

Attachment to AMENDED Ethics Complaint
against VINCENT GIZZI (case #17-176)

This is a complaint related to the ones filed against Juliana Bujalski (complaint #17-175) and against Joseph Ciurro (complaint #17-177). Because Complainant has been advised by staff that the Commission must only consider what is within "the four corners of the Complaint", this complaint will repeat word for word some of the statements in complaint #17-175.

Juliana Bujalski ("**the Mayor**") 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 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**.

Vincent Gizzi ("Respondent"), is the City's Parks & Recreation Director. 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"

This complaint centers around Respondent's role in directing the City's then Finance Director, Joseph Ciurro, to deviate from the RUA for a boat slip used by the Mayor in the city-owned marina. The Mayor and her husband were parties to the RUA, along with two other people.

There was a previous ethics complaint against the Mayor (complaint #16-204) which I was not aware of when I filed the present Complaint. 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, which necessitated this amended complaint against the Respondent.

In the Report of Investigation for #16-204 ("the ROI"), included as **appendix #2**, exhibit shows that within one month of entering into the agreement, the Mayor became delinquent on user fee payments. The Mayor 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. The Times' newspaper article on this matter is included as **appendix #3**.

The Mayor's husband, Tom Bujalski, entered into an agreement of sorts with the city that carried the title "6-month Amortization" ("**the Amortization Agreement**") on July 19, 2016. This document is included as **attachment #4**. 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, not a "payment plan". 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 Mayor was charged zero interest. Florida Statute §112.311(5) doesn't allow the Mayor to *"incur any obligation of any nature in substantial conflict with the proper discharge of his or her duties in the public interest"*. In Complainant's opinion, receiving such a loan as the Amortization Agreement from the agency you are supposed to be overseeing impedes the "proper discharge" of Respondent's duties.

Ciurro stated to the Tampa Bay Times (appendix #3) that in arranging a special privilege and exemption for others, *"he did only what he was directed to do by the parks and recreation department"* (Respondent is the director of the parks and recreation department).

At the bottom of page 5 of the AR, Respondent 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, Respondent said he was *"surprised that no formal notice of delinquency had been forwarded to the Respondent or Mr. Bujalski [the Mayor's husband]"*.

Respondent'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 without further notice and immediate cancellation of the Revocable Use Agreement. All costs of towing and storage will be the sole responsibility of the Boater. [emphasis]

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

Respondent chose to help provide this exemption from the RUA for the Mayor by interpreting the RUA himself. Respondent is not an attorney, and did not seek advice from the city attorney in interpreting the RUA. Respondent thus acted as an amateur lawyer and he arrived at wrong legal conclusions that provided the Mayor with a special privilege. How convenient!

The investigator and the city attorney also failed to consider the following fact: the RUA had four boaters as parties, including the Mayor. Those four people signed the RUA. However, only Mr. Bujalski signed the Amortization Agreement and none of the other three parties. This lack of 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 not executed with the same formality as the RUA itself.

Respondent had no authority to arrange such a special privilege for the Mayor, a deal which was available to no other person. In fact, Respondent's actions were a direct breach of the RUA §15.

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.

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

The quoted statement from the AR therefore calls into question the accuracy of the AR. Perhaps the investigator did tell the Advocate that the Mayor was going to advise Respondent, or maybe the Mayor in fact had advised Respondent. If either is true, why was that damning fact left out of the ROI?

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 Mayor asked Respondent if a *"payment plan might be arranged"* (ROI 32), his 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, Respondent granted the Mayor's unlawful request, which began as a "plan" (page 6 of the AR) and morphed into a "payment plan." Instead, Respondent granted the Mayor's unlawful request.

As alleged in the complaint against the Mayor, she actively sought to *"secure a special privilege, benefit, or exemption"* for herself, those exemptions being the Amortization Agreement, and unwarranted waivers of several very clear requirements of the RUA (as well as an exemption from Dunedin City Code Ordinance section 86-77. That ordinance is referenced in the RUA itself, yet Respondent agreed to do as the Mayor unlawfully requested.

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

According to ROI (14) Gizzi *"relied upon Mr. Frantz to manage the marina's slip rental accounts."* Frantz is the harbormaster for the marina and a subordinate of Gizzi. According to ROI (11-12), 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." Thus Gizzi knew that managing delinquencies was one of Frantz' duties, yet he made no arrangements to have another person take over this duty during Frantz's medical leave.

According to ROI (12), the next time Frantz looked at a delinquency report for the marina was when "he received the March 2016 slip rental report." It was during this time period of illness and neglect (07/2015 to 03/2016) that Respondent's delinquency with the city increased the most, from \$247.63 to \$2,576.88.

This was also the longest time, almost 8 months, between payments that the account ever experienced. All these facts taken together (Gizzi's failure to insure monitoring of delinquencies during Frantz's absence, the failure to enforce delinquencies for eight months, the sharp rise in the Mayor's delinquency during the period) all indicate that the Mayor and her husband took advantage of the neglect. This created a situation where the Mayor had leverage against Respondent in any discussions due to Respondent's neglect of his duties.

Respondent engaged in a charade that simply lacks credibility. The picture he and others have tried to paint is one of the Mayor being uninvolved for years with her own delinquent account with the city she is the mayor of. The Mayor only entered the picture to secure special exemptions, yet all claim she did nothing wrong. That story is not believable. That story is a lie. Respondent apparently lacked the character to stand up to the Mayor, but this deficiency in his character does not relieve Respondent of his obligations under the Florida Ethics laws.

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.

For a public official's actions to be a violation of Florida Statute §112.313(6), the person must "corruptly use or attempt to use his or her official position...to secure a special privilege, benefit, or exemption" for herself. The word "corruptly" is defined as follows in §112.312(9):

"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.
[FS §112.312 (9)]

The "omission of a public servant" in this case is Respondent not enforcing the RUA and not enforcing the city ordinance. Both the Mayor and Respondent took actions that were inconsistent with the proper performance of his or her public duties. In doing so, they violated Florida Statute §112.313(6) "Misuse of Public Position."

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.

Please pay close attention to interplay of the words "and" and "or" in the statute's definition of the word "corrupt." It's legally sufficient to show that the actions by Respondent were taken with a wrongful intent and for the purpose of obtaining 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 benefit does not have to be for himself, it can be for somebody else. Complainant believes he has made the requisite showing. The Advocate's Recommendation in this case may depend on a finding of "wrongful intent", a term not defined in the statute.

Note that the Mayor did not ask if a payment plan existed, she asked if it could be "arranged." Respondent's corruption alarm should have gone off right away, but didn't. Instead, ROI (28) shows that Respondent suggested to the city manager that the Mayor receive what Respondent knew or should have known was special treatment. This while all the while claiming that no special treatment was being given. The logic among the city staff involved seems to have been that since no "special treatment" had been asked for by the Mayor, then none had been given. Such reasoning is either corrupt or idiotic. Either way, Respondent through his actions misused his position in violation of §112.

The Complainant is informed and believes, and upon such information and belief, alleges that the Mayor unlawfully and unethically pressures and intimidates city employees in to doing what she wishes them to do. In doing so, the Mayor 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 the Mayor and her family. That may be a mitigating factor in determining culpability for the Respondent, but that is for the FCE to decide.

When Respondent spoke to the Mayor about her delinquent account, he did so in City Hall, see ROI (16). Since nothing to the contrary was alleged by either the Respondent or the Mayor, that conversation at that location would have been between a city employee and the mayor. Not between a city employee and a severely delinquent boat slip user whose only task should have been to pay up and move her boat out of the City marina.

In investigating the present complaint, the investigator should ask the new city manager Jennifer Bramley about the work environment she found when she arrived. The investigator should also ask if there have been any complaints of intimidation or harassment against the Mayor (if any), whether those complaints were formal, informal or verbal.

Complainant wrote an e-mail to Respondent on 12/20/2017 and laid out the ethics case against him. Complainant stated the following in bold letters: "***However, should you have any facts that demonstrate that an ethics complaint against you is not warranted, then please provide them immediately as I will be filing today.***" Respondent did not respond to that e-mail.