

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 08-0011

IN THE MATTER

OF

LAWRENCE P. DRISCOLL

DISPOSITION AGREEMENT

The State Ethics Commission and Lawrence P. Driscoll enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On October 11, 2006, and March 14, 2007, respectively, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), two separate preliminary inquiries into possible violations of the conflict of interest law, G.L. c. 268A, by Driscoll. The Commission concluded the inquiries, and on April 25, 2007, and on May 9, 2007, found reasonable cause to believe that Driscoll violated G.L. c. 268A.

The Commission and Driscoll now agree to the following findings of fact and conclusions of law.

MacDonald Receives MRB Headquarters Renovation Contract

Findings of Fact

1. Driscoll was a member of the five-person Middlesex Retirement Board (“MRB”) from 1983 until 2006. The MRB is the governing body for the Middlesex Retirement System (“MRS”).

2. In 2002, the MRS sought to renovate its headquarters at 25 Linnell Circle in Billerica. At an October 3, 2002 meeting, Driscoll and two other MRB members voted 3-2 to reject a \$660,000 renovation bid from an internationally known builder. The MRB then created a three-person building subcommittee, which included Driscoll and the two other MRB members who had voted against the bid. The MRB delegated the handling of the headquarters renovation contract to the subcommittee. At this meeting, the MRB’s general counsel advised the subcommittee to get three quotes before hiring a general contractor.

3. John C. MacDonald is a builder who was a friend of Driscoll’s and another building subcommittee member.

4. On October 5, 2002 (a Saturday), the MRB building subcommittee met. MacDonald was present and verbally submitted a bid of \$557,000 to do the renovation. MacDonald also verbally submitted a bid of \$595,000 on behalf of another builder. Driscoll knew that MacDonald had solicited and received the bid from the second builder prior to calculating his own bid. General counsel’s advice to get three bids notwithstanding, the subcommittee awarded the renovation contract to MacDonald at this same meeting.¹

¹The building subcommittee regarded the \$660,000 bid previously rejected by the MRB as a third bid.

5. After MacDonald was awarded the contract, he was informed by the building subcommittee that it needed the headquarters renovation bids in writing. The building subcommittee instructed MacDonald to prepare two written bids: one from MacDonald for \$557,000, and the other for \$595,000 on behalf of the second builder. MacDonald submitted the written bids to the MRB.

6. MacDonald completed the headquarters renovation on time and on budget.

Conclusions of Law

7. As an MRB member, Driscoll was a state employee as that term is defined in G.L. c. 268A, § 1(q), and therefore subject to the conflict-of-interest law.

Section 23(b) (2)

8. Section 23(b)(2) of G.L. c. 268A prohibits a state employee from knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

9. The award of the MRS renovation contract was a privilege.

10. Where the contract award was given to MacDonald through a process which gave the false impression of a competitive bid process, the renovation contract award was an unwarranted privilege.

11. Where the contract was for \$557,000, the contract award was an unwarranted privilege of substantial value.

12. By voting to give MacDonald the renovation contract under such circumstances, Driscoll knew that he was using his MRB member position to provide MacDonald with an unwarranted privilege.

13. The unwarranted privilege was not otherwise properly available to similarly situated individuals.

14. Therefore, by voting to give MacDonald the \$557,000 renovation contract involving a process which gave the false impression of a competitive bid process, Driscoll knowingly used his official position to secure for MacDonald an unwarranted privilege of substantial value that was not properly available to similarly situated individuals, violating § 23(b) (2).

Section 23(b)(3)

15. Section 23(b)(3) prohibits a state employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the facts, to conclude that anyone can improperly influence or unduly enjoy that person's favor in the performance of his official duties. This subsection further provides that the appearance of impropriety can be avoided if an elected public employee publicly discloses all of the relevant circumstances which would otherwise create the appearance of conflict of interest.

16. Driscoll acted as an MRB member by voting to award the \$557,000 headquarters renovation contract to MacDonald.

17. When he so acted in this matter, Driscoll and MacDonald had a friendship that was not disclosed. Consequently, by acting as an MRB member on a matter in which a friend had a substantial financial interest, Driscoll knew that he was acting in a manner which would

cause a reasonable person, knowing all of the relevant facts, to conclude that the MacDonald can improperly influence or unduly enjoy Driscoll's favor in the performance of Driscoll's official duties as an MRB member relating to the headquarters renovation contract. Thus, Driscoll violated § 23(b) (3).

18. Driscoll did not make any public disclosure of the relevant facts to dispel this appearance of impropriety.

MacDonald Hired as Facilities Manager

Findings of Fact

19. After the Linnell headquarters project was completed, the building subcommittee unanimously voted on December 6, 2002 to hire MacDonald as a full-time manager of the MRS headquarters facility, earning over \$60,000 annually.

20. Driscoll did not file any disclosures concerning his friendship with MacDonald.

21. MacDonald resigned from the facility manager position in November 2006.

Conclusions of Law

Section 23(b)(3)

22. Driscoll acted as an MRB member by voting to hire MacDonald as the facilities manager with an annual salary of \$60,000.

23. When he so acted in this matter, Driscoll and MacDonald had a friendship that was not disclosed. Consequently, by acting as an MRB member on a matter in which a friend had a substantial financial interest, Driscoll knew that he was acting in a manner which would cause a reasonable person, knowing all of the relevant facts, to conclude that the MacDonald could improperly influence or unduly enjoy Driscoll's favor in the performance of Driscoll's

official duties as an MRB member relating to the facilities manager position. Thus, Driscoll violated § 23(b) (3).

24. Driscoll did not make any public disclosure of the relevant facts to dispel this appearance of impropriety.

Unwarranted Reimbursements

Findings of Fact

25. Between 2002 and 2004, Driscoll requested travel expense reimbursements from the MRS of approximately \$5,120. These expenditures were expenses for conferences he did not attend, non-MRS related airfare, car payments for personal use, and personal items.

26. In November 2005, at the request of the MRB, Driscoll returned to the MRS the sum of \$2,437 in transportation and meal reimbursements.

Conclusions of Law

Section 23(b) (2)

27. As an MRB member, Driscoll had authorization to seek reimbursement for legitimate MRB expenses.

28. The receipt of reimbursements was a privilege.

29. Where the reimbursements were not based on legitimate MRB business expenditures, they were unwarranted.

30. Where the expenditures exceeded \$50 (individually or in the aggregate), they were of substantial value.

31. By submitting for reimbursement expenditures that were not based on legitimate MRB business expenditures, Driscoll knowingly used his official position to secure for himself

unwarranted privileges of substantial value not properly available to similarly situated individuals. By doing so, Driscoll violated G.L. c. 268A, § 23(b) (2).

Resolution

In view of the foregoing violations of G.L. c. 268A by Driscoll, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Driscoll:

- (1) that Driscoll pay to the Commission the sum of \$10,000 as a civil penalty for violating G.L. c. 268A, §§ 23(b)(2) and (b)(3) as noted above;
- (2) that Driscoll pay to the Commission the sum of \$2,683 as a civil forfeiture of the unwarranted reimbursements he received; and
- (3) that Driscoll waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

