

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 12-0017

IN THE MATTER

OF

DARRYL CLARK

ORDER TO SHOW CAUSE

1. The State Ethics Commission ("Commission") is authorized by G.L. c. 268B to enforce G.L. c. 268A, the state conflict of interest law, and in that regard, to initiate and conduct adjudicatory proceedings.

2. On April 20, 2012, the Commission (a) found reasonable cause to believe that Darryl Clark ("Clark") violated G.L. c. 268A, § 23(b)(2)(i) and (ii), and (b) authorized the initiation of adjudicatory proceedings.

Solicitation of Temporary Painter Gomes

FACTS

3. In 2010, Clark was a Massachusetts Bay Transportation Authority ("MBTA") Painters Foreman. As such, Clark was a state employee as that term is defined in G.L. c. 268A, § 1(q).

4. As a Painters Foreman, Clark supervised the painting of MBTA train cars.

5. As a Painters Foreman, Clark supervised the MBTA temporary painters by giving them assignments and controlling their work schedules.

6. In 2010, Alexandre Gomes ("Gomes") was an MBTA temporary painter and Clark's subordinate.

7. In or about the summer 2010, Clark asked Gomes at the MBTA workplace to lend him \$300.

8. Clark did not have a private or social relationship with Gomes.

9. Gomes did not loan Clark the \$300.

LAW

Section 23(b)(2)(i)

10. General Laws chapter 268A, § 23(b)(2)(i) prohibits a state employee from knowingly, or with reason to know, soliciting or receiving anything of substantial value for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee's official position.

11. The request for a \$300 loan was a solicitation.

12. The solicitation was of substantial value because, under the circumstances, it was worth \$50 or more.

13. This solicitation was not authorized by statute or regulation.

14. Clark solicited the loan for himself.

15. By asking his subordinate for a \$300 loan, Clark solicited something of substantial value for or because of his position.

16. Thus, by asking his subordinate for a \$300 loan, Clark solicited something of substantial value for or because of his Painters Foreman position, which was not otherwise authorized by statute or regulation, thereby violating § 23(b)(2)(i).

Section 23(b)(2)(ii)

17. General Laws chapter 268A, § 23(b)(2)(ii) 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.

18. A \$300 loan was a privilege.

19. The privilege was unwarranted because there is no justification for borrowing money from a subordinate with whom one has no private business or social relationship.

20. This privilege was of substantial value because, under the circumstances, it was worth \$50 or more.

21. This privilege was not properly available to similarly situated individuals other than Clark because such solicitation is inherently coercive as it is based on the exploitable nature of the superior-subordinate relationship.

22. By soliciting a \$300 loan from Gomes, a subordinate with whom Clark had no friendship or other personal relationship outside the employment relationship, Clark knowingly or with reason to know attempted to use his official position to secure this unwarranted privilege for himself.

23. Thus, by using his official position as a Painters Foreman to solicit a \$300 loan from Gomes, Clark knowingly or with reason to know attempted to use his Painters Foreman position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals thereby violating § 23(b)(2)(ii).

Solicitation of Temporary Painter Steiner

FACTS

24. In 2010, Thomas Steiner ("Steiner") was a temporary painter and Clark's subordinate.

25. In or about May 2010, Clark asked Steiner at the MBTA workplace to lend him \$500.

26. Clark did not have a private or social relationship with Steiner.

27. Steiner did not loan Clark the \$500.

LAW

Section 23(b)(2)(i)

28. The request for a \$500 loan was a solicitation.

29. The solicitation was of substantial value because, under the circumstances, it was worth \$50 or more.

30. This solicitation was not authorized by statute or regulation.

31. Clark solicited the loan for himself.

32. By asking his subordinate for a \$500 loan, Clark solicited something of substantial value for or because of his position.

33. Thus, by asking his subordinate for a \$500 loan, Clark solicited something of substantial value for or because of his Painters Foreman position, which was not otherwise authorized by statute or regulation, thereby violating § 23(b)(2)(i).

Section 23(b)(2)(ii)

34. A \$500 loan was a privilege.

35. The privilege was unwarranted because there is no justification for borrowing money from a subordinate with whom one has no private business or social relationship.

36. This privilege was of substantial value because, under the circumstances, it was worth \$50 or more.

37. This privilege was not properly available to similarly situated individuals other than Clark because such solicitation is inherently coercive as it is based on the exploitable nature of the superior-subordinate relationship.

38. By soliciting a \$500 loan from Steiner, a subordinate with whom Clark had no friendship or other personal relationship outside the employment relationship, Clark knowingly or with reason to know attempted to use his official position to secure this unwarranted privilege for himself.

39. Thus, by using his official position as a Painters Foreman to solicit a \$500 loan from Steiner, Clark knowingly or with reason to know attempted to use his Painters Foreman position to obtain an unwarranted privilege of substantial value not properly available to other similarly situated individuals thereby violating § 23(b)(2)(ii).

WHEREFORE, Petitioner asks that the Commission:

1. find that Darryl Clark violated G.L. c. 268A, § 23(b)(2)(i) and (ii) as described above; and
2. levy such fines, issue such orders and grant such other relief as may be appropriate.

Respectfully Submitted,

Petitioner State Ethics Commission
By its attorney,



/s/Candies Pruitt-Doncaster

Candies Pruitt-Doncaster

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