Attachment to AMENDED Ethics Complaint against JULIANA BUJALSKI (case #17-175)

After filing his original complaint, Complainant learned that a previous complaint had been filed against the same Respondent in substantially the same matter (#16-204). However, there are clear factual errors in the the Report of Investigation for #16-204 (**"the ROI"**) and in the Advocate's Recommendation (**"the AR"**) from the same case. In addition, certain contractual provisions that were not adhered to were not considered in the ROI. As result, the Commission's Final Order in #16-204 was in error.

For those reasons, Complainant respectfully requests that a different investigator and a different advocate handle this Complaint than the ones who handled #16-204.

Juliana Ward Bujalski (**"Respondent"**) is the mayor of Dunedin, FL. Together with her husband Tom Bujalski and two other people, the Respondent entered into a Revocable Use Agreement (**"the RUA"**) with City of Dunedin (**"the City"**) for the use of a boat slip in the City-owned marina on March 12, 2012. As a "boater", she agreed to pay a monthly "user fee", both being the terms used in the RUA. The RUA is included as **appendix #1.**

As explained in this document, Complainant alleges that the Respondent violated:

1/ Florida Statute §112.311(5) - an obligation in substantial conflict with the proper discharge of his or her duties in the public interest.

2/ Florida Statute §112.313(6) "Misuse of Public Position"

In the the ROI, included as **appendix #2**, exhibit A shows that within one month of entering into the agreement, Respondent became delinquent on user fee payments. Respondent largely remained delinquent until more than four years later, the day after the Tampa Bay Times newspaper "requested written marina records from the city" on 8/9/ 2016. Respondent's husband then paid off the $1,559.38 owed to the City. The Times' newspaper article on this matter is included as **appendix #3.**

Just three weeks earlier, Respondent's husband, Tom Bujalski, had entered into an agreement of sorts with the city that carried the title "6-month Amortization" (**"the Amortization Agreement")**. He did so on 7/19/ 2016, after he and Respondent claimed to the city that they were unable to pay off the balance owed. The fact that they paid off the entire amount three weeks later, and just one day after a reporter started asking questions, shows that theirs was an *unwillingness* to pay, not an *inability* to pay. The Amortization Agreement is included as **appendix** #4, and Mr. Bujalski entered into this agreement at the direction of Respondent (as shown below).

The Advocate's Recommendation in #16-204 ("the AR", included as **appendix #5**) states on page 6 that city finance director Joe Ciurro *"developed a six-month payment plan"* to allow Mr. Bujalski to pay off the monies owed. In doing so, the AR takes Mr. Ciurro's claim in the ROI (item #23) as fact, namely that "the payment plan was not a loan from the city."

However, Ciurro drew up an Amortization Agreement. The Merriam-Webster dictionary defines the word "amortize" in relevant part to mean *"to pay off (an obligation, such as a mortgage) gradually usually by periodic payments of principal and interest."* [emphasis]. Interest is involved in any amortization, even if it is zero interest, a fact that the ROI did not report on, nor did the AR consider.

An "amortization" is thus an obligation, and the Respondent was charged zero interest. Florida Statute §112.311(5) doesn't allow the Respondent to *"incur any obligation of any nature in substantial conflict with the proper discharge of his or her duties in the public interest"* [emphasis]. In Complainant's opinion, receiving such a loan as the Amortization Agreement from from the agency you are supposed to be overseeing impedes the "proper discharge" of Respondent's duties.

In an e-mail to a resident dated 8/8/2016(included as **appendix #6)**, one not adequately scrutinized in the ROI, the Respondent wrote "*my husband set up a payment plan with the appropriate people in order to get us back on target"* [emphasis]. The City's Parks & Recreation Director Vince Gizzi confirmed this account in ROI (16) when he said the Respondent said *"she would discuss their account with her husband and let him know what they planned to do to address the delinquency."* [emphasis]

The use of the words "us" and "they" in these statements shows that the Respondent expressed that she, and not just her husband, was a party to the Amortization Agreement. Therefore, the Respondent did in fact incur that very kind of obligation prohibited by §112.311(5).

Respondent's credibility is also in question. In appendix #6, she wrote:

As a matter of fact, my husband, set up a payment plan with the appropriate people in order to get us back on target several weeks ago, which was fully vetted by our city attorney. [emphasis]

Appendix #7 is an e-mail from city attorney Trask to Complainant in which he states:

The issue was not "fully vetted" by me prior to the requested payment plan.

In ROI (29), the same city attorney says *"he first became aware of the Respondent's delinquent slip rental account during August 2016, when the matter was reported in a Tampa Bay Times news article."* Thus he did not approve the Amortization Agreement before Mr. Bujalski signed it, contrary to Respondent's above statement claiming that the city attorney contemporaneously "vetted" the Amortization Agreement. It stands to reason that the attorney would have to "vet" the agreement before it was signed, not weeks later, after he read about it in the newspaper.

In ROI (33), Respondent backed off her declarative and unconditional assertion in appendix #6 that the Amortization Agreement "*was fully vetted by our city attorney."* Instead, she told the investigator that *"it was her understanding that City Attorney Trask had approved the payment plan."* [emphasis] Respondent's equivocation and dissembling on this point calls into question the veracity of any statement she makes.

There are additional deficiencies with the ROI. In ROI (29), city attorney Trask says he was *"not aware of any City policies or regulations which prohibit the establishment of a payment plan for past due marina slip rental fees."* However, no "rental fees" were due or paid - the payments are defined as "user fees" in §3 of the RUA and throughout the RUA. The ROI makes reference to "user fees" twice on page 1, but subsequently uses the term "rental fee" four times. The investigator also references "slip rental" - again, it is a user fee, not a rental payment.

The investigator three times erroneously references a "slip rental agreement." There is no such agreement. Again, the RUA is a use agreement, not a rental agreement. The fact that the city employees and the city attorney misinterpret the agreement in key areas, as shown above and below, is no excuse for the FCE investigator to make the same mistake. The investigator had a copy of the RUA and could determine for himself what the contractual facts were.

There is yet another reason why Complainant is asking for a different investigator in this case: Complainant in #16-204 told me that he was copied on a letter to Respondent in which it said that if his complaint was investigated, he'd be given an opportunity to speak to the investigator. However, he was not given that opportunity, even though his complaint was investigated.

ROI (10) states that harbormaster Frantz said that *"although the marina's <u>standard policy</u> was to provide delinquency notices at 30, 60, and 90 days past due <u>as previously indicated in the rental agreement</u>, in practice, he said, his response to delinquent slip rental situations varied from time to time depending upon different factors."* [emphasis] There are at least three problems with this statement which the investigator should have caught:

(i) There is no mention of delinquency notices or late notices of any kind in the RUA.
(ii) The actual practice of any organization is, by definition, its "standard policy".
As shown below, it was not the City's "standard policy" to send out delinquency notices.
(iii) With the risk of beating a dead horse: the RUA is <u>not</u> a rental agreement.

Additionally and very interestingly, the response to a public records request Complainant made to the city turned up the following information:

<u>Year</u>	**<u>Number of delinquency notices sent by the City of Dunedin to Boaters</u>**
2012	0
2013	0
2014	8 (all dated September 3rd or 5th)
2015	0
2016	18 (all after the scandal surfaced involving Respondent's unpaid user fees)

Therefore, Frantz' claim that it was "*the marina's standard policy was to provide delinquency notices at 30, 60, and 90 days past*" is simply false, as shown by the above data. The City's "standard policy" was to handle the marina's accounts receivable erratically and in a fashion typical of people handling other people's money (the taxpayer's money). Such action and inaction by City employees is inconsistent with their fiduciary duties. Public sector discretion in payment enforcement for non-essential services creates great opportunities for abuse, malfeasance and the granting of special privileges and exemptions. And that was exactly the outcome in this case.

Frantz's boss, Dunedin Parks and Recreation director Vince Gizzi, also went out of his way to not enforce the RUA. At the bottom of page 5 of the AR, Gizzi, is quoted as saying that since no formal notice of delinquency had been sent to the renters, *"the City's ability to exercise more aggressive recovery measures such as requiring the removal of the Bujalski's vessel, or initiating seizure proceedings, seemed inappropriate."* In addition, Gizzi said he was "*surprised that no formal notice of delinquency had been forwarded to the Respondent or Mr. Bujalski* [the Respondent's husband]".

Gizzi's claim as to the City's ability to take action is directly contradicted by the RUA. In relevant part, the RUA §3 states the following:

In the event a user fee is delinquent after 60 days from the 1st of the month (City Ordinance Section 86-77), the vessel may not occupy the slip, and it is subject to removal from the Marina or seizure for non-payment <u>without further notice</u> and immediate cancellation of the Revocable Use Agreement. All costs of towing and storage will be the sole responsibility of the Boater. [emphasis]

Therefore, Gizzi's reason for not having the Respondent's boat removed ("notice had not been given") is complete nonsense since it was expressly stated in the RUA that no notice is required.

Gizzi chose to help provide this exemption from the RUA for the Respondent by interpreting the RUA himself. Gizzi is not an attorney, and did not seek advice from the city attorney in interpreting the RUA. When Gizzi acted as a lawyer, he arrived at wrong legal conclusions that were beneficial to the Respondent and provided her with special privileges and exemptions.

The investigator and the city attorney also failed to consider the following fact: the RUA had four boaters as parties, including the Respondent. Those four people signed the RUA. However, only Mr. Bujalski signed the Amortization Agreement and none of the other three parties. This lack of the additional three signatures is a direct breach of §15 in the RUA. §15 requires that the RUA *"may not be modified except by a document in writing and executed with the same formality as this Agreement."* Instead, the RUA was modified and <u>not</u> executed with the same formality as the RUA itself.

On page 6 of the AR, fourth line down, it says *"Respondent told Gizzi that she was unaware of account's past due status and would discuss the matter with her husband so that <u>she</u> could <u>advise</u> Gizzi about a plan to address the delinquency (ROI 16,30)"* [emphasis] However, those ROI items do not say that the Respondent would advise Gizzi.

The quoted statement from the AR therefore calls into question the accuracy of the AR. Perhaps the investigator did tell the Advocate that the Respondent was going to advise Gizzi, or maybe the Respondent in fact had advised Gizzi what to do. Was that "plan" the Amortization Agreement? If so, why were those facts, detrimental to Respondent, left out of the ROI?

The Amortization Agreement was a special privilege that was never provided to any other boater. According to appendix #3, Gizzi admitted that such an arrangement has *never* been done for someone delinquent in their user fees in his nine years working at the city.

In fact, Respondent herself confirmed that *"she asked Mr. Gizzi if a payment plan might be arranged"*, see ROI (32). This matches what Gizzi said in ROI (17), namely that *"Respondent inquired about whether a payment plan might be arranged."*

It's one thing to ask whether a payment plan is available. It's quite another to ask whether one might be "arranged." The Respondent's own statement, confirmed by Gizzi, show clearly that the Respondent actively sought to *"secure a special privilege, benefit, or exemption"* for herself, that exemption being an exemption from the very clear requirements in the RUA and in Dunedin City Code Ordinance section 86-77. That ordinance is referenced in the RUA itself. Such action is a violation of Florida Statute §112.313(6) "Misuse of Public Position".

ROI (20) says *"Mr. Gizzi acknowledged that the City has not previously made a payment plan available to a marina patron with a delinquent slip rental account."* That means that when the Respondent asked him if a *"payment plan might be arranged"*, Gizzi's answer should have been a simple "no" followed by "you are in breach of the RUA, remove your boat from the marina immediately or we will do it for you." Instead, Gizzi granted the Respondent's unlawful request, which began as a "plan" and morphed into a "payment plan.".

ROI (20) further states that Gizzi said that *"he is not aware of a payment plan having ever been requested prior to this matter."* Gizzi's statement further supports the claim that a "*special privilege, benefit, or exemption"* [emphasis] was sought by the Respondent, and provided by Mr. Gizzi and Mr. Ciurro. That is why this complaint has been filed (#17-175) as well as against Gizzi (#17-176) and Ciurro (#17-177). Keep in mind that this special "payment plan" (the Amortization Agreement) had never before been furnished to any slip user.

ROI (18) says "*Mr. Gizzi recalled that Mr. Ciurro [the city's then finance director] suggested that he use a standard City utilities payment plan as a template for structuring a payment plan for the Respondent and Mr. Bujalski."*

It is therefore clear that this was a payment plan for Mr. Bujalski and the Respondent. Yet somehow, only Mr. Bujalski was made to sign the Amortization Agreement, as if he could also sign for the Respondent, and the other two parties to the agreement.

Ciurro also stated to the Tampa Bay Times (appendix #3) that *"he did only what he was directed to do by the parks and recreation department"* That is more or less what he said in ROI (18).

According to ROI (11-12), harbormaster Frantz was absent from work from July through October 2015 and did not resume policing late accounts until "he received the March 2016 slip rental report." During this time period (07/2015 to 03/16) that Respondent's delinquency with the city ballooned the most, from $247.63 to $2,576.88. This was the longest time, almost 8 months, between payments that the account ever experienced. This fact strongly indicates that Respondent took advantage of the fact that the harbormaster was on medical leave. This is in and itself misuse of public position.

The above facts show that Respondent and others engaged in a charade that simply lacks credibility. The picture Respondent and others have tried to paint is one of the Respondent being uninvolved with a delinquent account for years, an account with the City the Respondent is the mayor of. Respondent only entered the picture to secure special exemptions, yet the claim she did nothing wrong. That story is not believable. That story is a lie.

So what did happen? Money was owed by the Respondent to the city she is the mayor of, and the use of the City as the Respondent's personal and interest free line of credit could not continue any longer. The RUA had been breached, a city ordinance had been violated, all necessitating the removal of Respondent's boat from the marina. What is a mayor to do?

Simple - pressure Gizzi, and perhaps others, into providing her with a special exemption from the clear language of the RUA. Make sure only Respondent's husband signs the Amortization Agreement, even though as a signatory to the RUA, the Respondent also owed the money (not just her husband.) The goal was to keep her sticky fingers off of any paper trail.

When caught behaving like the corrupt city official she is, Respondent tells the press and the investigator, see ROI (16), that her husband had been injured. When asked by the reporter when that injury occurred, Respondent "declined to say."

Respondent plead poverty in arranging the Amortization Agreement. Her husband had just signed it, yet they managed to find the money just as the non-payment scandal became public. This is a point upon which the investigator should demand proof of these alleged health problems because it goes to the credibility of Respondent's statements. Respondent is asking citizens to believe she and her husband were late in paying for this non-essential slip usage for over four years because of an injury her husband sustained and *"other health issues he had"* (see appendix #3). That's a claim that's hard to believe and central to Respondent's credibility. Is the husband well now? Ask for details an proof of Respondent's health allegations.

What changed in their lives in just three weeks that made it possible for them to stop treating the City like a line of credit and instead adhere to the RUA? This after 4+ years of abusing the citizens through the Bank of Dunedin (a.k.a. "the City of Dunedin").

There is a waiting list for slips in the marina, and the City's user fees are well below market rates. By not adhering to the City Ordinance and the RUA, the Respondent deprived another boater of a spot in the marina, and deprived the City of a promptly paying user. The Respondent acted in a deceptive manner to manipulate others to secure a special privilege for herself.

Standards for legal review:

For Florida Statute §112.311(5), it might be *Blackburn v. State Commission on Ethics*, 589 So. 2d 431 (1991) 1st DCA. Complainant is not sure.

Florida Statute §112.313(6) reads as follows

(6) MISUSE OF PUBLIC POSITION.—No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.[emphasis]

Note that the word "corruptly" only applies to the portion before the underlined word "or" that is underlined. The AR, bottom of page 7, incorrectly states that the standard is:

A violation of Section 112.313(6) requires that Respondent 1) used or attempted to use her official position or any property or any resources within his or her trust ***or*** *2) performed her official duties in a corrupt manner to secure a special privilege, benefit, or exemption. The evidence does not show that Respondent used her position to direct any other City officials or performed her duties in the aforementioned manner.*

However, the word "corrupt" is in the wrong place, as one can see by simply reading Section §112.313(6). The word "corrupt"or "corruptly" belongs in the "used or attempted to use" portion of the AR's text, not in the "securing a special privilege" portion.

The legal conclusion in the AR is thus contrary to the statute in that it applies the word "corruptly" to the portion dealing with securing a special privilege, benefit or exemption.

From the reference to "the aforementioned manner" in the above quoted text, it is also clear that the AR relied on this very text they wrote in reaching its conclusion.

Florida courts generally rule that if the Legislature wanted to put something in a statute, they would have done so. In this case, the Legislature could have written *"or corruptly perform his or her official duties"*. They did not. Therefore, the above legal analysis is correct.

It is thus legally sufficient to show that Respondent *"performed her official duties to secure a special privilege, benefit, or exemption"* . There is no requirement to show that Respondent did so "corruptly."

ROI (5) shows that Respondent told the harbormaster that "her husband pays the bills for the family", after which, in ROI (6), Respondent's husband *"directed him* [the harbormaster] *not to contact the Respondent in the future regarding any issues relating to their boat or their rental of the boat slip."* [emphasis] That directive presumably applied to any city employee. Respondent was then completely uninvolved with her marina account for over two years, until $2,874.18 was owed and Gizzi contacted her.

It is possible that Respondent violated either the first or second portion of Section §112.313(6), so we must still consider the word "corruptly" (or that she violated both). The word "corruptly" is defined in Section §112.312(9) as follows:

"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 a public servant which is inconsistent with the proper performance of his or her public duties.

The *"omission of a public servant"* in this case is Respondent seeking to have Gizzi not enforce the RUA, not enforce the city ordinance, and in fact unlawfully modify both. In doing so, both Respondent and Gizzi took actions that were inconsistent with the proper performance of his or her public duties. Respondent received a benefit from that omission.

Siplin v. Commission on Ethics, 59 So.3d 150 (2011), 5th DCA, is a relevant case that cites many previous relevant cases. It references *Latham v. Commission on Ethics,* 694 So.2d 83 (1997), 1st DCA, as saying that:

The connotation generally given to the word "corrupt" suggests that one who is found guilty of being corrupt could well expect to be penalized. Moreover, the bearer of an officially-administered stamp of corruption, may find loss of livelihood among the least of his worries. The wake of such censure can easily sweep away business and political ambitions, station in the community, and the respect and love of family and friends.

However, this analysis forgets the definition of the word "corrupt" given in the statute, as stated above. Any "penalties" beyond what the ethics code contemplates are consequential in nature and immaterial to enforcement of §112. A person "found guilty of being corrupt" as a result of an FCE complaint will generally face no prison time and no reputational damage, unlike someone who is "found guilty of being corrupt" in a court of law.

The Advocate's Recommendation in this case may depend on a finding of "wrongful intent", a term not defined in the statute.

The Complainant is informed and believes, and upon such information and belief, alleges that the Respondent unlawfully and unethically pressures and intimidates city employees in to doing what she wishes them to do. In doing so, Respondent has created a toxic work environment in Dunedin city government in which employees are afraid to offer their competent professional opinion on matters, and fearful of enforcing ordinances and contracts against certain people, including against Respondent and her family.

If the investigator were to find that the Respondent's husband accepted an interest-free loan from the city, one that the Respondent could not accept, but that this is allowed because he's not a public official, such a finding would mean that any public official could simply quietly ask their spouse to seek the special privileges or exemptions that they themselves are prohibited from seeking. Such a finding would not serve the public interest, and make a mockery of the law.

The circumstantial evidence is overwhelming that Respondent used her official position to pressure Gizzi to provide her and her husband with a special exemptions. That circumstantial evidence has been laid out in great detail above, and the "special privileges and exemptions" were the Amortization Agreement, and a waiver of several requirements of the RUA in manner not allowed for any signatories of the RUA. Ever.

When Gizzi spoke to Respondent about the the delinquent account, he did so in City Hall, see ROI (16). Since nothing to the contrary was alleged by either Gizzi or the Respondent, that conversation at that location would have been between a city employee and the mayor. Not between a city employee and a boat slip user. The failure by the Respondent to draw a bright line between her role as a mayor and her role as a severely delinquent boat slip user is further evidence of her moral turpitude.

In investigating the present complaint, the investigator should ask the new city manager Jennifer Bramley about the work environment she found when she arrived on the job in 2017. The investigator should also ask to see any complaints of intimidation or harassment against Respondent (if any), whether those complaints were formal, informal or verbal.

Finally, Complainant repeats his respectful request that a different investigator and a different advocate handle this Complaint than the ones who handled #16-204.