Manhattan Borough President's Office

EEO Investigation Final Report

[redacted] v. [redacted]

Case No. 14-[redacted]

Prepared for Gale A. Brewer, Borough President

Sam Levine and Binchan Luo, EEO Officers

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[redacted]

Basis of Complaint

[redacted] filed the complaint against [redacted] on the basis of color and race.

Procedural History of Investigation

Date	Name	Relationship	Nature of Contact
4/28/2014	[redacted]	Complainant	MBPO received letter from [redacted] and determined that said letter constituted an EEO complaint.
4/29/2014	[redacted]	Complainant	Phone call with [redacted] EEO Officers reviewed the complaint with the complainant's letter and scheduled interview.
4/29/2014	[redacted]	Respondent	MBPO copied on a letter from the respondent in which she denied the allegations from the complaint.
5/7/2014	[redacted]	Witness	[redacted] interviewed by EEO officers at MBP main office.
5/14/2014	[redacted]	Witness	Follow-up interview with [redacted] over the phone.
5/14/2014	[redacted]	Witness	[redacted] sent email answering follow-up questions.
5/15/2014	[redacted]	Complainant	Officers interviewed [redacted] at MBP main office.
5/16/2014	[redacted]	Complainant	Complainant called [redacted] to correct a question that was asked of her the previous day.
5/16/2014	[redacted]	Respondent	Officers called respondent to schedule interview.
5/20/2014	[redacted]	Witness	Phone interview with [redacted]
5/22/2014	[redacted]	Respondent	[redacted] emailed to postpone interview.
5/22/2014	[redacted]	Witness	Officers conducted phone interview with [redacted]
5/23/2014	[redacted]	Witness	Officers spoke with [redacted] about previous conversations with [redacted]
5/23/2014	[redacted]	Complainant	[redacted] submitted completed complaint form via email.
5/23/2014	[redacted]	EEO Officers	Officers prepared and signed Notice of Discrimination Complaint.
5/27/2014	[redacted]	Respondent	[redacted] served [redacted] with Notice of Discrimination Complaint and copy of completed complaint form.
5/28/2014	[redacted]	Witness	Sam Levine, Jim Caras, and Adele Bartlett called [redacted] at her request.
6/4/2014	[redacted]	Respondent	Officers interviewed [redacted] MBP main office.
6/6/2014	[redacted]	Respondent	Sam Levine sent follow up questions to [redacted]
6/10/2014	[redacted]	Respondent	[redacted] ent responses to follow up questions as well as a formal written response to the complaint.
6/12/2014	[redacted]	Respondent	[redacted] forwarded emails requested by Sam Levine.

6/17/2014	[redacted]	Witness	Sam Levine conducted phone interview with [redacted]
7/2/2014	[redacted]	Witness	Officers conducted phone interview with [redacted]
7/2/2014	[redacted]	Witness	Officers conducted phone interview with [redacted]
7/2/2014	[redacted]	Witness	Officers conducted phone interview with [redacted]
7/15/2014	[redacted]	Respondent	Officers spoke with [redacted] via telephone to request clarification on her written statement.

Statement of Allegations and Response

[redacted], [redacted] alleged that [redacted] had demonstrated a consistent pattern of excluding people of [redacted] descent and [redacted] from leadership roles on Community Board [redacted] complained that all of the committee, subcommittee and task force chairs were either [redacted] or [redacted] including all of the chair appointments that [redacted] has made since becoming Community Board chair in [redacted]

[redacted] said that [redacted] approached [redacted] about being appointed chair of the [redacted] Committee after [redacted] announced a vacancy in that position at a full board meeting. [redacted] claims that [redacted] told [redacted] at [redacted] could not be appointed chair of the [redacted] Committee because there was a policy stating that a member must be on the Community Board for one full year before becoming eligible to serve as a committee chair. Furthermore, there was no flexibility even considering any relevant experience that [redacted] might have had. [redacted] claimed that [redacted] went on to appoint [redacted] a [redacted] as co-chair of the [redacted] Committee even though [redacted] had been on the board for less than one year, having served the same length of time as [redacted]

[redacted] also objected to [redacted] appointment as interim chair on the [redacted] Committee. [redacted] claimed that [redacted] was already the chair of two or three other committees at the time [redacted] was appointed to chair the [redacted] Committee. [redacted] also claims that [redacted] had to suspend [redacted] other committee meetings to accommodate [redacted] new role as chair of the [redacted] Committee.

[redacted] also claimed that [redacted], another [redacted] member of Community Board [redacted] approached [redacted] about co-chairing the [redacted] with [redacted], a white member of the board, [redacted] said that [redacted] told them that the Community Board [redacted] by-laws prevented the appointment of co-chairs to any committee.

Finally [redacted] claims that [redacted] was excluded from a task force that was created to rewrite the board's policy on its association with independent community groups. [redacted] said that [redacted] expressed [redacted] desire to be a part of the task force so as to ensure diverse representation. [redacted] said that [redacted] then appointed only four members to the task force, all of whom were [redacted] also claims to have had a conversation with [redacted] about the importance of including a person of [redacted] descent on the task force, a question to which [redacted] said no.

In [redacted] written response (Attachment 5), [redacted] denied all of the allegations. [redacted] claimed that every chair appointment [redacted] made was based on the qualifications of the board member being considered and that race was never a factor in any of her decisions. [redacted] said that [redacted] relies on outgoing committee, subcommittee and task force chairs to make recommendations for new chairs. In [redacted] written response [redacted] outlined [redacted] reasoning for each chair [redacted] appointed.

[redacted] also provided reasons for not appointing either [redacted] or [redacted] as chairs of the [redacted] Committee. [redacted] stated that [redacted] had received reports from chairs of committees and members of the Community Board regarding [redacted] disruptive behavior at meetings and committee meetings. [redacted] decided not to appoint [redacted] due [redacted] disruptive behavior; she felt that the behavior would not fit

in very well. With regard to [redacted] and [redacted] application, [redacted] said that neither had taken any leadership initiative during the time that they had been on the board.

Finding of Facts

The investigation of this complaint was complicated by the fact that [redacted] and [redacted], [redacted] for Community Board [redacted] were not completely reliable witnesses. Whether due to poor memory of the events leading up to the complaint or misrepresentation of facts, there were several inconsistencies in the accounts given by each of these witnesses. For the most part, the interviewees were unable to corroborate their statements with written documentation or other witness accounts. However, based on the interviews conducted and documents obtained by the EEO Officers, it is determined that the following facts are relevant to the case at hand.

From [redacted] o [redacted] erved as chair of the [redacted] Committee.

[redacted] was elected to chair Community Board [redacted] June, [redacted] and assumed the role the following month.

At the Community Board [redacted] full board meeting on [redacted] announced that there was a vacancy in the position of chair of the [redacted] Committee. [redacted] asked anyone who was interested in becoming chair to speak with [redacted]. After the meeting, [redacted] expressed [redacted] interest in chairing the committee to [redacted]

On [redacted], a [redacted], was announced as interim chair of the [redacted] Committee.

On [redacted], [redacted] was appointed as a member of the Human Services Committee at her request.

On [redacted] met with [redacted] to discuss [redacted] becoming a member of the [redacted] Committee. [redacted] expressed [redacted] concern about [redacted] behavior at other committee meetings. [redacted] said [redacted] had received complaints about [redacted] behavior from other board members. [redacted] then decided to appoint [redacted] as a member of the [redacted] Committee on [redacted]

At the full board meeting on [redacted], [redacted] was announced as co-chair of the [redacted] Committee. [redacted] said that [redacted] does not generally appoint co-chairs because it makes it difficult to get a quorum at Executive Committee meetings. However, [redacted] also said [redacted] appointed a co-chair in this instance because the interim chair [redacted], was only chairing until [redacted] finished a position paper on the [redacted]. [redacted] stepped down from [redacted] position on co-chair in [redacted] 2014, upon completion of the position paper.

Although an exact date was not able to be determined, [redacted] had approached [redacted] about co-chairing the committee with [redacted] prior to the appointment of [redacted] told [redacted] that [redacted] did not appoint co-chairs to committees because it would make it difficult to meet quorum at Executive Committee meetings. Although [redacted] denies that this interaction took place, the officers determined that [redacted] was credible in this instance. [redacted] and [redacted] informed the EEO Officers that they were only interested in chairing if they could do it as co-chairs. They each wanted to act as chairs for half of the meetings.

The EEO Officers interviewed three other [redacted] and [redacted] members or former members of the community board: [redacted] and [redacted]. None of these members had ever approached [redacted] about his or her interest in becoming chair of any committee, subcommittee or task force. However, [redacted] had approached [redacted] an [redacted], about chairing the [redacted] Committee. [redacted] declined to assume the role.

On [redacted] 013, [redacted] ent an email to [redacted], a Community Associate at the Community Board [redacted] office, with a message to the community board members informing them that the review of the board [redacted] policy would be discussed at the November Executive Committee meeting and that all members were encouraged to attend. On [redacted] 2014, [redacted] nt another message to [redacted] ith a message to all board members reminding them that there would be a vote on the [redacted], [redacted] at the following full board meeting. [redacted] sent both of these emails out to the full community board membership.

At the time that [redacted] made most of her committee, subcommittee and task for chair appointments, there were between seven and nine [redacted] and [redacted] members of the fifty member board. It should also be noted that two of these members were elected officers of the board. As such, they were not to be considered for chairing any committee, subcommittee or task force.

The total number of committee, subcommittee and task force chair appointments made by [redacted] at the time of her interview was six. They are: [redacted] s interim chair of the [redacted] Committee in [redacted] 2013; [redacted] as co-chair of [redacted] Committee in September of 2013; [redacted] to [redacted] Task Force in [redacted] of 2013; [redacted] to [redacted] s Task Force on [redacted] th, 2014; [redacted] to the [redacted] Committee on [redacted] 2014; [redacted] to [redacted] Committee on [redacted], 2014. It should be noted that [redacted] and [redacted] were appointed after the original complaint was filed.

At the full board meeting on [redacted] 2013, [redacted] expressed [redacted] concern about the [redacted] draft. [redacted] member of the community board, remarked "[redacted]

At the full board meeting on [redacted]th, 2014, [redacted], a member of the community board said "[redacted]"

Many aspects of the accounts provided in interviews were disputed by other parties. The EEO Officers were unable to determine the validity of the following points of dispute:

After the [redacted] conversation between [redacted] and [redacted] where [redacted] expressed [redacted] interest in being appointed chair of the [redacted] Committee, [redacted] claims that [redacted] only said "[redacted]" however, claims that [redacted] informed [redacted] that [redacted] was not eligible to chair the committee because [redacted] had been on Community Board [redacted] for less than one year. Furthermore, [redacted] claimed [redacted] told [redacted] there was no room for flexibility, even given [redacted] experience. There were no other witnesses to this conversation and the officers were unable to determine whether of these conversations took place.

In [redacted]013, [redacted] claims to have approached [redacted] about the issue of racial diversity on the board in response to [redacted] perceived exclusion from the [redacted] review. [redacted] claims to have asked [redacted] whether [redacted] thought it was important to have a person of [redacted] descent involved in the discussion, to which [redacted] answered no. [redacted] also claims that [redacted] denied there was any issue of a racial diversity in board leadership. [redacted] denied that either of these conversations took place. The officers were unable to determine which of these conversations occurred.

Statement of Issues

The complaint was investigated on the basis of two issues:

First, was there an occurrence of disparate treatment on the basis of race and color when [redacted] declined to appoint either [redacted] or [redacted] as chair or co-chair of the [redacted] Committee?

Second, was the lack of any [redacted] committee, subcommittee or task force chairs a case of disparate impact or, as [redacted] put it, "a pattern of [redacted] and [redacted] exclusion from appointed leadership on the community board"?

Determinations

On the issue of disparate treatment, we cannot substantiate that this was done on the basis of race or color. Based on the facts gathered, it is reasonable to conclude that [redacted] selected the co-chairs of the [redacted] Committee on the basis of previous experience, qualifications as well as [redacted] assessment of the leadership capabilities of all involved.

In particular, the fact that [redacted] was not on the [redacted] Committee until after [redacted] was appointed co-chair was relevant to [redacted]'s decision to decline appointing [redacted] as chair of that committee. While this fact did not necessarily preclude [redacted] from becoming chair of the committee, it is plausible that [redacted] found that [redacted] experience on the committee made [redacted] the more appropriate choice for chair.

In [redacted] decision to not appoint [redacted], a [redacted], and [redacted], a [redacted], as co-chairs in favor of appointing [redacted] as co-chair, [redacted] did not apply [redacted] policy on co-chair appointments unevenly. Based on statements from [redacted] interview, we find that [redacted] intended for [redacted] to be a co-chair temporarily, until [redacted] stepped down from [redacted] position as co-chair after the [redacted] position paper was completed. [redacted]'s and [redacted] wanted to be permanent co-chairs. In fact, they represented that they were only interested in chairing the committee if they could do so as co-chairs. Because [redacted] did not want to appoint permanent co-chairs, the officers concluded that [redacted] decision not to appoint [redacted] and [redacted] did not represent racial bias.

Therefore, the complaint that [redacted] made [redacted] choice for chair of the [redacted] Committee on the basis of race and/or color was not substantiated.

On the issue of disparate impact, the EEO Officers found that Community Board [redacted] did not, at the time the complaint was filed, have any [redacted] or [redacted] members serving as chairs of any committee, subcommittee or task force. However, the officers concluded that the number of appointments made by [redacted] in [redacted] time as board chair was insufficient to establish disparate impact. Despite the fact that at the time of the complaint, all of [redacted]'s appointments were either [redacted] or [redacted] the pool of potential appointments for chair from which [redacted] had to choose was fixed and was comprised of mostly [redacted] and [redacted] members. In fact, there were only five to seven [redacted] or [redacted] members that could have potentially been named chair of any committee, subcommittee or task force.

It is also important to note that, even given the low number of [redacted] and [redacted] members of the community board, the officers learned that [redacted] did reach out to [redacted] a [redacted], to ask [redacted] to consider chairing the [redacted] Committee.

Additionally, [redacted] accused [redacted] of excluding [redacted] and other board members from the discussion concerning the revision of the board's [redacted], [redacted] Based on [redacted] interview, the officers found that a group was convened to address the revision and it was made up entirely of Executive Committee members. Based on copies of emails sent to the entire community board, the officers found that [redacted] did outreach

to the entire board urging their participation in the matter at Executive Committee meetings. The officers found no evidence that the group convened outside of Executive Committee meetings.

The EEO Officers did not find the complaint that [redacted] demonstrated a pattern of exclusion of [redacted] members from leadership to be substantiated, but did find that the current leadership of Community Board [redacted] has failed to sufficiently emphasize the value of diversity and inclusion.

Recommendations

While the EEO Officers did not find that either of the complaints was substantiated, [redacted]

In response to this finding, [redacted]

The EEO Officers recommend the following actions to the Borough President:

- [redacted]
- [redacted]
- [redacted]
- [redacted]

OFFICE OF THE PRESIDENT
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1 Centre Street, 19th floor, New York, NY 10007
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www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

August 4th, 2014

[redacted]
Member, Community Board [redacted]
[redacted]
New York, NY [redacted]

Re: EEO Complaint – [redacted]

Dear [redacted],

We are writing to inform you that the Manhattan Borough President's Office has concluded its review of the complaint you filed on [redacted], 2014. We conducted a comprehensive investigation of the allegations you made in the complaint, including [redacted] pattern of exclusion of [redacted] and [redacted] members from board leadership positions as well as [redacted] decision not to appoint you or [redacted] to chair the [redacted] Committee on the basis of race and color. We have kept the investigation impartial and objective.

The complaint that [redacted] declined to appoint you or [redacted] as [redacted] Committee chair on the basis of race or color was not substantiated by the EEO Officers' investigation.

The EEO Officers did not find the complaint that [redacted] demonstrated a pattern of exclusion of [redacted] and [redacted] members from leadership to be substantiated, but [redacted] Therefore, the Manhattan Borough President's Office recommends the following remedial actions:

- [redacted]
- [redacted]
- [redacted]

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Gale A. Brewer, Borough President

[redacted]

Thank you for bringing your concerns to our attention and for being patient while we addressed them. I want to assure you that the Manhattan Borough President's Office is committed to protecting you from any retaliation as a result of your complaint and our investigation. Please call me if you feel you are being subjected to retaliation in any form.

To protect the privacy of everyone involved in this investigation, we have taken steps to handle this matter in confidence. We expect you to treat the information contained in this letter in the same manner.

Sincerely,

Sam Levine
EEO Officer

Binchan Luo
EEO Officer

cc: Gale A. Brewer, Borough President

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Gale A. Brewer, Borough President

August 4th, 2014

[redacted]
Chair, Community Board [redacted]
[redacted]
New York, NY [redacted]

Re: EEO Complaint – [redacted]

Dear [redacted]

We are writing to inform you that the Manhattan Borough President's Office has concluded its investigation of the above referenced complaint which was filed on [redacted], 2014 alleging discrimination on the basis of race and color, in which you were named respondent. These allegations include your decision not to appoint [redacted] or [redacted] as chair of the [redacted] Committee as well as a pattern of exclusion of [redacted] and [redacted] members from leadership positions on the board.

The complaint that you declined to appoint [redacted] or [redacted] as [redacted] Committee chair on the basis of race or color was not substantiated by the EEO Officers' investigation.

The EEO Officers did not find the complaint that you demonstrated a pattern of exclusion of [redacted] and [redacted] members from leadership to be substantiated, but did find that the current leadership of Community Board [redacted] has failed to sufficiently emphasize the value of diversity and inclusion. Therefore, the Manhattan Borough President recommends the following remedial actions:

- [redacted]
- [redacted]
- [redacted]

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Gale A. Brewer, Borough President

- [redacted]

Thank you for your cooperation and patience throughout the investigation.

To protect the privacy of everyone involved in this investigation, we have taken steps to handle this matter in confidence. We expect you to treat the information contained in this letter in the same manner.

Sincerely,

Sam Levine
EEO Officer

Binchan Luo
EEO Officer

cc: Gale A. Brewer, Borough President