



**BOARD OF ETHICS
CITY OF CHICAGO**

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BOARD OF ETHICS**

In the Matter of) Case No. 17011.10.LOB
)
Alan S. King, Respondent)
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)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into between the Chicago Board of Ethics (“Board”) and Alan S. King (“Respondent”), pursuant to §§ 2-156-245 and -505 of the City of Chicago Governmental Ethics Ordinance (“Ordinance”).

PROCEDURAL HISTORY

1. This matter involves further action following the Board’s determination on February 15, 2017, that there is probable cause for the Board to conclude that: (i) Respondent violated §2-156-245 of the Ordinance by engaging in lobbying (as defined in §2-156-010(p) of the Ordinance) on May 21, 2015, but (ii) failed to register as a lobbyist. The Board notified Respondent of that determination, and then, on March 13, 2017, the Board received a written response from the Respondent. The Board then afforded the Respondent the opportunity to meet to present any supplemental information or arguments, and that meeting was held on May 31, 2017.
2. At its meeting of June 13, 2017, the Board, having fully considered all of the information presented by the Respondent, VOTED 6-0 (Mary T. Carr, absent) to determine that the Respondent violated §2-156-245 of the Ordinance by failing to register as a lobbyist within five (5) days of engaging in lobbying activity. On July 11 and 13, 2017 the Respondent submitted a written request for the Board to reconsider its determinations, with supporting materials. At its meeting of July 19, the Board considered this written request, but VOTED, 6-0 (Nancy C. Andrade, absent) to reaffirm its June 13 determination, and to impose a fine of \$2,500.
3. At its September 2017 meeting, the Board VOTED 4-0 to deny the Respondent’s Request for Reconsideration on the grounds that there have been no new facts presented to the Board, nor any intervening change in the Ordinance (see §2-156-396(a)). However, the Board also VOTED

4-0 to exercise its inherent equitable authority and enter into this Agreement, for the reasons and on the terms stated below.

4. At all times relevant to this matter, Respondent has disputed the Board's determination that Respondent engaged in lobbying within the meaning of the Ordinance or that he otherwise violated the Ordinance in any respect.

RECITATION OF RELEVANT FACTS

5. At all times relevant to this matter, Respondent had never been a registered lobbyist with the Board of Ethics, nor was paid or compensated in any way, directly, or indirectly, to lobby City officials or employees on behalf of any person other than himself.

6. On May 21, 2015, Respondent emailed the Mayor as follows:

To the Mayor: "I have a bit of a crisis situation with the Chicago Park District...relating to our...Chosen Few House Music Picnic...on July 4th...due to some construction work the Park District has allowed on our picnic site (despite permitting the site to us)..it is a very serious situation for me and my business partners, and I think you might be able to help at least to broker a solution."

7. Respondent had no further substantive contact with the Mayor or any other City official or employee regarding the substance of this single May 21, 2015 email.

8. In its Final Determination of July 19, 2017 finding Respondent in violation of the Ordinance and imposing a \$2,500 fine, the Board emphasized that it "again ma[d]e clear that its determination [was] not intended to question the Respondent's integrity, character or motivations. Rather, it represent[ed] the Board's careful examination of all the facts and arguments presented to it, and the Board's conclusion that those facts show[ed] that the Respondent engaged in "lobbying" as defined in the Ordinance, but did not register as a lobbyist as required by the Ordinance."

STATEMENT OF RELEVANT LAW

9. Section 2-156-010(p) defines "Lobbyist" as:

"any person who, on behalf of any person other than himself, or as any part of his duties as an employee of another, undertakes to influence any legislative or administrative action, including but not limited to: (1) a bond inducement ordinance; (2) a zoning matter; (3) a concession agreement; (4) the creation of a tax increment financing district; (5) the establishment of a Class 6(b) Cook County property tax classification; (6) the introduction, passage or other action to be taken on an ordinance, resolution, motion, order, appointment or other matter before the City Council; (7) the preparation of contract specifications; (8) the solicitation, award or administration of a contract; (9) the award or administration of a grant, loan, or other agreement involving the disbursement of public monies; or (10) any other

determination made by an elected or appointed City official or employee of the City with respect to the procurement of goods, services or construction; provided, however, that a person shall not be deemed to have undertaken to influence any legislative or administrative action solely by submitting an application for a City permit or license or by responding to a City request for proposals or qualifications.

The term "lobbyist" shall include, but is not limited to, any attorney, accountant, or consultant engaged in the above-described activities; provided, however, that an attorney shall not be considered a lobbyist while representing clients in a formal adversarial hearing. The term "lobbyist" shall not include any volunteer, employee, officer or director of a not-for-profit entity who seeks to influence legislative or administrative action solely on behalf of that entity. Provided further, that if (1) any person is paid or otherwise compensated to influence legislative or administrative action on behalf of a not-for-profit entity; and (2) such not-for-profit entity lobbies on behalf of for-profit entities or individuals engaged in a for-profit enterprise, such person shall be deemed to be a lobbyist within the meaning of this chapter."

10. Section 2-156-230 requires anyone meeting the definition of lobbyist and not subject to an exemption to register with the Board within five (5) business days of engaging in lobbying.

11. The Board's determination is based on its conclusion that, as drafted, the Ordinance does not require that a person must receive direct or indirect compensation for engaging in "lobbying" to be considered a "lobbyist," required to register.

TERMS OF THE SETTLEMENT AGREEMENT

The above fact recitation and statement of law are incorporated into and made a part of this Agreement.

12. The parties agree to enter into this Agreement to resolve all factual and legal issues arising out of the Respondent's email to the Mayor of May 21, 2015 and to reach a final disposition without further proceedings.

13. Respondent acknowledges that, from the record before it, under the Ordinance as written, the Board determined that he failed to register as a lobbyist within five (5) business days of lobbying on May 21, 2015, as required by § 2-156-230, and assessed a fine of \$2,500.00. However, Respondent disagrees with the Board's determination that Respondent engaged in lobbying on May 21, 2015, and with the fine that was assessed by the Board.

14. The Board and Respondent acknowledge that, by entering into this Agreement, the Board is acting, in its own way, as would a court of equity, under its own authority, as it has in past cases (See 17004.A, 90029.A, 90033.A, 90040.A, and 90062.A).

15. In recognition of the foregoing, and in consideration of the Board's agreement as described in this paragraph, Respondent shall: (i) for one year from the date this Agreement becomes effective (that is, until 10-25, 2018), avoid any activity that is determined by the Board through its normal procedures to constitute "lobbying" or acting as a "lobbyist" as defined in the Ordinance without registering as required in the Ordinance; and (ii) within 30 days of the effective date hereof, provide proof of completion of a lobbyist law training program as designated by the Board. The parties agree that such completion does not constitute an admission by the Respondent that he engaged in lobbying or acted as a lobbyist by sending the May 21, 2015 email; in consideration therefor, the Board agrees to vacate its determination that Respondent violated the Ordinance and the fine of \$2,500.00 assessed for that violation, effective upon the final execution of this Agreement by the parties.

16. In further recognition of the foregoing, the parties agree that, should the Board determine that the Respondent again engaged in lobbying or acted as a lobbyist (as those terms are defined in the Ordinance) during the one year period in ¶15, above, without having registered as a lobbyist as required by the Ordinance, this Agreement shall be deemed to have been breached by Respondent and shall become null and void, and the Board shall re-impose and reinstate its determination that Respondent violated the Ordinance by failing to register as a lobbyist as required, and shall re-impose and reinstate the fine of \$2,500.00 for that violation, and shall make such breach, determination, and re-imposition public. Respondent agrees that the Board's right to exercise its actions described in this paragraph arise solely from the parties' agreements herein, require no further action by the Board to confirm those acts, and that Respondent has no recourse within this Agreement to limit, restrict, or condition the Board's actions as described in this ¶16; provided, however, that in the event the Board should re-impose its determination and fine pursuant to this paragraph, Respondent shall retain his right to seek judicial review and appeal of the Board's determination and fine.

17. Respondent acknowledges that this Agreement is a voluntarily negotiated, public and final resolution of the Board's determination and fine assessed in this matter, and the Board shall make it public pursuant to § 2-156-385(4), and, except as may be provided by applicable law, that all writings with respect to the Agreement or its negotiations in the Board's possession will remain confidential.

18. Respondent confirms he has entered into this Agreement freely, knowingly, and intentionally, without coercion or duress, and after having had the opportunity to be represented by an attorney of his choice, accepting all the terms and conditions contained herein without reliance on any other promises or offers previously made or tendered by any past or present representative of the Board, and that he fully understands all the terms of this Agreement. The terms of this Agreement are contractual and not mere recitals. If any of the provisions of this Agreement shall be found invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

19. Respondent understands and voluntarily waives and assigns, on his and his successors' behalf, any and all rights to commence any judicial or administrative proceeding or appeal before any court of competent jurisdiction, administrative tribunal, political subdivision or office of the State of Illinois or the United States arising out of his not registering as a lobbyist with the Board based on his May 21, 2015 email to the Mayor; provided, however, that such rights are not

waived in the event the Board should re-impose the determination and fine pursuant to ¶16 above.

20. Respondent releases and holds harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's enforcement and settlement of the violation described in the Agreement to contest the lawfulness, authority, jurisdiction, or power of the Board in imposing the sanction which is embodied in this Agreement, and the right to make any legal or equitable claim or to initiate legal proceedings of any kind against the Board, or any members or employees thereof relating to or arising out of this Agreement or the matters recited herein; provided, however, that such release and hold harmless shall not apply in the event the Board should re-impose the determination and fine pursuant to ¶16 above.

21. Once executed by Respondent, the Board staff shall submit this Agreement to the Board at its next regularly scheduled meeting. The Board must determine by a majority vote that it approves the Agreement and the Board Chair or Acting Chair must execute and date the Agreement before it becomes effective, which execution by both parties shall occur reasonably promptly following the Board meeting.

22. The parties agree that this Agreement shall become invalid in the event the Board refuses to approve it. Respondent acknowledges that if the Agreement is not approved or executed by the Board Chair or Acting Chair, the Board may proceed with enforcement of its July 19, 2017 determination against Respondent, and Respondent may assert his defenses thereto and may seek judicial review and appeal of such determination, and no member of the Board or its staff shall be disqualified from participating in such proceedings because of this Agreement or its negotiation. However, no statement or representation of any kind made in the course of negotiating this Agreement may be used by either party for the purpose of establishing liability at any future hearing or proceeding.

23. The parties agree that failure to comply with all the terms of this Agreement constitutes a breach of the Agreement and that following such failure the non-breaching party can proceed to enforce this Agreement or take any other action as permitted by law.

24. In further consideration of Respondent's full compliance with all terms of this Agreement, the Board waives any future penalties or fines against Respondent or Respondent's company, The Chosen Few Ltd., for any further proceedings arising out of Respondent's May 21, 2015 email, up through and including the date of this Agreement.

25. The Agreement contains the entire agreement between the Board and the Respondent and may not be modified unless the modified Agreement is re-executed and re-dated by both parties. The Agreement is entered into in the State of Illinois and shall be construed and interpreted in accordance with its laws.

26. This Agreement shall not be effective until all parties have affixed their signature below.
[signature page follows]

Chicago Board of Ethics

Alan S. King, Respondent

By: AO Wilson
Chair

and: SK Miller
Executive Director

Alan S. King

10-25-17