

State of Nebraska

Accountability and Disclosure Commission

P.O. BOX 95086
Lincoln, Nebraska 68509
www.nadc.nebraska.gov



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Phone (402) 471-2522
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Synopsis Case #15-31 and #15-32 Action Taken on March 9, 2018

Respondent: John Hestermann

John Hestermann is a member of the Waverly City Council. The Waverly City Council sits as the Waverly Development Agency. Accordingly, he is a member of the board of that agency. In August of 2015 two complaints were filed by Waverly resident Larry Nedrow, now deceased. The first complaint alleged that the Respondent failed to disclose an interest in a contract with the city. The second complaint alleged that the Respondent failed to disclose and acted on matters in which he had a conflict of interest. Investigations on the two complaints were commenced on September 15, 2015.

It was alleged that the Respondent had an interest in a contract with the City of Waverly through Copper Oak Investments LLC, a business with which he was associated and that he failed to disclose the interest in violation of §49-14,103.01 of the Nebraska Political Accountability and Disclosure Act (NPADA). The Respondent abstained from voting on payment under the contract.

It was further alleged that on two occasions, the Respondent failed to disclose a conflict of interest and on two occasions failed to abstain from participating or voting on a matter in which he had a conflict of interest. On the first occasion, the Respondent while acting as a member of the Waverly Development Agency, voted to adopt the Waverly Redevelopment Plan and Project. The Respondent's residence and six residential rental properties owned by Copper Oak Investments, LLC were within the plan area. It was alleged that because of the ownership of these properties, the Respondent would benefit financially from the adoption of the plan. The Respondent did not disclose a conflict of interest and did not abstain from voting to adopt the plan. On the second occasion, as a member of the Waverly City Council, the Respondent voted to adopt the Waverly Redevelopment Plan and Project. The Respondent did not disclose a conflict of interest and did not abstain from the vote. Failure to disclose a conflict of interest is a violation of §49-1499.03(2)(a)(i) of the NPADA. Failure to file a written copy of the filing to the city clerk is a violation of §49-1499.03(2)(a)(ii). Failure to abstain from voting on matter in which an official has a conflict of interest is a violation of §49-1499.03(2)(a)(iii) of the NPADA.

The issue on the conflict of interest allegations was whether the adoption of the Waverly Redevelopment Plan would have a reasonably foreseeable financial effect on the Respondent or his business. This single issue was argued before and submitted to a hearing officer. The hearing officer accepted the Commission's position and recommended a finding that the adoption of the plan would have a reasonably foreseeable financial effect on the Respondent and/or Copper Oak Investments, LLC.

The parties entered into a settlement agreement by the terms of which the Commission could find a violation of §49-1499.03(2)(a)(i) and a violation §49-1499.03(2)(a)(ii) of for failing to disclose a conflict of interest and file a disclosure statement with the city clerk. All other allegations would be dismissed. The agreement provides for a civil penalty of up to \$3,000.00. The Commission approved the Settlement Agreement and assessed a civil penalty of \$3,000.00 with eight Commissioners concurring, no Commissioners dissenting, and no Commissioners abstaining.

Violation: Pursuant to the Settlement Agreement, the Commission found that the Respondent violated §49-1499.03(2)(a)(i) and §49-1499.03(2)(a)(ii) of the NPADA by failing to disclose a conflict of interest and file a written disclosure statement with the city clerk.

Civil Penalty: \$3,000.00

Attorney for Commission: Neil Danberg

Attorney for the Respondent: J. L. Spray

Synopsis Prepared by: Frank Daley, Executive Director
Nebraska Accountability & Disclosure Commission
P.O. Box 95086
Lincoln, NE 68509
402-471-2522

BEFORE THE NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

John Hestermann,

Respondent

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Cases #15-31 and 15-32

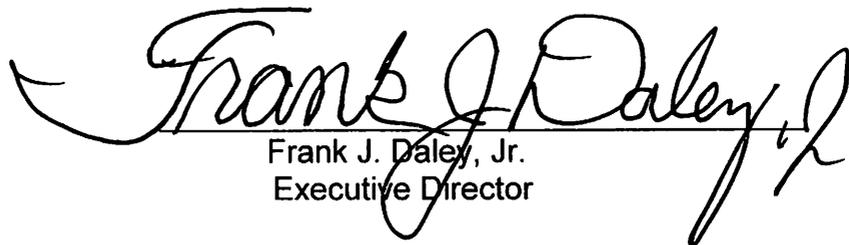
ORDER

Now on this 9th day of March, 2018, this matter comes before the Nebraska Accountability and Disclosure Commission. Commissioners Callahan, Carlson, Davis, Enenbach, Gale, Hegarty, Loudon and Sullivan are present with Commissioner Loudon presiding. Commissioner Peetz is excused. The Respondent is not present. The Commission notes the submission of a proposed Settlement Agreement.

Whereupon, the Commission, with eight Commissioners concurring, no Commissioners dissenting, and no Commissioners abstaining, finds that the attached Settlement Agreement should be and hereby is approved and incorporated into this Order. Pursuant to that Agreement, the Commission takes the following actions: The Commission dismisses the alleged violation of Section 49-14,103.01 in Case 15-31, and dismisses the second and fourth violations of Section 49-1499.03(2)(a)(iii) in Case 15-32. However, the Commission finds that the Respondent has committed the first and third violations as alleged in Case 15-32 of Nebraska Revised Statutes, Section 49-1499.03(2)(a)(i) and (ii), as more fully set forth in the attached Settlement Agreement. Pursuant to the terms of the Settlement Agreement, the Commission elects to impose a civil penalty the amount of \$3,000.00 in this case.

Issued this 9th day of March, 2018

Nebraska Accountability and Disclosure Commission



Frank J. Daley, Jr.
Executive Director

Certificate of Service

I hereby certify that a copy of this Order was sent by certified U.S. Mail, postage prepaid, return receipt requested on this 9th day of March, 2018, to the following person at the following address: John Hestermann, 14140 Heywood Street, Waverly, NE 68462; and by regular U.S. Mail to his attorney, J.L. Spray, Mattson Ricketts Law Firm, 134 S. 13th Street, Lincoln, NE 68508.


Frank J. Daley, Jr.
Executive Director

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BEFORE THE NEBRASKA ACCOUNTABILITY AND DISCLOSURE COMMISSION

IN THE MATTER OF
JOHN HESTERMANN

RECEIVED
NEBRASKA)
CASES No. 15-31 and 15-32
2018 MAR -8 PM 3:53
NE. ACCOUNTABILITY &)
DISCLOSURE COMMISSION)

SETTLEMENT AGREEMENT

- 1) **Parties:** The parties to this Settlement Agreement (hereinafter "Agreement") are the Nebraska Accountability and Disclosure Commission, hereafter referred to as the "Commission" and John Hestermann, hereinafter referred to as the "Respondent".
- 2) **Jurisdiction:** The Respondent acknowledges the jurisdiction of the Commission pursuant to the Nebraska Political Accountability and Disclosure Act ("NPADA").
- 3) **Intention:** The parties hereby agree and intend that this Agreement shall constitute a waiver of any further formal hearing on the alleged violations as described in Paragraph 4 of this Agreement, thereby resolving the matter without further delay and expense to the parties.
- 4) **The Two Cases and their Alleged Violations:** This Agreement includes two separate Preliminary Investigations, which are:
 - (a) **Case # 15-31, which alleges one violation of Section 49-14,103.01, of the NPADA** as follows: The Respondent, on or before August 4, 2015, had a contract with the City of Waverly at a time when he was a Waverly City Councilman, but he did not make a declaration on the record of his interest at the time of the City Council's making of the contract or at the time of the Council's making payments on said contract.
 - (b) **Case #15-32, the Amended Notice of Preliminary Investigation alleges four (4) violations, including two alleged violations of Section 49-1499.03(2)(a)(i) and (ii) and two alleged violations of Section 49-1499.03(2)(a)(iii) of the NPADA,** as follows:
 - (1) **Violation of Section 49-1499.03(2) of the NPADA:** As a member of the City of Waverly Community Development Agency (hereinafter the "Agency") the Respondent on or before June 18, 2013, was confronted with taking an official action that could cause him or a business with which he was associated financial benefit or detriment, namely the adoption of a Redevelopment Plan and Project (hereinafter, the "Plan") in which he had a financial interest, to wit: properties owned by Copper Oak Investments, a business which he owned, which properties were within the

area of the Plan, and he failed to prepare and deliver to the person in charge of keeping records for the City, a written statement describing the matter requiring action or decision and the nature of his potential conflict.

- (2) Violation of Section 49-1499.03(2)(a)(i) and (ii) of the NPADA.** As a member of the "Agency", on or before June 18, 2013, the Respondent as a member of the City of Waverly Community Development Agency, on or before June 18, 2013, was confronted with taking an official action that could cause him, or a business with which he was associated, financial benefit or detriment, namely action by the Agency to adopt a Redevelopment Plan and Project in which he had a financial interest, to wit, properties owned by Copper Oak Investments, a business which he owned, and he failed to abstain from participating or voting on the matter.
- (3) Violation of Section 49-1499.03(2) of the NPADA.** As a member of the City Council of Waverly, (hereinafter, the "Council"), on or before June 18, 2013, the Respondent was confronted with taking an official action that could cause him or a business with which he was associated financial benefit or detriment, namely action by the "Council" to adopt the "Plan" in which he had a financial interest , to wit: properties owned by Copper Oak Investments, a business which he owned, which properties were within the area of the Plan, and he failed to prepare and deliver to the person in charge of keeping records for the City, a written statement describing the matter requiring action or decision and the nature of his potential conflict
- (4) Violation of Section 49-1499.03(2)(a)(iii) of the NPADA.** As a member of the "Council" on or before June 18, 2013, the Respondent was confronted with taking an official action that could cause him, or a business with which he was associated, financial benefit or detriment, namely action by the Waverly City Council to adopt a Redevelopment Plan and Project in which he had a financial interest, to wit: properties owned by Copper Oake Investments, a business which he owned, and he failed to abstain from participating or voting on the matter.
- 5) Dismissal of three of the Alleged Violations.** As part of this Agreement, and in view of its remaining terms as set out below, the Commission agrees to dismiss the following three alleged violations, which have been more fully described in the preceding paragraph 4 of this Agreement. The three alleged violations which will be dismissed are as follows:

 - (a) Case #15-31. Dismissal of the single alleged violation of Section 49-14,103.01,** failure to make a declaration at the time of making a contract with the City, and at the time of the City making payments under the contract. Since this is the only alleged violation with respect to Case #15-31, dismissal of this sole alleged violation will also result in dismissal of the entirety of that case.

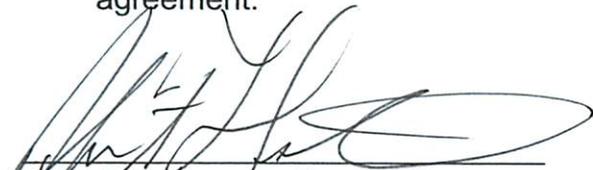
(b) **Case #15-32. Dismissal of Allegations 2 and 4, both allegations alleging a violation of Section 49-1499.03(2)(a)(iii)**, alleging that as both a member of the Waverly Community Development Agency and a member of the Waverly City Council, he failed to abstain from participating or voting on the matter. to obtain financial gain. These two violations have been numbered as (2) and (4) in the preceding Paragraph 4 of this Agreement, and they will both be dismissed pursuant to the terms of this Agreement.

- 6) **The First and Third Alleged Violations: Stipulations and Agreements.** The allegations of Case #15-32, which allege violations of the NPADA, Section 49-1499.03(2)(a)(i) and (ii), have been numbered as (1) and (3) in Paragraph 4 of this Agreement. The Respondent and the Commission stipulate and agree, with respect to violations 1 and 3, that at the time of these alleged violations, the Respondent was a member of the Waverly community Development Agency and a member of the Waverly City Council. He was also the owner of Copper Oak Investments, which was a corporate entity under Nebraska law which owned certain homes and properties in the area which was included within the "Plan". The parties to this Agreement further agree and stipulate that the Respondent did not submit a written statement describing the matter requiring action or decision and the nature of his potential conflict.
- 7) **The First and Third Alleged Violations: Findings** The alleged First and Third violations, as identified, above, in Paragraphs 4 and 6, relate to the Respondent's failure to deliver a written statement concerning a potential conflict of interest both with respect to his participation on the Community Development Agency and the Waverly City Council. These violations are more fully described in Paragraph 4 of this Agreement. For his part, the Respondent states that it was not his intention to violate Nebraska law as alleged, that it was public knowledge that he had an interest in Copper Oak Investments, and he did not intend for there to be a conflict of interest through his continued participation as a member of the "Agency" and "Council". Nonetheless, the Respondent agrees and stipulates that if this matter proceeded to a hearing, there is sufficient evidence from which the Commission could make a finding of a violation with respect to both the First and Third alleged violations. He further agrees that the Commission may enter an order in accordance with said finding, and he would not contest such a finding.
- 8) **Limitation of Civil Penalty:** The parties have agreed that, upon acceptance of this Agreement by the Commission, the Commission may, but is not required to, impose a civil penalty upon the Respondent. The parties further agree that In the event the Commission elects to impose a civil penalty, such penalty will not exceed the amount of \$3,000.00
Total for both alleged violations
- 9) **The NADC must approve this Agreement in order for it to be Effective:** The parties agree that in order for this Agreement to become effective, the Commission must approve it and shall, if it approves the Settlement, enter an Order in accordance with the terms of this Agreement.

10) **Effective Date of Agreement:** This Agreement shall not be binding upon the parties until the date upon which it is approved by the Commission and the Commission issues an order in accordance with the terms of this Agreement. The date upon which the Commission enters its Order approving this Agreement shall be deemed its effective date. If this Agreement is not approved in whole by the Commission, this Settlement Agreement shall be void and may not be used in this or any other proceeding. The parties acknowledge that this Settlement Agreement and any subsequent Order shall be announced at an open public meeting of the Commission and that the vote on such matters shall take place during the Closed Session portion of the meeting. The parties acknowledge that upon adoption, this Settlement Agreement, the Order and the Commission's file pertaining to this matter shall become open and public.

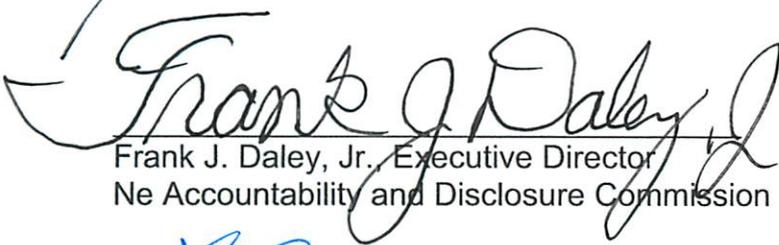
11) **Right to Address the Commission:** The Respondent and his attorney have a right to address the Commission concerning both a possible civil penalty as well as the approval of this Settlement Agreement.

12) **Advice of Counsel:** The Respondent acknowledges that he has had an opportunity to seek the advice of his attorney in connection with the terms of this agreement.



John Hestermann, Respondent

3-8-18
Date



Frank J. Daley, Jr., Executive Director
Ne Accountability and Disclosure Commission

3-9-18
Date



Approved as to Form, J.L. Spray,
Attorney for Respondent, John Hestermann

3-8-18
Date