely" did not tell Martino to cut and paste Robinson's signature. She said that to her knowledge Roberts did not do so either and she is not aware of anyone else having done this. Martinez stated that had the deal closed and been booked on March 31st, she would have earned a substantial commission, representing around 40% of her total annual compensation. Martinez testified that she cannot account for how Robinson's signature got on the ELO document. She stated that after she spoke to Bimonte on April 20th and learned there were issues with the document, she had a conversation with Martino who said she had picked up the document off a desk at DoITT but didn't know how the signature got on the document. Martinez said that Martino's story did not sound credible to her. Martinez said that based on her conversations with Roberts and someone from BMC's Human Resources Department, it was decided that BMC needed to make sure that the company stopped the ELO transaction and did not recognize any revenue or pay out any commissions. Martinez said that once it was determined that there was an issue with the ELO document, she spoke to Martino on and off and that Martino was very agitated. She said that she and Martino really didn't talk about the ELO transaction other than a conversation where Martino reiterated only that she picked up the document on a desk and didn't recall where the desk was. Martinez said that Martino was upset over Easter weekend because she was getting calls from BMC legal and BMC Vice President Kenneth Mellett and didn't want to call them back. She said that Martino called her about this over Easter weekend in Rochester, where Martinez was with her family.

Martinez said it was a "big deal" to have a signed ELO in order to book the deal, however, not to the point where anyone would be asked to do anything incorrectly. She said that from DoITT's perspective it was important to close the deal by March 31st because there were support contracts that were expiring and BMC had agreed to hold the pricing through the end of the month if they closed by the end of the month.⁵ Martinez said that there was never a sense that people would lose their job if the ELO deal didn't get done, although she stated that she and Roberts had had multiple conversations with Martino wherein Martino joked that she would get her "magenta slip" (fired) if the deal didn't close but that Martinez assured her that this was not the case. Martinez said that she never heard Roberts tell Martino that she would lose her job.

D. Roberts

DOI interviewed Mark Roberts, BMC's Area Director for State and Local Government Sales, on May 12, 2011. Roberts said that he was not involved in and did not know about the fraud at the time it occurred. According to Roberts, in order for BMC to book the deal, they needed DoITT to sign the ELO and Column to sign a partner ELO, which is similar to the DoITT ELO but contains dollar figures and other terms and conditions.⁶ He said these were the only two pieces of

⁵ Robinson told DOI that March 31st might have had some significance because the price of the deal for DoITT might go up after that date.

⁶ Roberts said that both DynTek and Column needed to be involved in the ELO deal as resellers: DynTek would buy software and services from Column on behalf of the City; Column would buy the software from BMC and provide the services themselves. He said the reason for this complexity is that both City and BMC wanted to close the transaction by end of March; there was sales pressure for BMC because the fiscal year was ending and for DoITT as well, because support contracts were expiring at end of March. Roberts said that DynTek already had contracts in place to act as a reseller. He said another option would have been to put the deal out to bid but as it got closer to March 31st there was no time to do this and DynTek

paper BMC needed to be signed to book the deal. Roberts said that although the Term Sheet was drafted for BMC's signature, it in fact reflected a statement of intent between DoITT and DynTek and that the contract against where the funds would come from would be DynTek's underlying contract with the City. He said he didn't notice until afterwards that BMC's name, rather than DynTek's, was in the Term Sheet signature block because the Term Sheet "wasn't that interesting" to him.⁷ Roberts said the City came up with the idea of a Term Sheet, which referenced how the ELO, not the Term Sheet itself, would be the binding document.

Roberts said he believes he received the Term Sheet from Martino just before 6:00 p.m. on March 31st and that his response to Martino, in an email sent at around 6:00 p.m. was, "Thanks Carmela, this is the Term Sheet... where's the ELO?" He said he then got a call from Martino somewhere between around 6:00 and 6:15 and she told him that BMC had the signed ELO, too. He said that Martino did not explain how the document came to be signed; she just said "we have it" and he did not press her for details. He said that sometime between 6:15 and 6:25 p.m. he started sending emails internally within BMC saying they had the signed DoITT ELO and that around this time he called Mellett to tell him this. Roberts said he hadn't seen the ELO document at this point but he knew it had been signed because Martino had told him it had.

Roberts testified that he believed that Martinez and Martino both understood that the ELO was necessary, and that he and Martinez both understood that the Term Sheet was going to be a document between DoITT and DynTek and that there were two documents the City was going to sign, i.e., the Term Sheet and the ELO. Roberts said that at around 1:00 p.m. on March 31st, a DoITT employee involved in the deal had emailed Martinez saying that Robinson would sign the ELO as long as it contained certain language that was a problem for BMC. He said he believed later in the day that the language issue had been resolved. Roberts said that there was urgency in getting ELO signed on March 31st as the deal needed to be booked by 1:00 a.m. EST on April 1, 2011. He said there was no confusion at BMC regarding the need for a signed ELO versus a signed Term Sheet in order to book the deal and that he would be shocked if anyone at BMC was unclear on what was needed to book the deal. He reiterated that the Term Sheet was for DynTek's benefit although he could not explain why DynTek was not on the transmittal emails regarding the Term Sheet. Roberts said he is sure Martino was not confused and knew what documents BMC needed signed and added that he is not aware of any confusion on DoITT's side about what documents were needed.

Roberts said he sent an unsigned copy of the ELO to Martino and Martinez at 7:55 p.m. on March 31st. He said he sent this in response to a phone call, he believes with Martinez, where they discussed how they wanted to make sure DoITT signed the correct version of the document, as they

had enough "headroom," i.e., money left on its contracts, to run the contract through them. Roberts said that Column would provide personnel to make the software work and DynTek would act as a reseller using its existing contract with the City, buying off of BMC's GSA contract. Then, according to Roberts, BMC would issue a purchase order to Column. Roberts said that Column also has a backdrop contract but without adequate "headroom" and that structuring the deal in the way he described would allow BMC to get paid sooner as the City often takes a while to pay.

⁷ As discussed below, Ben-Yishay, DynTek's CEO, characterized the Term Sheet as reflecting an agreement between DoITT and BMC, not DynTek. Robinson and Lederman, DoITT's ACCO, both of whom, as discussed above, disclaimed knowledge of DynTek's specific role in the deal, also expressed their common understanding that the Term Sheet summarized the terms of DoITT's deal with BMC, not DynTek.

were up to "Version 11" of the ELO at that point. Roberts said that at 8:08 p.m., Martino emailed the ELO containing what appeared to be Robinson's signature to Martinez. He said there was no dispute that it took 13 minutes from the time he emailed Martino and Martinez the unsigned ELO at 7:55 until a signed version appeared at 8:08 but that he had no conversations with Martinez about how she was able to get Robinson to sign the document in 13 minutes. He said, however, that he had understood for a couple of hours at this point, i.e., 8:08 p.m., that BMC already had Robinson's signature and that he did not understand that Robinson had signed the version of the document Roberts had sent at 7:55. Roberts said he emailed Martinez at around 8:15 p.m., saying "Whatever you did, it worked." He said by this he meant that BMC got the ELO signed and he was giving Martinez credit. On April 1, 2011, after the deal was booked, Roberts sent Martinez and Martino an email saying that BMC's revenue recognition group had said that BMC needed the rest of the Robinson signature block filled in on the ELO, and he included the information that needed to be filled in. Roberts said that even if the signature block wasn't filled in the order could be booked.

Roberts said he now understands that Robinson did not sign the ELO, and he assumes it was a "cut and paste." He said the problem with the signature came to his attention late in the day on April 19th. He said he compared the signatures on the Term Sheet and ELO, and they were exactly alike. He said he told Martinez on the evening of April 19th to meet with Bimonte on April 20th; she reported back that there was no doubt that Robinson had not signed the document. Roberts said that Martinez told him on April 19th or 20th that she believed Martino had done something improper.

E. Ben-Yishay

DOI interviewed Ben-Yishay on May 18, 2011. Ben-Yishay recalled meeting with Martinez on March 31, 2011 at an apartment DynTek maintains on the West Side. Ben-Yishay said that Martinez arrived at the apartment around lunch time and that at some point she asked him if Martino, whom Ben-Yishay said he barely knew, could come over. Ben-Yishay stated that Martino arrived at about 6:00 p.m. and left about an hour later but he didn't understand why Martino needed to be there. He said that he and Martinez had been involved for most of the day dealing with Column and that during the day, Martinez was actively communicating with Martino. Ben-Yishay said he got the sense that Martino had been or was supposed to have been at DoITT, and he sensed some tension between the two women. Ben-Yishay said that when Martino arrived, she did not have a signed document with her, referring to what he characterized as a letter of intent or Term Sheet. He said that it was his understanding that the Term Sheet reflected a "100%" agreement between DoITT and BMC, not DoITT and DynTek, and that DynTek had had very little direct contact with DoITT on the ELO transaction. (DoITT told DOI that the agency had had no direct contact with DynTek on the ELO transaction.)

Ben-Yishay said that Martinez and Martino seemed to be under a lot of pressure and an unusual amount of stress because the fiscal year was ending on March 31st. He said he was not familiar with the ELO document itself; Martinez and Martino kept referring to a letter of intent and he never heard them discussing another document. He said he never heard Martinez direct Martino to "get a signature." He did recall her saying to Martino, "Get the document, get it done," asking Martino, "Why did you leave?" and telling her "Your job is to get the document." Ben-Yishay said that when Martino was in the apartment, he did not notice that she had a laptop with her and didn't notice her or Martinez on their blackberries to any great extent. He said that before Martino left, Martinez walked her out and the two of them spoke in the hallway for a few minutes. He said he did not hear what they were discussing.

F. Mellett

DOI interviewed Kenneth Mellett, BMC's Vice President for Public Sector, on May 4, 2011. Mellett denied any role in or knowledge of the forgery of Robinson's signature. Mellett stated he has no idea how a copy of Robinson's signature got onto the ELO. He said that he first learned about the signature issue on or about April 20, 2011, when Roberts told him that Martinez had been told by Bimonte that Robinson had not signed the ELO. He said that around April 20th BMC was close to completing the accounting for the prior quarter and if the client was saying they didn't sign the contract, then the transaction could not be counted and needed to be removed from BMC's books. Although BMC had booked the ELO transaction late on the evening of March 31, 2011, Mellett said that to the best of his knowledge the deal was removed from BMC's books for Fiscal Year 2011.

Mellett said that after he learned about the signature issue, he asked Martinez when she received the ELO and, if Robinson didn't sign it, why he didn't, and how could his signature have appeared on the document. Mellett said that Martinez was as surprised as he was and had no answers as to how the document was signed. Mellett said that he asked Martino what had taken place and she told him that the document randomly appeared on someone's desk and she picked it up. Mellett said he found Martino's story "a little bit exceptional" in comparison to his normal expectations of how someone would normally secure a document. He said he asked Martino if she had in any way shape and form fabricated the signature on the ELO, and she said "absolutely not." Mellett further testified that he had no understanding of how a version of the ELO was produced with the printed information under Robinson's name. Mellett said that there's always urgency at the end of a quarter and the fiscal year to close a deal. Mellett said that conveyed that sense of urgency to his team and while he cannot say what people may have understood him to mean, he never specifically told people to "get DoITT's signature." He stated that his team always talks about the key values within the company, i.e., "get it done and do it right," and that faking a signature would certainly be doing it wrong.

G. Interviews of Other BMC Personnel

In connection with our investigation, DOI interviewed various "back office" BMC personnel who had an administrative role in the ELO transaction. None of these persons DOI interviewed appeared to have had any role in or knowledge of the forgery of Robinson's signature.

Conclusion and Recommendations

DOI's investigation substantiated that Martino, by her own admission, orchestrated the forgery of Brett Robinson's signature on the ELO document. While Martino implicated Martinez in the forgery, stating essentially that Martinez directed her to commit the fraud and then created a cover story for her, the evidence regarding Martinez's culpability is unverified and at this time inconclusive. Our investigation did not substantiate the complicity of any other BMC personnel, or of any DoITT personnel, in the forgery. Our investigation is on-going.

DOI recommends, as Policy and Procedure Recommendations, the following:

1. DOI's investigation substantiated misconduct by BMC employee Martino, based on her admissions and emails. Martinez denies knowledge of the fabricated signature. At a minimum, the facts showed that Martino was able to engage in fraud and misconduct

without any visible means of oversight by her superiors. For example, Martinez testified that fairly late in the day on March 31st, around 6:00 p.m., she realized that Martino had not obtained DoITT's signature on the ELO and dispatched her at 6:45 p.m. from the DynTek apartment to "do what [Martino needed] to do ... and find where that document is." According to Martinez, within a little over an hour, i.e., by 8:00 p.m., she was informed by Martino that DoITT had now signed the ELO based on an email she received from Martino that said "Executed Attachment." The relative speed with which Martino produced the apparently signed ELO, after business hours, and following communications about how important it was for BMC to obtain the signed ELO, prompted no questions from Martinez to Martino about how she was able to accomplish securing the signed ELO that evening. Roberts, for his part, pointed out to Martino at 6:00 p.m. that although BMC had received a signed Term Sheet, it had not received the signed ELO. He then accepted the representation Martino made minutes later that DoITT had signed the ELO as well, saying "Whatever you did, it worked." Like Martinez, Roberts, in his apparent urgency to book the deal before midnight, did not pause to ask what in fact his subordinate did. Indeed, the forgery of Robinson's signature only came to light at DoITT by happenstance after BMC's back office sent a copy of the ELO document with Robinson's purported signature to DoITT. The fact that BMC removed Martino was a necessary step but does not sufficiently address the serious concerns raised by what transpired and the process by which a forgery of a City official's signature ended up on a contract document. We note that BMC and its counsel fully cooperated with DOI's investigation. However, DOI recommends, in order to be assured of this vendor's on-going integrity, that a monitor be appointed, at BMC's expense, to oversee BMC's engagement with DoITT with regard to the ELO transaction. DOI will arrange the specifics of such a monitorship, including its terms, scope and duration.

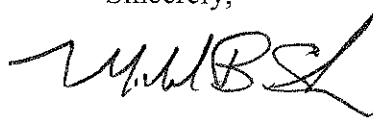
2. To the extent that BMC is engaging the services of re-sellers or other partners or subcontractors in connection with the ELO transaction, DoITT should insist that BMC (and indeed, all DoITT vendors) make full disclosure to DoITT of all such business relationships, as well as provide DoITT with an analysis of why such relationships are in the City's best programmatic and fiscal interests. DoITT should maintain the ability to reject any business relationship that BMC enters into in connection with the ELO transaction that BMC cannot demonstrate is in DoITT's best interests. DOI specifically recommends that DoITT reconsider the role DynTek and Column have played in the ELO transaction to date, and consider whether these companies are necessary at all for purposes of the transaction going forward. DoITT should also be mindful of and scrutinize potentially high and/or hidden costs to the City such as the large commissions at issue in the ELO transaction.

DOI will also refer its findings regarding Martino to the Manhattan District Attorney's Office.

DOI thanks you for promptly bringing this matter to our attention and for the assistance afforded DOI by members of your staff during this investigation.

If you require further information, please feel free to contact me at 212-825-0646.

Sincerely,

A handwritten signature in black ink, appearing to read "MBS", with a stylized flourish extending from the end.

Michael B. Siller
Special Counsel to the Commissioner and
Inspector General, DoITT