

TO: Mr. David Fried, Deputy Town Attorney

Mr. Paul Feiner, Greenburgh Town Supervisor

CC: Greenburgh Town Council

Greenburgh Town Clerk

Opinion 2020-4

Re: The Matter of the Citizen's complaint brought by

Hal Samis against S. Kenneth Jones, Town Councilman

History

The Board of Ethics (BOE) is in receipt of a complaint filed by Hal Samis (the Complainant), a resident of the Town of Greenburgh, dated July 22, 2020, against Town Councilman S. Kenneth Jones. The Complainant cites Section 570-4 A (1)(b) of the Code of Ethics – Prohibited Acts Re Campaign Contributions. The complaint alleges that Mr. Jones accepted campaign contributions that were prohibited under the Code of Ethics.

The Complainant says, "A (sic) explanation follows for combining this new Verified Complaint and request to revisit the May 21 Opinion..." and goes on to name Mona Fraitag, Barbara Brennan and Mike Marino as individuals from whom Jones improperly accepted contributions.

The Complainant quotes from the Board of Ethics' Opinion 2020-2, adopted on May 21, 2020, "With regard to the other contributors specifically referred to in Mr. Samis' complaint, this board finds no evidence or allegations sufficient to warrant a finding of a violation of the code."

It should be noted in his 2019 complaint, the Complainant attached a seven-page list containing seventy-seven contributions; Mona Fraitag, Barbara Brennan and Mike Marino were listed therein, the three individuals he is requesting the BOE now consider.

After moving to Phase 1 in the 2019 complaint, this BOE sent out letters to eight individuals listed in the Complainant's complaint to ascertain whether their contributions were solicited or unsolicited. Of the eight contributions, the BOE found two violations. It should be noted one violation had already been conceded by Mr. Jones and returned, and the other violation was a contribution not highlighted in the Complainant's complaint. In the instant complaint, the Complainant comments with reference to that, "... I had her on my personal hold list with the vista of 2020-2 used to test the waters."

Such remarks leave the BOE somewhat perplexed as to what is the Complainant's intent. The BOE does not take lightly bringing a Citizen's Complaint against someone; it is very serious in that it impugns the integrity of the charged party, and the BOE will not be put to the test at the expense of others, as expressed by the Complainant's remark "... with the vista of 2020-2 used to test the waters." If the Complainant had this violation in sight when bringing the first complaint, the Complainant was obligated by the Internal Rules of the Board of Ethics to cite this as a possible violation at that time.

No new evidence was submitted in this complaint. An opportunity was given to Mr. Samis to add any new evidence he may have had and he declined to do so. After deliberations, the BOE concluded the instant complaint is nothing more than a request for the BOE to reconsider its decision in the 2019 complaint. The BOE is not an appellate court. There is no specific procedure for the BOE to review and overturn a previous opinion especially an opinion issued by a BOE made up of different members, which Mr. Samis has asked of this board in the past. Although it is possible that this BOE might reconsider one of its own opinions the threshold for such an action is high. Merely stating that the BOE made a mistake is not sufficient. Mr. Samis' argument, which in effect says the BOE is wrong and he is right, is petulant and not worthy of consideration. Highlighting different contributions which were already on the contribution list in his 2019 complaint is not new evidence which might give this board pause. In conducting a shell game with his arguments and his evidence he has weakened his own cause and wasted this Board's time. The Internal Rules and Regulations Section 6 (2) (iii), reads, in part, as follows: "In making a determination of good cause to proceed, the factors that the BOE will consider include, but are not limited to: A determination that the RRV arises out of the same or substantially the same operative facts that result in a finding of no violation as in a previous complaint, or a determination that the RRV is covered by a conclusion or interpretation of the Code of Ethics in a previous opinion of the Board of Ethics. " (See Opinion 2020-2)

In rendering its decision in the 2019 complaint, the three individuals named in this complaint were listed as contributors at that time. The BOE at that time found two contributions in violation of the code, none of which were the three listed above. Thus, by the BOE's decision in the 2019 Complaint, Mr. Jones was acquitted of any other violations pertaining to this list of contributors.

DECISION

The instant complaint brought by the Complainant, the BOE has determined is not only res judicata, but to reverse itself and find otherwise, the BOE has determined would be a violation of Mr. Jones' Fifth Amendment rights, his protection from Double Jeopardy.

For all of the above reasons, the BOE has determined to dismiss the instant complaint with prejudice.

BY THE BOARD OF ETHICS

Adopted at October 15, 2020 meeting

Voting for:

Mr. Spinozzi, Chairman

Ms. Holand, Secretary

Mr. Hays, Member

Hon. Doris Friedman, Member

