

**FILED
AND
ENTERED
ON 6-24-2021
WESTCHESTER
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X Index No. 54409/2020
In the Matter of the Application of
CYNTHIA GREER GOLDSTEIN

Plaintiff-Petitioner,

For a Judgment pursuant to Article 78 of the Civil
Practice Law and Rules and For a Declaratory Judgment
Under Civil Practice Law Rules Article 30,

- against -

DECISION AND ORDER
Seq. No. 1

VILLAGE OF MAMARONECK BOARD OF ETHICS,
VILLAGE OF MAMARONECK BOARD OF TRUSTEES
And INCORPORATED VILLAGE OF MAMARONECK,

Defendants -Respondents.

-----X
NEARY, J.

The Plaintiff-Petitioner commenced this proceeding seeking an order pursuant to CPLR Article 78 annulling the Defendant-Respondent Village of Mamaroneck Board of Ethics' Decision and Recommendation dated November 19, 2019 which after a hearing in which testimony was taken concluded that the Plaintiff-Petitioner violated the Village Code of Ethics by failing to promptly recuse herself from acting on applications for which they found she

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had a direct or indirect interest in the outcome. The Plaintiff-Petitioner also alleges that the ethic code provisions in question are unconstitutionally vague. The Defendants-Respondents oppose the Petition in all respects.

The Court has reviewed the following submitted papers by the parties:

Plaintiff-Petitioner's Summons-Notice of Petition, Verified Complaint-Petition, Affirmation in Support of Complaint-Petition with Exhibits lettered A through X, Memorandum of Law in Support of Article 78 Petition and Request for Declaratory Judgment, Verified First Amended Complaint/Petition, Amended Summons/Notice of Petition, Affirmation in Support of Amended Complaint-Petition with Exhibits lettered A through V, Memorandum of Law in Support of First Amended Complaint and Article 78 Petition
Defendants-Respondents' Certified Record Volumes 1 through 4, Verified Answer to First Amended Complaint/Petition. Affidavit of Ethic Board Chairman Mark Ettenger with Appendix A in Opposition, Affidavit of Mayor Thomas Murphy in Opposition to Petition with Exhibits A and B, Memorandum of Law of Defendants-Respondents Village of Mamaroneck Ethics Board and Incorporated Village of the Village of Mamaroneck, Flash Drive of Public Records, Verified Answer to First Amended Complaint/Petition, Defendant-Respondent Village of Mamaroneck Board of Trustees Memorandum of Law in Opposition to Petition-Complaint, Amended Verified Answer to First Amended Complaint-Petition
Plaintiff-Petitioner's Reply Memorandum of Law in Support of Article 78 Petition.

"Judicial review of administrative determinations made as a result of a hearing required by law is limited to a consideration of whether that resolution is supported by substantial evidence." [See *Matter of Silberfarb v. Board of Coop. Educational Servs., Third Supervisory Dist. Suffolk*, 60 NY2d 979, 981, 471 NYS2d 257, 459 NE2d 482; see also *Martin v. Board of*

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Educ. of the Yonkers City School Dist., 215 AD2d 661, 627 NYS2d 703]. Pursuant to CPLR §7804(g), all Article 78 proceedings in which a substantial evidence issue is raised must be transferred to the Appellate Division, Second Department, unless there are other objections raised that could terminate the proceeding (i.e., lack of jurisdiction, statute of limitations and *res judicata*) without the need to reach the substantial evidence issue.

In the present case, the Plaintiff-Petitioner challenges the relevant provisions of the Village Code as unconstitutionally vague. The Court has reviewed the relevant code provisions and finds that they are not impermissibly vague. It is well settled that “a statute is unconstitutionally vague if it fails to provide a person of ordinary intelligence with a reasonable opportunity to know what is prohibited, and it is written in a manner that permits or encourages arbitrary or discriminatory enforcement.” [See *Town of Delaware v. Leifer*, 34 NY3d 234]. The Village Code of Ethics states in relevant part that:

§21-1. Declaration of policy.

The Board of the Village of Mamaroneck recognizes that it must establish high standards of ethical conduct for officers, board members and employees of the Village so as to promote public confidence in the integrity of local government. It is the purpose of this chapter to afford officers, board members and employees of the Village clear guidance on ethical standards, to require public disclosure of interests that may influence or appear to influence the actions of the Village officers, board members and employees and to provide for the fair and effective administration of this chapter, including the protection of those who made good faith disclosure of suspected unethical or wrongful conduct.

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DISCRETIONARY ACTION

Any act involving the exercise of judgment or discretion by a Village officer or employee, either individually or as a member of any board, body, department or committee, and includes but is not limited to negotiation, approval, advice, recommendation, authorization or audit.

INTEREST

Any participation, connection or involvement which may result in a direct or indirect pecuniary or material benefit accruing to an officer or employee, as a result of a business or professional transaction with the Village. For the purpose of this chapter, an officer or employee shall be deemed to have a direct interest in the affairs of:

- A. His/her spouse, minor child, stepchildren, mother, father, brothers, sisters, grandparents, grandchildren, in-laws and other dependents or relatives.
- B. A business concern, partnership, or association of which such officer or employee is a member, partner, owner, director, or employee.
- C. A corporation of which such officer or employee is an officer, director, or employee.
- D. A corporation, in which 5% or more of the corporation's stock is owned or controlled, directly or indirectly, by such officer or employee.

OFFICER, BOARD MEMBER or EMPLOYEE

An officer or employee of the Village of Mamaroneck, whether paid or unpaid, including all decision-making officers, employees, and members of any decision-making board, body, council, commission, agency, department or committee. For the purposes of this chapter, no volunteer firefighter, auxiliary police officer or civil defense volunteer shall be deemed an officer or employee, except a Fire Chief or Assistant Fire Chief.

§21-4. Standards of conduct.

- A. General prohibition. A Village officer, board member or employee shall not use his or her official position or office, or take or fail to take any discretionary action, in a manner which he or she knows, or has reason to know, may result in a personal financial benefit for any of the following persons:
 - (1) The Village officer or employee;

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- (2) His or her outside employer or business;
 - (3) A member of his or her household;
 - (4) A customer or client;
 - (5) a relative; or
 - (6) Any firm, corporation, association, partnership, or other organization in which the Village officer, board member or employee, or a relative, serves as an officer or director, whether compensated or not compensated or of which he or she legally or beneficially owns or controls more than 5% of the outstanding stock or has authority to decide upon grants or other monetary benefits.
- B. Specific Village officers and employees.
- (1) Responsibilities.
 - (a) Professionally licensed. All Village officers, board members, employees and consultants with professional licenses are prohibited from knowing exercising any discretion in any matter of Village interest which shall provide any person, firm or corporation which is a client of his or hers or a client of his or her firm.
 - (b) Authorized to conduct inspections and issue permits. All Village officers, board members and employees with the authority to conduct inspections or issue permit approvals shall not engage in a business or have a financial interest in any firm engaged in a business with the Village where said business conducts, as a regular and significant part of its business, matters requiring such inspections or such permits. In addition, any such Village officer and/or employee(s) shall recuse himself/herself from conducting any such inspection or issuing any necessary permits that directly pertain to his or her outside employer or business.
 - (2) The foregoing Village officers, board members and employees are listed due to the unique nature of their offices and positions which, in turn, raises ethical conflicts unique to those offices and positions. This list is not to be deemed all-inclusive. Every Village officer and employee shall endeavor to pursue a course of conduct consistent with the spirit of this chapter as well as the actual provisions

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and strive to act so as not to raise reasonable suspicion among the public that he or she is likely to be engaged in activities that are in violation of his or her trust.

C. Recusal.

- (1) A Village officer or employee, or Board or committee member shall promptly recuse himself/herself from acting on a matter before the Village when acting on the matter, or failing to act on the matter, may benefit the persons listed in §21-4A, financially or otherwise, or give the reasonable appearance of a conflict of interest or impropriety.
- (2) Whenever a Village officer, employee, or Board or committee member is required to recuse himself/herself, he/she must do so on the record and/or in writing and refrain from any further participation in the matter.

The Code section concludes with a statement that board members and officers should seek the assistance of the Board of Ethics when in doubt regarding any particular behavior or issue. It is clear to the Court that the Code provisions are not unconstitutionally vague. It does provide a person of ordinary intelligence with an opportunity to know what is prohibited.

To the extent the Plaintiff-Petitioner seeks to annul the provisions of the Village Ethics Code as unconstitutionally vague, the Petition is denied.

It appears that none of the other issues raised by the Plaintiff-Petitioner would terminate the proceeding within the meaning of CPLR §7804(g). Therefore, the entire proceeding must be transferred to the Appellate Division, Second Department for disposition. [See *Matter of Casalino Interior Demolition Corp. v. State of New York Dept. of Motor Vehicle Traffic Violation Bur. Appeals Bd.*, 261 AD2d 615, 690 NYS2d 685; *Matter of Dusco v. Kralik*, 216 AD2d 297, 627 NYS2d 749; *Matter of Magwood v. Glass*, 240 AD2d 409, 658 NYS2d 401;

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Matter of Carroll v. County of Putnam, 271 AD2d 443, 706 NYS2d 888, *lv. denied* 97 NY2d 605, 737 NYS2d 53, 762 NE2d 931].

Upon service by the Plaintiff-Petitioner of a copy of this order with notice of entry upon the Westchester County Clerk, the Clerk is directed to deliver all papers filed in the action to the Clerk of the Appellate Division, Second Department.

The foregoing constitutes the decision, order and judgment of the Court.

Dated: White Plains, New York
June 24, 2021


ROBERT A. NEARY
SUPREME COURT JUSTICE

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