



September 24, 2014 at 2:00pm
Notice posted

Minutes

Meeting of the Cuyahoga County Debarment Review Board
Wednesday, September 24, 2014 at 2:00 P.M.
Cuyahoga County Administration Building
2079 East 9th Street, Cleveland, OH 44115
Meeting Room 4-407

The Honorable Timothy McMonagle, Chair
Cuyahoga County Council President C. Ellen Connally, Vice Chair
Brandon D. Cox
Roland J. DeMonte
Evan T. Byron

Required notices were provided and posted and the meeting of the Cuyahoga County Debarment Review Board (CCDRB) was called to order at 2:10PM by the Chair. The roll was called.

Present: McMonagle, Connally, Cox, DeMonte, Byron

Absent: None

A quorum was present. Also present were County Council Staff Member **Trevor McAleer**; County Council Chief of Staff **Joseph Nanni**; Cuyahoga County Law Director **Majeed Makhlof**; Assistant County Law Director **Ruchi Asher**; Media member **Andrew Tobias**; Attorney **Ronald Lasko**; Petitioner **William Neiheiser**; and **James Boyle**, Clerk of the Debarment Review Board.

The **Chair** called the meeting to Order and introduced himself to the other Board members and attendees. The **Chair** provided a brief biographical background including details concerning his military career, his time as a practicing lawyer and his extensive judicial service.

The **Chair** noted that the Debarment Review Board was slated to hear the matter concerning **William Neiheiser**, File No. 13-0002-1. The **Chair** called on attorney **Lasko** to commence the presentation of his case. **Lasko** stated that the Assignment of Error accurately portrayed the issue that he felt needed to be addressed by the CCDRB. **Lasko** provided a synopsis of the criminal case that was brought against **Neiheiser** in the Federal Courts. Specifically, **Lasko** compared and contrasted the outcomes of his matter in the Federal system and the outcomes in the County system. **Lasko** detailed the following time table:

1. July 26, 2011—**Neiheiser** enters “Guilty” plea in Federal Court;
2. December 11, 2012—Cuyahoga County enacts Debarment Ordinance;
3. June 24, 2014—Cuyahoga County Debarment issued by AIG;
4. March 24, 2016—Federal term of Debarment ends;
5. June 24, 2019—Cuyahoga County term of Debarment concludes.

Lasko noted that the Federal Court was the entity that was the most familiar with **Neiheiser**’s situation. He noted that the Federal Court and its Probation staff did extensive research and interviews of **Neiheiser** and involved parties, prior to handing down his sentence and his term of debarment. **Lasko** noted that the process was much more intensive and time-consuming than the process undertaken by the AIG. In light of the familiarity with the entire situation, **Lasko** concluded that the date of termination for the Federal Debarment termination (March of 2016), should be afforded some level of deference and should be incorporated into the term of debarment handed down by Cuyahoga County.

The **Chair** asked **Lasko** if the Petitioner was seeking to have the county’s term of debarment match the term issued by the Federal authorities. **Lasko** responded that **Neiheiser** would certainly agree to such an outcome, but if noted that if the three year term of debarment permitted by the county’s Debarment Ordinance were implemented, the timing between the two terms would be acceptable. **Cox** asked **Lasko** to describe any extenuating circumstances. **Lasko** noted that only a brief time period was allotted to meet with the AIG and staff. He stated that he did address his client’s age, health and civic involvement.

Asher added that the true issue, under the county’s Debarment Ordinance, was whether the AIG abused her discretion in making this decision. **Asher** noted that the AIG had access to all the information from the Federal Court case, including the details of **Neiheiser**’s plea. She stated that the criminal conviction impugned

the integrity of the county and concluded by re-stating that the nature of **Neiheiser**'s convictions warranted a five-year term of debarment.

The **Chair** inquired as to whether the AIG was aware of the term of debarment issued by the Federal authorities. **Asher** believed that the AIG was aware of the term. **Connally** noted that all the businesses that had county debarments that arose from the County Corruption were issued a five-year term of debarment. **Connally** asked **Asher** if there was a presumption that such a term would be imposed. **Asher** indicated that no such presumption existed. **Cox** asked for further clarification regarding the "extenuating circumstances" provision. **Asher** stated that the AIG should hear the evidence brought by the Petitioner but should render a decision based upon both the parameters of the Debarment Ordinance and the information that the AIG possessed. **DeMonte** asked why the AIG's decision was rendered in 2014, more than a three years after **Neiheiser**'s guilty plea, and more than a year after the county's Debarment Ordinance was enacted. **Lasko** noted that the ordinance allows a five-year look-back period for criminal convictions but no such provision exists in the federal rules. **Asher** had no explanation for the timing of the AIG's ruling but reiterated that the implementation of the county's policy was not to punish businesses, but rather, to serve as a protection for the county and its assessment of potential liability and risk.

The Petitioner was called to testify. The **Chair** administered the oath to **Neiheiser**. **Neiheiser** provided a synopsis of his background and the history of his business, Reliance Mechanical. He acknowledged his criminal behavior and addressed the affect that his actions caused, including his incarceration, his divorce, the disintegration of Reliance, and the damage to his reputation in the community. **Neiheiser** stated that he had paid all of his court-ordered fines and had "paid his debt to society". **Neiheiser** stated that he was really trying to put the entire matter behind him and get on with his life. While he did not have any intention to bid on any current county contracts, **Neiheiser** stated that having the ability to participate in the future was his goal.

Neiheiser took questions from the Board. In response to the **Chair**, **Neiheiser** stated that he had not been involved in any contracts with Cuyahoga County since 2008. The **Chair** noted that the decision to issue any debarment was left to the AIG and the analysis that would occur with the Debarment Review Board would be in response to the decision rendered by the AIG. **Asher** asked **Neiheiser** what type of contracts was he barred from bidding on. **Neiheiser** responded that he was precluded from receiving any federal contracts. He noted that he was still on probation to the federal government and his probationary term would not conclude

until 2015. He stated that his term of debarment issued by the federal government would end in 2016.

Asher called Director of Law **Makhlouf** to testify. He was sworn in as a witness by the **Chair**. **Makhlouf** provided details about the background of the Debarment Ordinance and re-stated that the Ordinance was not designed as a punitive measure, but rather, was instituted as a Risk Management tool. **Asher** asked if the debarment issued by the AIG would have any impact on other governmental contracts. **Makhlouf** stated the AIG's ruling only applied to Cuyahoga County operations and the AIG (nor any County entity) had any ability to regulate federal or state contracting operations. **Lasko** asked **Makhlouf** about any federal "look back" provision. **Makhlouf** stated that, as far as he knew, the federal debarment policies did not contain any "look back" provisions. **Lasko** further questioned the Director of Law about the possibility of some sort of standardized or model version of a debarment policy that could be applied across jurisdictions. **Makhlouf** again was unaware of such a version and noted that the current Debarment Ordinance was unique in its terms and provisions to any version that he had reviewed. **Lasko** noted that, under this current five-year look back period and a maximum debarment period of five additional years, a business could potentially be excluded from participating in county bidding for almost ten years. **Makhlouf** agreed with the time period articulated by **Lasko**, but noted that the business could still bid on projects while the look period was running as no actual term of debarment would be present. **Makhlouf** also noted that the determination of the existence of "extenuating circumstances" would be case specific. **Makhlouf** stated to **Lasko** that neither he, nor any members of the County's Law Department, were involved in any aspect of decision making regarding the Debarment Ordinance and noted that he was not aware of any purposeful delay by the AIG in rendering this, or any other opinion.

On re-cross examination, **Lasko** inquired about potential inequities in the application of the current Debarment Ordinance. He asked **Makhlouf** if an embezzlement of \$1 million would be treated the same as an individual who embezzled one dollar. **Makhlouf** stated that both crimes would be treated same under the county's policy.

In summation, **Neiheiser** simply stated that he "wanted his life back". He noted that he had paid his debt to society and was seeking a term of debarment that was consistent with that which was issued by the federal authorities. **Asher** summed up her case by re-stating the evidence and testimony that had been introduced and asked the Board to uphold the ruling by the AIG.

The Board had no further questions. Having no further matters, the Board retired and commenced their deliberations on the matter at 3:20PM. At 4:00PM, the Board returned and noted that they had reached a decision. The Board agreed to issue its written opinion in a reasonable period of time.

There being no further business before the Board, the **Chair** made a motion to adjourn. The motion was seconded by **DeMonte**. The motion was unanimously approved by a voice vote of the Board members. The meeting was adjourned at 4:05PM.

The final opinion was issued by the Debarment Review Board on October 6, 2014. A copy of this opinion is attached hereto. The **Clerk** distributed this opinion to all parties and council.

Draft _____

Issue _____

App. _____

Posted _____