



North Bay Village

Administrative Offices

1666 Kennedy Causeway, Suite 300 North Bay Village, FL 33141

Tel: (305) 756-7171 Fax: (305) 756-7722 Website: www.nbvillage.com

OFFICIAL AGENDA **SPECIAL VILLAGE COMMISSION MEETING**

VILLAGE HALL
1666 KENNEDY CAUSEWAY, #101
NORTH BAY VILLAGE, FL 33141

MONDAY, JANUARY 29, 2018
7:00 P.M.

NOTICE IS HEREWITH GIVEN TO ALL INTERESTED PARTIES THAT IF ANY PERSON SHOULD DECIDE TO APPEAL ANY DECISION MADE AT THE FORTHCOMING MEETING OF THE VILLAGE COMMISSION, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, HE OR SHE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE VILLAGE FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TO REQUEST THIS MATERIAL IN ACCESSIBLE FORMAT, SIGN LANGUAGE INTERPRETERS, INFORMATION ON ACCESS FOR PERSON WITH DISABILITIES, AND/OR ANY ACCOMMODATION TO REVIEW ANY DOCUMENT OR PARTICIPATE IN ANY VILLAGE-SPONSORED PROCEEDING, PLEASE CONTACT (305) 756-7171 FIVE DAYS IN ADVANCE TO INITIATE YOUR REQUEST. TTY USERS MAY ALSO CALL 711 (FLORIDA RELAY SERVICE).

1. **CALL TO ORDER**

PLEDGE OF ALLEGIANCE

ROLL CALL

2. **DISCUSSION REGARDING WHETHER COMMISSIONER DR. DOUGLAS N. HORNSBY WAS A QUALIFIED APPLICANT FOR APPOINTMENT TO THE VILLAGE COMMISSION, AS THE AT LARGE COMMISSIONER, ON DECEMBER 13, 2016.**

3. **ADJOURNMENT**



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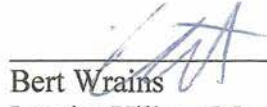
www.nbvillage.com

MEMORANDUM

North Bay Village

TO: Mayor Connie Leon-Kreps
Vice Mayor Eddie Lim
Commissioner Jose R. Alvarez
Commissioner Dr. Douglas N. Hornsby
Commissioner Andreana Jackson

FROM:


Bert W. Wains
Interim Village Manager

SUBJECT: Special Meeting of the Village Commission

DATE: January 26, 2018

Pursuant to §30.03 of the North Bay Village Code of Ordinances and the Commission Agenda Procedures, a Special Meeting of the Village Commission has been called for Monday, January 29, 2018 AT 7:00 P.M., or as soon as possible thereafter at Village Hall, 1666 Kennedy Causeway, #101, North Bay Village, Florida. The sole purpose of this meeting shall be to discuss whether Commissioner Dr. Douglas N. Hornsby was a qualified applicant for appointment to the Village Commission, as the At Large Commissioner, on December 13, 2016.

If you have any questions regarding this matter, please let me know.

BW/ypb

C: Norman Powell, Village Attorney
Yvonne P. Hamilton, Village Clerk

Mayor
Connie Leon-Kreps

Vice Mayor
Eddie Lim

Commissioner
Jose R. Alvarez

Commissioner
Dr. Douglas N. Hornsby

Commissioner
Andreana Jackson



North Bay Village

Administrative Offices

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MEMORANDUM

North Bay Village

TO: Bert Wrains
Interim Village Manager

FROM: 
Mayor Connie Leon Kreps

SUBJECT: Special Commission Meeting

DATE: January 26, 2018

Pursuant to §30.03 of the North Bay Village Code of Ordinances and the Commission Meeting and Agenda Procedures, I hereby call a Special Meeting of the Village Commission for Monday, January 29, 2018 at 7:00 P.M. or as soon as possible thereafter at Village Hall, 1666 Kennedy Causeway, #101, North Bay Village, Florida. The sole purpose of this meeting shall be to discuss whether Commissioner Dr. Douglas N. Hornsby was a qualified applicant for appointment to the Village Commission, as the At Large Commissioner, on December 13, 2016; and none other.

If you have any questions regarding this matter, please let me know.

CLK:yph

Mayor
Connie Leon-Kreps

Vice Mayor
Eddie Lim

Commissioner
Jose R. Alvarez

Commissioner
Dr. Douglas N. Hornsby

Commissioner
Andreana Jackson



North Bay Village

Administrative Offices


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MEMORANDUM
North Bay Village

TO: Bert Wrains
Interim Village Manager

FROM: Commissioner  Andreana Jackson

SUBJECT: Special Commission Meeting

DATE: January 26, 2018

Pursuant to §30.03 of the North Bay Village Code of Ordinances and the Commission Meeting and Agenda Procedures, I hereby call a Special Meeting of the Village Commission for Monday, January 29, 2018 at 7:00 P.M. or as soon as possible thereafter at Village Hall, 1666 Kennedy Causeway, #101, North Bay Village, Florida. The sole purpose of this meeting shall be to discuss whether Commissioner Dr. Douglas N. Hornsby was a qualified applicant for appointment to the Village Commission, as the At Large Commissioner, on December 13, 2016; and none other.

If you have any questions regarding this matter, please let me know.

AJ:yph

Mayor
Connie Leon-Kreps


Vice Mayor
Eddie Lim

Commissioner
Jose R. Alvarez

Commissioner
Dr. Douglas N. Hornsby

Commissioner
Andreana Jackson

To: Honorable Mayor Connie-Leon Kreps and
Members of the North Bay Village Commission

From: Norman C. Powell, Esq., Village Attorney 
Neil D. Kodsi, Esq.

Re: Whether Douglas N. Hornsby, M.D. was a qualified applicant for appointment to the
North Bay Village Commission on December 13, 2016 and on May 9, 2017 under Florida
Law and the North Bay Village Charter

Date: January 29, 2018

I. SUMMARY

My Office has received requests from Members of the North Bay Village Commission ("Commission") to provide them with a formal written legal opinion regarding the legal validity of the Commission's purported appointments of Douglas N. Hornsby, M.D. ("Dr. Hornsby") to the Commission, including his qualifications to serve in that capacity under the North Bay Village Charter ("Charter") and Florida law.

As requested, I have reviewed the relevant provisions of the Charter, the Florida Constitution, Florida Statutes and relevant Florida case law for the purpose of providing this legal opinion.

For the reasons set forth more fully herein, it is my legal opinion that the appointment of Dr. Hornsby to the Village Commission on December 13, 2016 is void, as a matter of law. Additionally, I am also of the opinion that the attempt to *re-appoint* Dr. Hornsby and, presumably, to retroactively *cure* or *reaffirm* the appointment at the May 9, 2017 Commission Meeting was also legally deficient and void as a matter of law.

Because these Commission actions are clearly legally void, as a matter of law, they cannot be cured or corrected under either the Charter or Florida law. Rather, the Commission must, consistent with Article 3, Section 3.07(D) and Article 5, Section 5.04 of the Charter and Florida law, resolve the vacancy created by the void appointment. The Commission's options to resolve the vacancy under the Charter are either to initiate another appointment process or conduct a Special Election.

Although Dr. Hornsby's appointment is void, I recommend that the Commission take legislative action pursuant to its authority under Article 3, Section 3.02 of the Charter and vote on a resolution that would repeal both the December 13, 2016 Resolution appointing Dr. Hornsby and the May 9, 2017 Commission vote to re-affirm his initial appointment.

A. The Removal of Dr. Hornsby From Florida's Statewide Voter Registration System

The conclusions and legal opinions contained herein are not based, in any way, on my office's determination or construction of Dr. Hornsby's criminal history. Instead, they are based on the Miami-Dade County Supervisor of Elections' determination that he was not a **qualified** elector until he registered to vote in July 2017; and had been unqualified to serve as an elector in Miami-Dade County between the time of his initial registration in 1998 and July 2017.

In fact, on July 6, 2017, Christina White, the Supervisor of Elections for the Miami-Dade County Elections Department (“Elections Department”) mailed Dr. Hornsby an Official Notification that the Elections Department had removed him from the Statewide Voter Registration System because his voter registration was ineligible. The Elections Department concluded that Dr. Hornsby’s voter registration had been ineligible from 1998 to the date of their determination. The Elections Department’s determination regarding Dr. Hornsby’s ineligibility is based on their analysis of documents Dr. Hornsby provided to the Elections Department.

The Elections Department’s letter gave Dr. Hornsby two choices concerning their determination of his ineligibility to vote. He could either appeal the decision or properly register to vote. Dr. Hornsby waived his right to appeal and chose to simply register to vote on July 11, 2017. Thereafter, Dr. Hornsby finally became a valid Elector of Miami-Dade County and North Bay Village on July 16, 2017.

Article 6, Section 2 of the Florida Constitution defines an Elector as follows:

Every citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, **if registered as provided by law**, shall be an elector of the county where registered. (emphasis added).

As previously noted, Dr. Hornsby was not *registered as provided by law* until July 11, 2017. Therefore, the inescapable conclusion is that he was also not a qualified Elector of North Bay Village when he was initially appointed to the Commission on December 13, 2016 and the Commission’s attempted re-appointment on May 9, 2017.

B. The Requirements of the North Bay Village Charter

The North Bay Village Charter contains only two fundamental requirements to be qualified to serve as a Commissioner. Article V, Section 5.04 provides that an applicant or candidate must be both a resident of North Bay Village and a qualified elector of North Bay Village. Although Dr. Hornsby was a Resident of North Bay Village, he did not become an elector of North Bay Village until July 16, 2017 at the earliest. Since Dr. Hornsby was not an elector of North Bay Village during either of these appointments, his appointments violate the provisions of the Charter and are void, as a matter of law.

Pursuant to Article 3, Section 3.02 of the Charter, the Commission is the “judge” of the qualifications of its members. Although Dr. Hornsby’s appointment is void, I recommend that the Commission take legislative action pursuant to its authority under Article 3, Section 3.02 and vote on a resolution to repeal both the December 13, 2016 Resolution appointing Dr. Hornsby and the May 9, 2016 vote to re-affirm his appointment.

C. The Process for Appointing a New Commissioner

Should the Commission accept my recommendation and adopt a resolution rescinding its appointments, Article 3, Section 3.07(D) of the Charter provides the Commission with thirty (30) days to fill the at-large vacancy. The Commission has three options. First, the Commission can choose to fill the vacancy immediately. Second, the Commission can accept applications to fill the

vacancy from today until the next regularly scheduled Commission meeting on February 13, 2018. At the February 13, 2018 Commission Meeting, the remaining four Commissioners can vote on the candidates to fill the vacancy. Third and finally, the Commission may resolve to conduct a Special Election to fill the vacancy. Section 3.07(D) provides that if the Commission fails to appoint someone to fill the vacancy within thirty (30) days, a Special Election must take place within ninety (90) days. In May of last year, the prior Village Attorney informed the Commission that the Elections Department estimated that a Special Election would cost the Village approximately \$30,000.00.

FACTUAL AND LEGAL ANALYSIS

I. Factual Background

On November 29, 2016, a vacancy was created on the Commission. Thereafter, the Commission resolved to accept applications to fill the vacancy at its December 13, 2016 Meeting. The Commission voted 3-1 to appoint Dr. Hornsby to the vacant seat.

A. The May 9, 2017 Commission Meeting Vote was Invalid

Subsequently, at the May 9, 2017 Commission Meeting, Dr. Hornsby announced that there was an issue with his voting rights and informed the Commission, *for the first time*, that he had been convicted of a felony in Tennessee sometime in the 1990s and had lost his voting rights.¹ He also informed the Commission that Tennessee restored his voting rights on May 5, 2017 and requested that the Commission vote to re-appoint him to his seat. After Dr. Hornsby's comments, the former Village Attorney *verbally* advised the Commission that they had the authority to re-appoint Dr. Hornsby and cure the defect in his initial appointment. The former Village Attorney indicated that he would provide the Commission with a formal written legal opinion regarding these issues, but he did not do so before he left his role as Village Attorney in November 2017.² In any event, the Commission accepted the advice given by its former attorney and voted to reaffirm Dr. Hornsby as a Commissioner at the May 9, 2017 meeting. The Commission also voted to ratify any prior votes or actions of Dr. Hornsby while he sat on the Commission between December 13, 2016 and May 9, 2017.³

B. Dr. Hornsby Waived His Right to Appeal the Determination of the Miami-Dade Elections Department

On May 24, 2017, the Elections Department sent Dr. Hornsby a letter informing him that the Department was investigating his right to vote in Miami-Dade County and asked him to provide information regarding his prior felony conviction and the restoration of his civil rights.⁴ There is no record of Dr. Hornsby ever informing the Commission about the Election Department's correspondence.

On June 20, 2017, Dr. Hornsby formally responded to the Elections Department and represented that he had been convicted of a felony and that his civil rights with respect to voting had been

¹ May 9, 2017 Commission Meeting Video at 32:00 – 37:05.

² May 9, 2017 Commission Meeting Video at 37:05 – 44:50.

³ May 9, 2017 Commission Meeting Video at 44:50 – 48:00.

⁴ This Letter is Attached hereto as Attachment 1.

restored. He also provided the Elections Department with a May 5, 2017 Order from a Circuit Court in Tennessee restoring his civil rights.⁵

On July 6, 2017, Ms. Christina White, Supervisor of Elections for the Elections Department, mailed Dr. Hornsby an Official Notification that the Elections Department was removing him from the Statewide Voter Registration System.⁶ The Supervisor indicated that this decision was made based on the Elections Department's analysis of documents provided by Dr. Hornsby and others. In removing Dr. Hornsby from the Voter Registration System, the Elections Department also concluded that Dr. Hornsby's voter registration had been ineligible from 1998 to the date of their determination.

Upon receipt of the Official Notification, Dr. Hornsby had two independent options: **1)** appeal the Department's decision, or **2)** register to vote, under the assumption that he was *currently* eligible to vote. Dr. Hornsby chose the second option and registered to vote on July 11, 2017. Again, there is no record of Dr. Hornsby ever informing the Commission about the correspondence with the Election Department or its findings.

Dr. Hornsby voluntarily waived his rights to appeal the Elections Department's determination. As such, Dr. Hornsby finally became a valid elector of Miami-Dade County and North Bay Village on July 16, 2017, when he received a legally valid voter registration card.

II. Legal Analysis

A. The Determination of the Miami-Dade Elections Department is Dispositive.

Article V, Section 5.04 of the Charter provides that to be a qualified Commissioner, an applicant or candidate must be a resident of North Bay Village and a qualified elector of North Bay Village. Therefore, the Election Department's July 6, 2017 decision is dispositive. Dr. Hornsby was not an elector of North Bay Village when he was appointed to the Commission on December 13, 2016 or when he was purportedly re-appointed on May 9, 2017.

Article 6, Section 2 of the Florida Constitution defines an Elector as follows:

Every citizen of the United States who is at least eighteen years of age and who is a permanent resident of the state, *if registered as provided by law*, shall be an elector of the county where registered. (emphasis added).

The Department of Elections determined that Dr. Hornsby was not *registered as provided by law* until July 11, 2017. Therefore, the inescapable legal and factual conclusions are that he was also

⁵ Dr. Hornsby's June 20, 2017 Response with attachments is attached hereto as Attachment 2.

⁶ Ms. White's July 6, 2017 letter is attached hereto as Attachment 3.

not a qualified elector of North Bay Village when he was initially appointed to the Commission on December 13, 2016 or May 9, 2017.

When an appointment of a Commissioner is made in violation of Florida law, that appointment is void, **as a matter of law**. In *Gay and Moore v. City of Madeira Beach, et al.*, Case-No.: 16-004836-CI, in the Circuit Court for the Sixteenth Judicial Circuit in and for Pinellas County (March 7, 2017), Circuit Judge Jack Day was confronted with a strikingly similar case. In *Gay*, a Madeira Beach Commissioner was appointed in violation of Florida Law.⁷ Judge Day held that because the appointment violated Florida Law, it was void *ab initio*. In other words, it was void *from the beginning* of the appointment.

In the case of Dr. Hornsby, the same is true. Dr. Hornsby's appointment was void *ab initio* and incurable, as a matter of law.

B. The December 13, 2016 Appointment Is Void Because Dr. Hornsby's Voting Rights Had Not Been Restored.

In addition to having to meet the requirements of the North Bay Village Charter, candidates for the Commission must also meet the requirements of the Florida Constitution. Under the Florida Constitution, convicted felons are ineligible to hold office in Florida until their civil rights have been restored:

No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

Florida Constitution Article 6, Section 4. (emphasis added). Here, Dr. Hornsby's civil rights were not restored by Tennessee until May 5, 2017. Thus, the December 13, 2016 appointment is void under Article 6, Section 4 of the Florida Constitution.

C. The Commission's May 9, 2017 Vote to Re-Appoint Dr. Hornsby Did Not Cure the Commission's Void December 13, 2016 Appointment.

The void appointment of Dr. Hornsby is analogous to an appointment made in violation of Florida's Sunshine Laws, which would also be void, as a matter of law. There is substantial case law in Florida on "curing" an otherwise void action in violation of Florida's Sunshine Law. When these cases are reviewed, it becomes abundantly clear that the actions taken by the Commission at the May 9, 2017 Commission meeting to re-appoint Dr. Hornsby were legally insufficient to "cure" the legally void December 13, 2016 appointment.

⁷ In *Gay and Moore v. City of Madeira Beach*, the Commissioner at issue was appointed in violation of Florida's Sunshine Laws. The analysis conducted by Judge Day applies equally to an appointment that violates any Florida law, such as the Florida Constitutional provisions discussed above. Moreover, Judge Day's opinion provides additional guidance with respect to the purported re-appointment of Dr. Hornsby on May 9, 2017, which is discussed more fully under Section II.C. of this Memorandum. Judge Day's Opinion is also attached hereto as Attachment 4.

Commission can then accept applications to fill the vacancy on the Commission between January 29, 2018 and the next regularly scheduled Commission meeting on February 13, 2018.⁸ At the February 13, 2018 Commission Meeting, the remaining four Commissioners can vote on the candidates to fill the vacancy. In the alternative, the Commission may resolve to require a Special Election to fill the vacancy.

⁸ Paradoxically, Dr. Hornsby is now finally qualified to serve on the Commission. While this does not cure the prior void appointment and re-appointment, he is now free to join his fellow Electors in North Bay Village and seek appointment in any future Commission process to fill the Commission vacancy or Special Election.

Pursuant to Florida law, a violation of the Sunshine law may be cured only when there is a full, open hearing. *Zorc v. City of Vero Beach*, 722 So. 2d 891, 903 (Fla. 4th DCA 1998). A violation will not be cured by a "perfunctory ratification" of action taken outside of the sunshine. *Id.*; *Tolar*, 398 So.2d at 429 (ruling that a violation may be cured by an independent final action taken in the sunshine that is "not merely a ceremonial acceptance of secret actions and not merely a perfunctory ratification of secret decisions at a later meeting open to the public.").

In *Zorc*, a city commission and its attorneys held a non-public meeting under the Sunshine Law's exemption for pending litigation where an agreement was reached to include certain language in a consent decree which would resolve pending litigation. *Id.* A subsequent public meeting and vote to reconsider the approval of language to be included in the consent decree was held. *Id.* At the public meeting, the council members were provided a transcript of the closed-door meeting and only briefly discussed the issue. *Id.* at 903. The meeting was then opened for public comment and the plaintiff read a prepared statement. *Id.* The city council voted against the motion to reconsider the wording to be included in the consent decree. *Id.*

Even though an open meeting occurred and public comment was taken, the court found that the meeting "was not a full reexamination of the issues, but rather was merely the perfunctory acceptance of the City's prior decision." *Id.* at 903. The court found that there was no significant discussion of the issues or any discourse as to the language being included in the consent decree. *Id.* Because of this, the court found that no cure of the previous violations had occurred. *Id.*

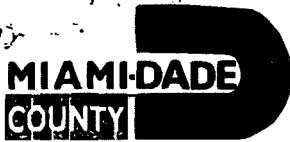
Clearly, the May 9, 2017 vote to reaffirm Dr. Hornsby's appointment was substantially more perfunctory than the procedures rejected by the Court in *Zorc*. At least the open meeting in the *Zorc* case provided notice to the public of the issues to be discussed. No such notice was provided to the residents of North Bay Village for the Commission's May 9th meeting. Moreover, there was no "re-examination" of any issues related to Dr. Hornsby's qualifications. The Village Attorney simply suggested that the Commission re-appoint him. Then, a motion doing so was made, two members of the Village provided comments, and a vote was taken, which was approved.

D. To Cure the Void Appointments, the Commission Must Fill the Vacancy

Pursuant to Article 3, Section 3.02 of the Charter, the Commission is the sole "judge" of the qualifications of its members. Although Dr. Hornsby's appointment is void, we recommend that the Commission take legislative action pursuant to its authority under Article 3, Section 3.02 of the Charter and vote on a resolution to repeal both the December 13, 2016 Resolution appointing Dr. Hornsby and the May 9, 2016 vote to re-affirm his appointment.

Article 3, Section 3.07(D) of the Charter provides the Commission with thirty (30) days to fill the resulting vacancy and because of this short time frame, we requested the Village Clerk to schedule a Special Meeting on Monday January 29, 2018 to announce the opening of a vacancy. The

ATTACHMENT 1



Elections
2700 NW 87th Avenue
Miami, Florida 33172
T 305-499-8683 F 305-499-8547
TTY: 305-499-8480

miamidade.gov

May 24, 2017

[109794024]
Douglas N. Hornsby
1353 Bay Ter
N Bay Village FL, 33141

Dear Voter:

Our office has received information from the State of Florida that you may have been convicted of a felony and your civil rights in respect to voting may not have been restored at this time. A copy of the information has been enclosed for your review. Please contact the Florida Office of Executive Clemency at 850-488-2952 if you need any additional information and forms on the restoration of rights following a felony conviction.

Failure to submit this form within thirty (30) days to the Supervisor of Elections may result in the removal of your name from the voter registration list. You may no longer be eligible to vote until you can provide proof that your civil rights have been restored.

If you agree with this information, please check the box below. Once checked, your name will be removed from the voter registration list.

☐ I agree with your information and do not require an administrative hearing.

If your rights in respect to voting have been restored, please check the box below. A copy of the Clemency certificate must be provided within thirty (30) days.

☐ I was convicted of a felony, but my civil rights in respect to voting have been restored.

You have the right to request a hearing for the purpose of providing information to substantiate your status, if you believe this information is incorrect.

(FORM CANNOT BE ACCEPTED WITHOUT VALID SIGNATURE AND DATE)

SIGNATURE OF VOTER

DATE

TELEPHONE

Please contact the Registration Section at 305-499-8363 or by e-mail at register@miamidade.gov if you have any questions regarding this letter.

Sincerely,

Christina White

Christina White
Supervisor of Elections
Miami-Dade Elections Department

Enclosure: Charge Phase

(Véase traducción al español al dorso)
(Pou vèsyon Kreyòl lan gade lòt bò paj la)

ATTACHMENT 2



Elections
2700 NW 87th Avenue
Miami, Florida 33172
T 305-499-8683 F 305-499-8547
TTY: 305-499-8480

miamidade.gov

May 24, 2017

[109794024]
Douglas M. Hornsby
1353 Bay Ter
N Bay Village FL, 33141

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☒ I was convicted of a felony, but my civil rights in respect to voting have been restored.

You have the right to request a hearing for the purpose of providing information to substantiate your status, if you believe this information is incorrect.

(FORM CANNOT BE ACCEPTED WITHOUT VALID SIGNATURE AND DATE)

Douglas M. Hornsby 6/20/2017 305-759-9293
SIGNATURE OF VOTER DATE TELEPHONE

Please contact the Registration Section at 305-499-8363 or by e-mail at register@miamidade.gov if you have any questions regarding this letter.

Sincerely,

Christina White

Christina White
Supervisor of Elections
Miami-Dade Elections Department

Enclosure: Charge Phase

(Véase traducción al español al dorso)
(Pou vèsyon Kreyòl lan gade lòt bò paj la)

IN THE CIRCUIT COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS

FILED
MAY 05 2017

CIRCUIT COURT CLERK
BY: *[Signature]* D.C.

DOUGLASS NEAL HORNSBY

Petitioner

Vs

STATE OF TENNESSEE

Respondent.

§
§
§
§
§
§
§
§

No. CT-001897-17 Div. IV
RE: IND # 91-11176 & 90-07780

ORDER GRANTING RESTORATION OF CITIZENSHIP

This matter was presented to this Court heard on this, the 5th day of May, 2017, on petition of the Petitioner for restoration of citizenship, and after having been served on the State of Tennessee pursuant to T.C.A. § 40-29-101, and based on the petition, the response from the State of Tennessee that there is no opposition to the petition, and having heard from the Petitioner, the affidavit of citizens in his community, the Court finds as follows pursuant to, T.C.A. § 40-29-101 et al.

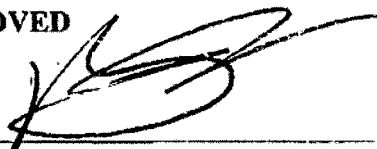
1. That Douglass Neal Hornsby is eligible to have full citizenship rights, including but not limited to his right to vote, serve on a jury and hold public office restored, *Except as provided in Paragraph No. 2.*
2. That Petitioner's right to possess or own a firearm is not restored and specifically prohibited
3. That Pursuant to T.C.A. § 40-29-107, Douglass Neal Hornsby is eligible to have a certificate of employability

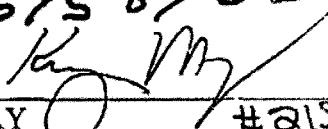
IT IS THEREFORE HEREBY ORDERED that Douglass Neal Hornsby, Petition is granted and his of rights of full citizenship, including but not limited to his right to vote, serve on

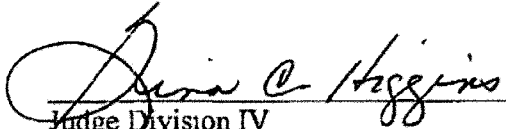
a jury and hold public office are fully restored and he is further granted a Certificate of
Employability

IT IS SO ORDERED this 5th of May, 2017

APPROVED

By: 
WALTER LEE BAILEY, JR. (#4868)
22 North Front, Suite 1060
Memphis, Tennessee 38103

901-575 8702
By: 
KIRBY MAY #21507
Assistant District Attorney General
901-222-1300


Judge Division IV
5 May 2017

RECEIVED
DEPT. OF STATE

2017 JUN -6 PM 4:56
**IN THE CIRCUIT COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS**

DIVISION OF ELECTIONS
TALLAHASSEE, FL

DOUGLASS NEAL HORNSBY

Petitioner

Vs.

STATE OF TENNESSEE

Respondent.

§
§
§
§
§
§
§

**No. CT-001897-17 Div. IV
RE: IND # 91-11176 & 90-07780**

ORDER GRANTING RESTORATION OF CITIZENSHIP

This matter was presented to this Court heard on this, the 5th day of May, 2017, on petition of the Petitioner for restoration of citizenship, and after having been served on the State of Tennessee pursuant to T.C.A. § 40-29-101, and based on the petition, the response from the State of Tennessee that there is no opposition to the petition, and having heard from the Petitioner, the affidavit of citizens in his community, the Court finds as follows pursuant to, T.C.A. § 40-29-101 et al.:

1. That Douglass Neal Hornsby is eligible to have full citizenship rights, including but not limited to his right to vote, serve on a jury and hold public office restored, *except as provided in paragraph 2.*
2. That Petitioner's right to possess or own a firearm is not restored and specifically prohibited
3. That Pursuant to T.C.A. § 40-29-107, Douglass Neal Hornsby is eligible to have a certificate of employability.

IT IS THEREFORE HEREBY ORDERED that Douglass Neal Hornsby, Petitioner is granted and his of rights of full citizenship, including but not limited to his right to vote, serve on

a jury and hold public office are fully restored and he is further granted a Certificate of

Employability

IT IS SO ORDERED this 5th of May, 2017

~~Gina C. Higgins~~
Judge Division IV

8

APPROVED

By: _____
WALTER LEE BAILEY, JR. (#4868)
22 North Front, Suite 1060
Memphis, Tennessee 38103

ATTEST
JIMMY MOORE, Clerk

 D.C.

By: _____
KIRBY MAY
Assistant District Attorney General

DEPARTMENT OF ELECTIONS
TAMPA, FLORIDA

2

2017 JUN -6 PM 4:56

RECEIVED
DEPARTMENT OF STATE

ATTACHMENT 3



July 6, 2017

Elections
2700 NW 87th Avenue
Miami, Florida 33172
T 305-499-8683 F 305-499-8547
TTY 305-499-8480

miamidade.gov

Douglas Hornsby
1353 Bay Ter
N Bay Village, FL 33141

109794024

Dear Douglas Hornsby:

The Miami-Dade County Elections Department recently notified you of your potential ineligibility as a registered voter by certified mail. Pursuant to F.S. 98.075(7), I have reviewed all documentation and have determined, based on a preponderance of the evidence, that your voter registration is ineligible. Therefore your name has been removed from the statewide voter registration system.

This decision on ineligibility is made based on the ineligibility at the time of registration.

If you do not agree with this information, you may appeal the decision under the provisions of F.S. 98.0755. If you believe that you are currently eligible to vote, you must re-register in order to have your name restored to the statewide voter registration system.

Please contact the Registration Section at 305-499-8363 or by e-mail at register@miamidade.gov if you have any questions regarding this letter.

Sincerely,

Christina White

Christina White
Supervisor of Elections
Miami-Dade Elections Department

ATTACHMENT 4

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL ACTION

WILLIAM G. GAY, and
CATHY P. MOORE,

Plaintiffs,

v.

Case No.: 16-004836-CI

The CITY OF MADEIRA BEACH, a
Municipal Government of the State of
Florida, TRAVIS PALLADENO, TERRY
LISTER, and NANCY HODGES,

Defendants.

FILED
ST. PETERSBURG
2017 MAR -7 PM 1:33
KEN BURKE
CLERK OF CIRCUIT COURT

ORDER ON CROSS-MOTIONS FOR PARTIAL SUMMARY JUDGMENT

THIS CAUSE, having come before the Court on March 2, 2017, on the Motion for Partial Summary Judgment filed by Plaintiffs and the Motion for Partial Summary Judgment filed by Defendants, each relating to Count I of Plaintiffs' Second Amended Complaint, and the Court, having reviewed the file, having heard arguments of counsel, and being otherwise fully advised, makes the following findings:

1. Following the resignation of a City Commissioner of the CITY OF MADEIRA BEACH ("the City"), TRAVIS PALLADENO ("Mayor Palladeno"), TERRY LISTER ("Commissioner Lister"), and NANCY HODGES ("Commissioner Hodges") participated in a process to fill the vacancy in office in which applications were solicited from the public and then ranked by the Mayor and Commissioners¹ outside of a public meeting. The Tabulation Form used by each of the individual Defendants to rank the applicants provided, "The highest ranked applicant *will be selected* for appointment to the Board of Commissioners for District 4 for the remainder of the

¹ A fourth commissioner who was not named as a defendant in this suit apparently participated as well.

vacant term.” (emphasis supplied). With these instructions, Mayor Palladeno, Commissioner Lister and Commissioner Hodges, outside a public meeting, ranked each of the applicants on a Tabulation Form and returned the form to the City Clerk. According to Lister, the City has followed this procedure to make public appointments in the past.

2. The City tabulated the results and administrative personnel sent a memorandum to Mayor Palladeno and all of the Commissioners announcing that Housh Ghovaei was the highest ranked applicant. Cheryl McGrady, assistant to City Manager Shane Crawford, then contacted Mr. Ghovaei and informed him that he had been selected, asked him if he accepted the appointment, and advised him that he should be at the upcoming Commission meeting on July 12, 2016 to take the oath of office. McGrady called the other applicants and advised that Mr. Ghovaei had been selected and that there was no need for them to attend the public meeting. Crawford explained that this was consistent with past practice and was done to avoid embarrassment on the part of the losing candidates and to give the winning candidate an opportunity to bring family and friends to the meeting.

3. Following the selection, on July 8, 2016, the City Clerk posted two public notices. The first notice was for a Special Workshop Meeting. The agenda indicated that a topic for the meeting was “Discussion on Board of Commissioner’s Ballot and Selection of Candidate for District 4 Vacancy.” The minutes of this meeting reflect that “Mr. Ghovaei is the recipient of the lowest number, making him the appropriate person to appoint based off the balloting.” They further state, “Consensus was to appoint Mr. Ghovaei during the regular meeting.”

4. The second notice posted on July 8, 2016 was for the Regular Meeting of the Board of Commissioners. On the “Consent Agenda,” the Clerk listed “Board of Commissioners District 4 Appointment.” Under the agenda item was listed “Commissioner District 4 Housh Ghovaei.”

5. The Court has additionally reviewed video excerpts of both the Special Workshop Meeting and Regular Meeting, for which a transcript has also been made available, which the Court

finds to be accurate. Notably, the City Attorney Tom Trask attempted to "cure" any potential Sunshine Law violations at the Regular Meeting by asking each of the Commissioners to affirm that the Tabulation Form previously completed by them was their Tabulation Form, prior to voting to appoint Mr. Ghovae. The rankings made by each of the Commissioners were not announced publicly at the meeting. Moreover, there was no discussion of any other candidate or the relative merits of the three candidates. Only Mr. Ghovae's merits were discussed and then only in a congratulatory fashion.

6. Based on the undisputed facts before the Court, the Court concludes that the City, Palladeno, Lister, and Hodges violated the Sunshine law in selecting Mr. Ghovae to fill the vacancy in the District 4 Commissioner seat.

7. Furthermore, the Court concludes that the invalid appointment of Mr. Ghovae was not "cured" at the Regular Meeting held on July 12, 2016.


ACCORDINGLY, IT IS ORDERED AND ADJUDGED that:

A. Plaintiffs' Motion for Summary Judgment is GRANTED. Defendants' Motion for Summary Judgment is DENIED.

B. The process used by Defendants to fill the vacancy in office violated the Sunshine Law. Furthermore, the appointment of Housh Ghovae as District 4 Commissioner is void *ab initio*.

C. The Court reserves jurisdiction to consider an award of attorney's fees and costs against the City.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida this 6th day of March, 2017.


The Honorable Jack Day
Circuit Court Judge

cc: Timothy Weber, Esq.
Andrew Salzman, Esq.
Kenneth L. Weiss, Esq.