



Palm Beach County Commission on Ethics

Commissioners

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In Re: Dr. Scott Swerdlin

C11-027

Amended Public Report and Finding of Probable Cause

COMPLAINANT, Carole Coleman, filed the above-referenced COMPLAINT on December 21, 2011, alleging a possible ethics violation involving RESPONDENT Dr. Scott Swerdlin, Chairman of the Wellington Equestrian Preserve Committee (EPC).

The COMPLAINT originally alleged three Code of Ethics violations involving a meeting of the EPC on December 14, 2011.

COUNT 1 alleged that RESPONDENT misused his official position by participating in a matter before the EPC that would result in a special financial benefit to his customer or client, Equestrian Sports Production and/or Mark Bellissimo, applicant for the Equestrian Village Project, before the EPC for an advisory vote prior to consideration by the Village of Wellington Planning, Zoning and Adjustment Board and ultimately the Village Council.

COUNT 2 alleged that RESPONDENT corruptly attempted to secure a special privilege, benefit, or exemption for himself and/or his customer or client, Equestrian Sports Production and/or Mark Bellissimo, with wrongful intent, in a manner inconsistent with the proper performance of Respondent's public duties.

COUNT 3 alleged that RESPONDENT, after having been admonished by the Village of Wellington Attorney that a conflict of interest under the Code of Ethics requires abstention from both voting and participating in the matter before the EPC, did significantly participate prior to ultimately abstaining from voting in the matter. In addition, after abstaining, RESPONDENT allegedly failed to file a state conflict of interest Form 8B as required under the Code of Ethics.

On January 30, 2012, the COMPLAINT was determined by staff to be LEGALLY SUFFICIENT. The matter had been brought to the attention of COE staff by a formal complaint and pursuant to COE Rule of Procedure 4.1.3 a preliminary inquiry was commenced. After obtaining sworn statements from material witnesses and documentary evidence sufficient to warrant a finding of legal sufficiency a MEMORANDUM OF LEGAL SUFFICIENCY was filed and a preliminary investigation commenced pursuant to Article V, Division 8, Section 2-260(d). Information obtained during the inquiry was adopted into the investigation and presented to the Commission on Ethics on March 1, 2012 with a recommendation that PROBABLE CAUSE exists that a code of ethics violation occurred. At that time, the Commission conducted a PROBABLE CAUSE hearing in executive session. The Commission reviewed and considered the investigative report, documentary submissions, recommendation of

staff, written response of the RESPONDENT as well as oral statements of the RESPONDENT and ADVOCATE. At the conclusion of the hearing the Commission on Ethics determined that there were reasonably trustworthy facts and circumstances for the COMMISSION ON ETHICS to believe that the RESPONDENT may have violated §2-443(a)(COUNT 1), §2-443(b)(COUNT 2) and §2-443(c)(COUNT 3) of the Palm Beach County Code of Ethics and a final hearing was set in order to determine whether a violation(s) occurred.

Subsequently, pursuant to §2-260(d) and COE Rule of Procedure 4.12, Commission Staff obtained additional investigative material regarding the RESPONDENT, his equine clinic and medical facilities and equine sports complex businesses and the relationship between Wellington Equestrian Partners (WEP), Equestrian Sports Productions (ESP) and Mark Bellissimo and filed a motion to amend the Public Order Finding Probable Cause to include a finding that RESPONDENT may have violated §2-443(1) and (4) of the Code of Ethics as follows:

COUNT 1 now alleges that RESPONDENT misused his official position as Chairman of the Equestrian Preserve Committee (EPC), a Village of Wellington advisory board, by participating in a matter before the EPC that would result in a special financial benefit to himself, his outside businesses, including Palm Beach Equine Clinic, Palm Beach Equine Medical Centers and Palm Beach Equine Sports Complex, or his customers or clients, Equestrian Sports Production, Wellington Equestrian Partners and/or Mark Bellissimo, by participating in items before the EPC regarding a proposed Equestrian Village Project.

COUNT 2 now alleges that RESPONDENT corruptly attempted to secure a special privilege, benefit, or exemption for himself, his outside businesses, including Palm Beach Equine Clinic, Palm Beach Equine Medical Centers and Palm Beach Equine Sports Complex, and/or his customers or clients, Equestrian Sports Production, Wellington Equestrian Partners and/or Mark Bellissimo, with wrongful intent, in a manner inconsistent with the proper performance of RESPONDENT'S public duties.

COUNT 3 alleges that RESPONDENT, after having been admonished by the Village of Wellington Attorney that a conflict of interest under the Code of Ethics requires abstention from both voting and participating in the matter before the EPC, did significantly participate prior to ultimately abstaining from voting in the matter. In addition, after abstaining, RESPONDENT allegedly failed to file a state conflict of interest Form 8B as required under the Code of Ethics.

Pursuant to Article XIII, Section 2-443(a), *Misuse of public office of employment* prohibits a public official or employee from using their official position to take any action, or to influence others to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared by members of the general public, for any person or entity listed in §2-443(a)(1-7), including him or herself, an outside business or employer or a customer or client of their outside business or employer.

Article XIII, Section 2-443(b), *Corrupt misuse of official position* prohibits any official or employee from using his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "corruptly" means done with a wrongful intent and for the purpose of obtaining,

or compensating or receiving compensation for, any benefit resulting from some act or omission of an official or employee which is inconsistent with the proper performance of his or her public duties.

Pursuant to Article XIII, §2-443(c), an official shall abstain from voting and not participate in any matter that will result in a special financial benefit for him or herself, an outside business or employer or customer or client of his or her outside business or employer. A customer or client is an entity to which the official's outside business or employer has provided goods or services in excess of \$10,000 in the aggregate during the 24 months preceding the official action taken. The official must not only publicly disclose the nature of the conflict when abstaining, but must also file a conflict of interest Form 8B pursuant to the requirements of §112.3143, Florida Statutes, and submit a copy to the Commission on Ethics.

Information obtained during the inquiry, investigative and supplemental investigative reports along with a COE staff Motion to Amend the Public Order Finding PROBABLE CAUSE was presented to the Commission on Ethics on July 12, 2012 with a recommendation that an Amended Public Order Finding PROBABLE CAUSE be issued. At that time, the Commission conducted a PROBABLE CAUSE hearing in public session. The Commission reviewed and considered the investigative reports, documentary submissions, recommendation of staff, written response of the RESPONDENT as well as oral statements of the RESPONDENT and ADVOCATE. At the conclusion of the hearing the Commission on Ethics determined that there were reasonably trustworthy facts and circumstances for the COMMISSION ON ETHICS to believe that the RESPONDENT may have violated §2-443(a)(1),(4) and (5)(COUNT 1 as amended), §2-443(b)(COUNT 2 as amended) and §2-443(c)(COUNT 3) of the Palm Beach County Code of Ethics and a final hearing was set in order to determine whether a violation(s) occurred.

Pursuant to Chapter 2, Article V, Division 8, Section 2-258(a)¹ of the Palm Beach County Commission on Ethics Ordinance, the Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics.

Therefore it is:

ORDERED AND ADJUDGED that the **MOTION TO AMEND THE PUBLIC ORDER FINDING PROBABLE CAUSE IS HEREBY GRANTED** and the **COMPLAINT** against **RESPONDENT**, Dr. Scott Swerdlin, is hereby set for **FINAL HEARING** beginning on the 1st day of October, 2012.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on July 12, 2012.

Palm Beach County Commission on Ethics,

By: 

Manuel Farach, Chair

¹ Article V, Division 8, section 2-258(a). *Powers and Duties*. The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the:

- (1) Countywide Code of Ethics;
- (2) County Post-employment Ordinance; and
- (3) County Lobbyist Registration Ordinance