

City of Miami

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INDEPENDENT AUDITOR GENERAL



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April 11, 2016

Honorable Members of the City Commission
City of Miami
3500 Pan American Drive
Coconut Grove, FL 33133-5504

Re: Investigation into Allegations of Missing Monies in the Bayside Foundation
Report No. 16-03

Executive Summary

We have completed an investigation authorized by the Commission at its June 26, 2014 meeting (via Resolution 14-0248) which requested that the “City Attorney’s Office and the Independent Auditor General conduct an investigation of all prior years of the Bayside Foundation to see if there are any missing monies and if appropriate, to pursue common law and statutory accounting remedies and any other appropriate measures to recover such missing monies.” The missing monies were allegedly attributable to improprieties committed by the organization’s former Executive Director (Director) and were estimated to be in excess of \$1.5 million. We were informed that in 2010, the current Miami Bayside Foundation’s (MBF) Board members requested a State Attorney’s Office investigation into this matter. Accordingly, the Commission requested the investigation include the period which covered the tenure of MBF’s former Director (September 2006 through August 2010).

As part of our investigation, we interviewed the Assistant State Attorney who was assigned to conduct a criminal investigation of the matter (which has not been finalized), and the current MBF Director. We also reviewed and analyzed available MBF accounting records, bank statements, federal tax returns (Form 990), and MBF records that were in the possession of the Assistant State Attorney.

Our investigative procedures included a cash flow analysis that indicated a possible cash shortage of \$130,112 that consists of: a cash balance difference of \$77,721 between the 2010 year-end cash balance we calculated based on data in the Internal Revenue Service (IRS) Form 990 (\$1,390,231) and the 2010 year-end cash balance stated in the bank statements (\$1,312,510); and, a difference of \$52,391 between total cash contributions we calculated using data in the Form 990s (\$1,216,100) and actual contributions paid by General Growth Properties (\$1,268,491) (GGP – formerly the Rouse Company, the developer of the Bayside Marketplace) in accordance with its lease and minority participation agreement with the City. It should be noted that even though our cash flow analysis was based on tax returns (Form 990) that were filed with the IRS, we were later informed that these returns were prepared using incomplete documentation related to the tenure of the former Director and Board.

Also, the City's Office of the Independent Auditor General does not have subpoena power to obtain the necessary banking and other pertinent information, which was in the possession and under the control of the former MBF Director and Board, that could bring this investigation to a close. Accordingly, we will provide the results of our investigation to the State Attorney's Office for further action, if necessary. Finally, we recommended that the agreement with MBF be amended to facilitate improved accountability and transparency regarding its operations.

Sincerely,



Theodore P. Guba, CPA, CIA, CFE
Independent Auditor General
Office of the Independent Auditor General

C: The Honorable Mayor Tomas Regalado
Daniel Alfonso, City Manager
Victoria Mendez, City Attorney, City Attorney's Office
Barnaby Min, Deputy City Attorney, City Attorney's Office
Robin Jones-Jackson, Senior Assistant City Attorney, City Attorney's Office
Nicholas Basco, Assistant City Attorney, City Attorney's Office
Nzeribe Ihekwaba, Assistant City Manager/Chief of Operations
Alberto N. Parjus, Assistant City Manager
Fernando Casamayor, Assistant City Manager/Chief Financial Officer
Daniel Rotenberg, Director, Department of Real Estate Asset Management
Nathan Kurland, Chairman of the Board, Miami Bayside Foundation
Kathleen Murphy, Executive Director, Miami Bayside Foundation
Jeff P.H. Cazeau, Board Member, Miami Bayside Foundation
Lorenz Michel Pruss, Dimond, Kaplan & Rothstein, P.A.
Katherine Fernandez Rundle, State Attorney, Office of the State Attorney
Isis Perez, Assistant State Attorney, Office of the State Attorney
Members of the Audit Advisory Committee
Investigation Documentation File

Investigation conducted by: Mala Khilnani, CPA, CISA, Senior Auditor

Investigation reviewed by: Lewis Blake, CPA, CIA, Audit Manager

**INVESTIGATION INTO ALLEGATIONS OF MISSING MONIES IN THE
BAYSIDE FOUNDATION**

Report No. 16-03

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ORIGIN OF ALLEGATIONS

At its June 26, 2014 meeting (via Resolution 14-0248), the City Commission requested that the “City Attorney’s Office and the Independent Auditor General conduct an investigation of all prior years of the Bayside Foundation to see if there are any missing monies and if appropriate, to pursue common law and statutory accounting remedies and any other appropriate measure to recover such missing monies.” The missing monies were allegedly attributable to improprieties committed by the organization’s former Director and were estimated to be in excess of \$1.5 million. We were informed that in 2010, the current Miami Bayside Foundation’s (MBF) Board members requested a State Attorney’s Office investigation into this matter. Accordingly, the Commission requested that the investigation include the period which covered the tenure of MBF’s former Director (September 2006 through August 2010).

BACKGROUND

The MBF is a nonprofit organization that was created to implement the terms of a “Minority Participation Agreement” (MPA), dated January 14, 1985. The MPA was attached as an exhibit to the City’s ground lease agreement (Lease) with General Growth Properties, Inc., (GGP, formerly the Rouse Company), the developer of the Bayside Marketplace shopping center (Bayside).

Although the foundation was created in order to facilitate minority participation in Bayside’s development/construction, and the creation of minority-owned retail businesses operating at Bayside, the organization’s overarching objective is to “advance economic development in the City of Miami through the support of minority businesses and education.” MBF strives to achieve this objective “through the creation and administration of loan programs for minority businesses... and educational scholarships for minorities, and by providing technical assistance to local organizations engaged in economic development.”

MBF operations are funded via donations and annual contributions made by GGP in accordance with the Lease. Pursuant to the terms of the lease, from 1987 through September 23, 2014, GGP was required to contribute the greater of \$100,000 or ten percent (10%) of the Net Income Available for Distribution (NIAD). However, pursuant to a 2nd Amendment to the MPA dated September 24, 2014, GGP is required to contribute \$350,000 annually. Consequently, total GGP contributions from 1987 through the end of our investigation period (2010) were approximately \$3 million. Additionally, we noted that according to MBF’s federal tax returns (Form 990), MBF total revenues and functional expenses during our investigative period (2006 through 2010) were as follows:

MBF Revenues and Functional Expenses (Per Federal Tax Returns)

	2006	2007	2008	2009	2010
Donations & GGP Contributions	\$200,000	\$100,000	\$483,212	\$178,353	\$100,000
Program Service Revenue	\$9,175	\$4,639	\$2,646	\$0	\$0
Interest Income	\$2,282	\$3,355	\$2,571	\$2,392	\$2,056
Total Revenue	\$211,457	\$107,994	\$488,429	\$180,745	\$102,056
Functional Expenses	(\$122,911)	(\$90,385)	(\$115,375)	(\$97,724)	(\$132,136)
Excess or (deficit)	\$88,546	\$17,609	\$373,054	\$83,021	(\$30,080)

METHODOLOGY

As part of our investigation, we met with the Assistant State Attorney and reviewed documents that MBF provided to the State Attorney's Office. We also interviewed MBF's current Director, reviewed and analyzed accounting records, bank statements, and MBF's Form 990 federal tax returns (990). MBF's Director informed us that she obtained MBF bank statements and created the organization's accounting records (since there were no records on file) and filed 2006 through 2010 Form 990's with the Internal Revenue Service (IRS). Using these 990s, we performed a cash flow analysis.

In addition, in order to determine the reasonableness of expenses for which the former MBF Director was an MBF vendor, we analyzed MBF expenses for the period October 2006 through June 2010 using expense data provided to us by the current MBF Director.

RESULTS OF INVESTIGATION

ALLEGATION: There were missing monies of more than \$1.5 million from MBF bank accounts that were the subject of a State Attorney's criminal investigation.

As part of our investigative procedures, we performed a cash flow analysis that indicated a possible cumulative cash shortage of \$130,112 that consists of: a cash balance difference of \$77,721 between the 2010 year-end cash balance we calculated based on data in the Internal Revenue Service (IRS) Form 990 (\$1,390,231) and the 2010 year-end cash balance stated in the bank statements (\$1,312,510); and, a difference of \$52,391 between total cash contributions we calculated using data in the Form 990s (\$1,216,100) and actual contributions paid by General Growth Properties (\$1,268,491) (GGP – formerly the Rouse Company, the developer of the Bayside Marketplace) in accordance with its lease and minority participation agreement with the City. Details of our results are described below:

Cash Flow Analysis

Based on the allegations that monies were missing from MBF bank accounts, we performed a cash flow analysis using MBF bank statements (we were able to identify at least 12 bank accounts in use at 12/31/10), Form 990s and the audited financial statements that were available to establish the beginning cash balance at 1/1/2006. Commencing with calendar year 2006, we performed the analysis by making accrual adjustments to the difference between revenues and expenses for each year (i.e., Revenues less Expenditures plus: depreciation, accounts/loans receivable decreases, accounts payable increases; and, less: accounts/loans receivable increases, accounts payable decreases). We then added the resulting “net cash increase (decrease)” to the beginning cash balance in order to determine the ending cash balance for each year.

Finally, we noted the 2005 ending cash balance indicated in MBF’s audited financial statements and compared it to the beginning cash balance indicated in the 2006 Form 990; and, we also noted the 2010 ending cash balance indicated in the bank statements and compared it to the ending cash balance indicated in the 2010 Form 990.

It should be noted that even though our cash flow analysis was based on tax returns that were filed with the IRS, we were later informed that these returns were prepared using incomplete documentation from the tenure of the former Director and Board.

As indicated in the table on the next page, the results of our analysis indicated a possible cash shortage of \$130,112:

MBF Cash Flow Analysis Using Form 990 Data – 2006 through 2010

	2006	2007	2008	2009	2010	Totals	
Contributions	\$200,000	\$100,000	\$483,212	\$178,353	\$100,000	\$1,061,565	
Program service revenue	\$9,175	\$4,639	\$2,646	\$0	\$0		
Interest Earned	\$2,282	\$3,355	\$2,571	\$2,392	\$2,056		
Total Revenue	\$211,457	\$107,994	\$488,429	\$180,745	\$102,056		
Functional Expenses	(\$122,911)	(\$90,385)	(\$115,375)	(\$97,724)	(\$132,136)		
Excess or (deficit)	\$88,546	\$17,609	\$373,054	\$83,021	(\$30,080)		
Accrual Adjustments:							
Decrease (Increase) in Accounts Rec.	\$43,174	\$0	\$33,008	(\$28,573)	\$106,926		\$154,535
Decrease (Increase) in Loans Rec.	\$30,000	\$57,500	\$137,500	\$0	\$0		
Increase (Decrease) in AP	(\$6,949)	\$9,735	(\$6,150)	\$250	(\$8,150)		
Depreciation	\$495	\$0	\$0	\$0	\$0		
Net Cash Incr (Decr)	\$155,266	\$84,844	\$537,412	\$54,698	\$68,696		
Cash Beg. Balance	\$489,315	\$644,581	\$729,425	\$1,266,837	\$1,321,535		
Cash End. Balance	\$644,581	\$729,425	\$1,266,837	\$1,321,535	\$1,390,231		
Total Cash Contributions						\$1,216,100	
Results							
<p>Investigative inquiry and correspondence with MBF regarding our cash flow analysis led to the following results:</p> <p>There is a possible Ending Cash Balance (12/31/10) Shortage of \$77,721 (\$1,390,231 calculated using Form 990 data less \$1,312,510 per 2010 year-end bank statements).</p> <p>It should be noted that when we compared calculated cash contributions (using Form 990 data) of \$1,216,100 made to the MBF (i.e., the contributions listed above totaling \$1,061,565, plus the \$154,535 in Accounts Receivable collections from 2006 through 2010) to the actual cash contributions paid by GGP totaling \$1,281,770, there is a shortage of \$52,391. Therefore, adding this shortage to the \$77,721 shortage described above results in a total possible cash shortage of \$130,112.</p>							

Other Observations - Expense Analysis

Based on the allegations that monies were missing from MBF bank accounts, we also performed an expense analysis using accounting records compiled from bank statements by the current MBF Director. The objective of our analysis was to determine the reasonableness of payments

for expenses made to the former Director and to other vendors. Accordingly, we obtained MBF “QuickBooks” expense details (i.e., accounting records) from October 2006 through June 2010. We were informed that these records were compiled from bank statements and were used to prepare federal non-profit tax returns (Form 990) for this period in order for the foundation to maintain its non-profit status.

We noted the total amounts attributable to each vendor for the period and found \$347,950 (or 90%) of the \$387,765 in expenses were paid to the former Director for “Outside Contract Services”. These payments amounted to approximately \$93,000 annually, during the former Director’s five-year tenure. However, we also noted that the current Director’s compensation is \$100,000 annually and \$5,000 of annual health benefits as a full-time employee, with corresponding MBF revenues totaling \$457,233 during fiscal year 2014.

We were informed that MBF expense payment procedures require that the Director prepare checks and present supporting documentation for the payment to two MBF board members for approval and check signature. However, the current Director did not know whether or not the former Director provided support (such as invoices) for “Outside Contract Services” checks written because there were no records available for any disbursements during the 2006-2010 period. In addition, we were informed that there was no evidence of any deliverables that contributed to the objectives of the MBF.

OVERALL CONCLUSION: Inconclusive

The allegation that there are missing monies of more than \$1.5 million at MBF was inconclusive based on the results of our cash flow analysis. Although there is a possible \$130,112 cash shortage as of year-end 2010, it should be noted that the City’s Office of the Independent Auditor General does not have subpoena power to obtain the necessary banking and other pertinent information, which was in the possession and under the control of the former MBF Director and Board, that could bring this investigation to a close and possibly explain the cash shortage. Accordingly, we will provide the results of our investigation to the State Attorney’s Office for further action, if necessary.

RECOMMENDATION: City Attorney’s Office

The MBF was established pursuant to a “public contract” (i.e., a ground lease of City land— Bayfront Park) to receive funding with an obligation to create “public benefits” that include establishing and administering a loan guaranty program, a vocational/educational scholarship fund, and a technical/economic development assistance program for minorities. Therefore, in order to facilitate accountability and transparency regarding the fulfillment of this responsibility and the use of funds, we recommend that the City Attorney’s Office work with the City Commission and Administration to amend the Minority Participation Agreement to require:

- The submission and presentation to the City of an annual report that lists/details loans made, scholarships granted, and technical/economic development assistance provided during the year.
- The submission to the City of a certified financial audit report.
- The right to conduct audits of MBF operations and financial records by the City’s Office of the Independent Auditor General.

Note: We noted that MBF's 2013-2015 annual report and the audited financial statements were posted to the foundation's website.

City Attorney's Office Response:

Upon submission of a request by either the Administration or the City Commission, we will gladly work on negotiating amendments to any relevant agreements. A Legal Services Request can be found at the following link:
<http://www.miamigov.com/cityattorney/legalServicesRequest.html>

Implementation Date:

This will be implemented upon the request of the Administration or City Commission.