

## Consent Agreement

The Montgomery County Public Ethics Law states: “our system of representative government depends in part on the people maintaining the highest trust in their officials and employees. The people have a right to public officials and employees who are impartial and use independent judgment . . . The confidence and trust of the people erodes when the conduct of County business is subject to improper influence . . . .” (19A-2(a),(b)).

The Commission’s authority pursuant to the ethics law includes the application and civil enforcement of the ethics provisions set forth in Chapter 19A of the County Code, including the post-employment provisions codified at 19A-13, which state:

Sec. 19A-13. Employment of former public employees.

(a) A former public employee must not work on or otherwise assist any party, other than a County agency, in a case, contract, or other specific matter if the employee significantly participated in the matter as a public employee.

(b) For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business if the public employee significantly participated during the previous 3 years:

(1) in regulating the person or business; or

(2) in any procurement or other contractual activity concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).

(c) Significant participation means making a decision, approval, disapproval, recommendation, rendering of advice, investigation, or similar action taken as an officer or employee. Significant participation ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.

Pursuant to the County Code, HOC employees are “public employees” subject to coverage of the County’s ethics law. Pursuant to 19A-4 of the ethics law an Agency or County agency includes the Housing Opportunities Commission. The definition of public employee includes any person employed by a County agency. The inclusion of HOC as covered public employees under the County’s ethics law is dictated by the Maryland State Public Ethics Law. The State law defines local official, to be covered by Montgomery County ethics law, as including commissioners and employees of the Montgomery County Housing Opportunities Commission.

The Ethics Commission regulations in the Code of Montgomery County Regulations at 19A.09.01.02.5 provides that Commission staff may ask “the person responsible for the possible violation . . . if he or she would like to propose a cure to the Commission to remedy the possible violation. . . . Commission staff must present any such proposal to the Commission. The Commission may accept or reject the proposal . . . .” Pursuant to this authority, if the Commission accepts the proposal, upon satisfaction of the terms of the proposal, Commission

staff can close the matter. This “Consent Agreement” is made pursuant to this regulatory authority. It is acknowledged that if accepted by the Ethics Commission, this document will become a public document.

#### Relevant Facts

In November of 2022, Ethics Commission staff received information that Mr. Jay Berkowitz had terminated employment with the Housing Opportunities Commission (HOC) to work at Residential One, LLC, a property management company.

While at the HOC, Mr. Berkowitz held the position of Asset Manager. Mr. Berkowitz acted as Asset Manager with respect to several HOC properties with respect to which the HOC had contracted with Residential One to be the property manager. According to the HOC, generic responsibilities of an Asset Manager include:

- Monitor, evaluate, and direct, as needed, the performance of third-party management companies at assigned properties owned by HOC.
- Provide guidance and direction, acting on behalf of the owner's interests.
- Assure that third-party management companies are competent, responsive to tenants, professional in manner, and are a positive reflection of HOC.
- Assist with the preparation and posting of Requests for Proposals (“RFQ”) for Property Management of HOC’s contract managed properties, as well as the evaluation and selection of respondents to the RFQs.
- Prepare and present Committee and Commission packets for approval of recommended selection of property management firms, as well as requests for renewal of contracts.
- Monitor contract expiration and renewal dates and ensure that timely action is taken for posting of RFQ’s or contract renewals, including working with HOC’s Procurement Office.
- Ensure that required reports are submitted to HOC in a timely manner.
- Assess, on a continual basis, the physical condition, marketing aspects and financial performance of assigned HOC properties to assure that the properties are well maintained and properly positioned for the foreseeable future.
- Through the review and analysis of routine financial and analytical reports for the assigned properties, identifying existing and potential performance problems or issues and develop strategies to correct, including workouts and dispositions, as required.
- Through regular visits and inspection of assigned portfolio, monitor the physical condition and maintenance of each property identifying existing or potential problems and directing efforts to correct such conditions.
- Work with third party management company to identify areas of physical or functional obsolescence and develop improvement plans.

- Work with third party management companies, and within established HOC policies and guidelines to review both fiscal and calendar year operating budgets, ongoing and long-term capital plans as well as structured renovation plans.
- Oversee and ensure the timely submission of both fiscal and calendar year budgets by third party management companies for assigned properties.
- Ensure that third party management companies respond to requests from HOC's Compliance Department, auditors, lenders and investors or other stakeholders who perform compliance reviews for assigned properties.

As Asset Manager, Mr. Berkowitz worked on several contracts with Residential One. These contracts covered the following HOC properties: Tanglewood and Sligo, Dale Drive, Southbridge Apartments, and Manchester Manor ("Tanglewood"), Diamond Square, Paddington Square, and Barclay & Fairfax Court.

The HOC provided information about Mr. Berkowitz's involvement in the procurement actions concerning these contracts.

- Tanglewood - the current contract was approved by the Commission on 3/1/2017, which was before Jay's hire date. Jay did approve renewals.
- Diamond Square - the current contract was approved by the Commission on 3/6/2019, which was before Jay's hire date. Jay did approve renewals.
- Paddington Square - current contract was done via emergency procurement, so Jay was not involved in selection/scoring. Jay did approve the contract extension.
- Barclay and Fairfax Court - current contract was done via emergency procurement, so Jay was not involved in selection/scoring.

[Mr. Berkowitz states that "the information provided by HOC that I approved the renewal contracts is not correct. I never approved any renewal contracts as all renewals are approved by the commission. All emergency procurements are approved by the executive Director of HOC."]

The detail provided by the HOC on these contracts reflected the following:

- Tanglewood and Sligo, Dale Drive, Southbridge Apartments, and Manchester Manor ("Tanglewood")
  - Initial Term: 4/1/17 – 3/31/18
    - Amount: \$207,792
  - Renewal #1: 4/1/19 – 3/31/20
    - Amount: \$103,896
  - Renewal #2: 4/1/20 – 3/31/21
    - Amount: \$116,532
  - Renewal #3: 4/1/21 – 3/31/22

- Amount: \$103,896
  - Change Order #1: 4/1/22 – 3/31/23
    - Amount: \$103,896
  - **TOTAL: \$636,012**
- Diamond Square
  - Initial Term: 7/1/19 – 6/30/21
    - Amount: \$55,056
  - Renewal #1: 7/1/21 – 6/30/22
    - Amount: \$61,008
  - Renewal #2: 7/1/22 – 6/30/23
    - Amount: \$55,800
  - **TOTAL: \$171,864**
- Paddington Square
  - Initial Term: 4/1/21 – 3/31/22
    - Amount: \$91,080
  - Change Order #1: 4/1/22 – 3/1/23
    - Amount: \$91,080
  - **TOTAL: \$182,160**
- Barclay & Fairfax Court
  - Initial Term: 3/1/21 – 2/28/22
    - Amount: \$81,000
  - Change Order #1: 3/1/22 – 2/28/23
    - Amount: \$81,000
  - **TOTAL: \$162,000**

Mr. Berkowitz concedes that he committed a violation of the ethics law. Within a year of the effective date of his termination from County employment, Mr. Berkowitz entered into an employment understanding to work part-time with a business, Residential One, after he significantly participated in the prior three years in contract related matters with respect to the contracts between the HOC and Residential One. In addition, Mr. Berkowitz worked on behalf of Residential One on the very same contracts that he had significantly participated in managing as Asset Manager while at the HOC.

Mr. Berkowitz attended ethics training while an employee of the HOC on March 23, 2021, which training was conducted by staff of the Montgomery County Ethics Commission. This training specifically covered, among other things, the post-employment requirements of the County's ethics law applicable to HOC employees. The training emphasized the need to seek ethics advice to avoid circumstances that implicate the ethics law. While Mr. Berkowitz says he discussed working with Residential One with several senior HOC officials, he did not request

advice associated with the coverage of the post-employment bars with the Montgomery County Ethics Commission or the HOC's legal counsel.

Mr. Berkowitz was notified on December 16, 2022, by Ethics Commission staff of concerns associated with his employment by Residential One. Mr. Berkowitz resigned his employment with Residential One effective December 23, 2022.

In lieu of Ethics Commission taking further action in this matter, Mr. Berkowitz agrees to the following:

Mr. Berkowitz and the Ethics Commission agree that:

1. Mr. Berkowitz will pay the County \$2500 to resolve this matter within 15 (fifteen) days of his receipt of written confirmation from the Ethics Commission that it agrees to the terms of this Consent Agreement.
2. The Commission will immediately close the matter without further proceedings.
3. In connection with any other employment opportunity that Mr. Berkowitz may be offered with an entity that does business with the HOC, Mr. Berkowitz agrees to obtain advance written approval of the arrangement from HOC legal counsel or the Montgomery County Ethics Commission.
4. The failure to make the agreed-upon payment by Mr. Berkowitz will constitute a breach of this agreement and the County may use all authorities in Chapter VI of 19A and any other legal authority to obtain payment. The failure to abide the terms of this agreement may also result in the Ethics Commission in its sole discretion nullifying the agreement, allowing it to proceed as provided in the ethics law as though this agreement was never entered into. Because the Ethics Commission through its agreement to this proposal would be foregoing proceeding under the ethics law, Mr. Berkowitz waives any statute of limitations defenses should the Commission decide to proceed in the matter as a result of a breach of an agreement by Mr. Berkowitz.
5. The Agreement is entered into by the Ethics Commission in reliance upon factual information supplied by Mr. Berkowitz; if the Ethics Commission determines that the information supplied to it by Mr. Berkowitz is materially false, the Commission in its sole discretion may nullify the agreement, allowing it to proceed as provided in the ethics law as though this agreement was never entered into, and Mr. Berkowitz waives any statute of limitation defenses upon such nullification.

If this Consent Agreement is accepted by the Ethics Commission, the acceptance will confirm an agreement that is binding on Mr. Berkowitz and the Ethics Commission only. Mr. Berkowitz recognizes that the Ethics Commission does not have any authority to bind any other agency, and Mr. Berkowitz also recognizes that the conduct referenced in this document may subject him to the imposition of civil/or criminal penalties by other government authorities who are not a party to this agreement.

A statement from Mr. Berkowitz is attached as Attachment A to this agreement.

 1/11/2023

Jay Berkowitz

Date



1/11/2023

Bruce Romer

Date

Chair, For the Montgomery County Ethics Commission

## Attachment A

### Narrative Statement Provided by Mr. Jay Berkowitz:

I have terminated my employment from RES 1 as of Friday December 23, 2022

I retired from HOC on July 22 and started working for RES 1 after Labor Day. I do not remember the ethics training that I participated in as an employee of HOC in 2021. If I had remembered I would have contacted the ethics committee for guidance.

I do remember that prior to leaving HOC I had a conversation with the prior director of property management, my boss who left in April 2022 to work for the City of Rockville. I told her that I was leaving HOC and that I might be working with Res 1 helping them with the nine properties that they manage for HOC. I Asked her if this would be an issue and she said probably not as I was not part of the executive staff. Res 1 contacted me in early July 2022 if I might be interested in working for them. I told them that I was leaving HOC and my last day was July 22. I told them that I was going on vacation for two weeks and would contact them when I got back from vacation.

Prior to leaving HOC and afterwards I communicated to several HOC staff that I might be working for Res1 part time. I emailed and had conversations with several HOC employees including the Director of Risk Management and the CFO after starting work at RES 1. All the management contracts Res 1 had with the properties with HOC had already been extended until I believe June 30, 2023, as were most of the contracts with Property Management companies due to COVID. The message was relayed that the commissioners did not want any change in management companies during covid. My work with RES 1 was an accounting function (rent collection, rent relief and budgets) and had nothing to do with the management contracts as the contracts were already extended to June 30,2023. My conversations with RES1 regarding my role did not start until after I left HOC.

I had agreed in principle to work for RES 1 after I left HOC, but I was not hired until late August and started work after Labor Day. My main point of focus with RES 1 was to work with MCCH- Coalition for the Homeless on their SOP as Res 1 had entered into a consulting agreement with MCCH. Res 1 which entered into a consulting agreement with the Montgomery County Coalition for the Homeless needed by property management experience from my 15 years as Director of Affordable Housing for Horning Brothers to help draft SOP for the Coalition. This work is a benefit to the County and to the homeless population.

My duties with Res 1 were mostly accounting functions and not with any contract renewals with HOC. I worked part time (20 hrs. a week) and my total compensation with RES 1 was \$15,500 from September 6<sup>th</sup> through December 23<sup>rd</sup>. Most of my work was with MCCH. My focus in working part time was to keep busy. The 6 weeks off after leaving HOC was great but I needed to start working again part time. I am currently retired and not working.