

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
BOARD APPOINTMENT SUMMARY

Meeting Date: December 20, 2011

Department: **Public Safety Department**
Submitted by: **Consumer Affairs Division**
Advisory Board Name: **Consumer Affairs Hearing Board**

I. EXECUTIVE BRIEF

Motion and Title: Staff Recommends Motion to Approve: the reappointment of the following representative to the countywide Consumer Affairs Hearing Board for a term of one year, twenty five days beginning on December 20, 2011 and ending on January 13, 2013.

Nominee	Term	Expires	Seat	Requirement	Recommended By
*Herbert Milstein	Reappoint	1/13/2013	9	Special Technical	Burt Aaronson

*Herbert Milstein, who resigned on July 7, 2011 from the board mid-term, would be reinstated for a term that expires on January 13, 2013

Summary: Palm Beach County Consumer Affairs Ordinance 72-10 established a Hearing Board. The nine (9) members of the Board are selected for countywide representation and serve two (2) year terms for a maximum of six (6) years. The Board serves in both an advisory capacity to the County Commissioners and as an Appeals Board to hear and act on consumer concerns about unfair/deceptive business practices and appeals relating to the towing, vehicle for hire, moving and price gouging ordinances. The Hearing Board represents various businesses, professionals and the general public. **NOTE:** With the re-appointment of this one seat, the Hearing Board will still have two vacancies for a certified contractor and a business person or retired business person with at least five years experience in the operation or management of a business. Nominations are being sought from the Board of County Commissioners for these vacant positions. With approval of this motion the Hearing Board will have 7 of 9 appointed/active members. **Countywide (GB)**

Background and Justification: The Board of County Commissioners created the Consumer Affairs Hearing Board in 1972. The Board carries out the requirements of the six ordinances administered by Consumer Affairs. The representation on the Consumer Affairs Board must include: a) an attorney; b) a business person (active or retired) recommended by a Chamber of Commerce; c) a resident (active or retired) with at least five years experience in the management of a business; d) three at-large residents interested in consumer issues; and e) two persons who have expertise in technical fields relating to consumer transactions. The Advisory Board has six seats current filled and a diversity count of Asian: 1 (16.67%) Black: 1 (16.67%) Hispanic: 1 (16.67%) and White: 3 (49.99%). The gender ratio (male: female) is 6:0.

Attachments:

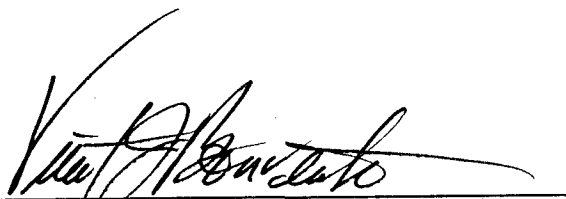
1. Memorandum requesting nomination and background
2. Board appointment form and background material on the candidate
3. Current Consumer Affairs Hearing Board membership

Recommended by: *Vincent J. Bonvento* 12/11/11
Department Director Date

Legal Sufficiency: *[Signature]* 12/2/11
Assistant County Attorney Date

II. REVIEW COMMENTS

Other Department Review:

A handwritten signature in black ink, appearing to read "V. Albano", written over a horizontal line.

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

MEMORANDUM

Date: November 22, 2011

To: Honorable Shelley Vana, Chair
and Members of the Board of County Commissioners

Thru: Vince Bonvento, Director
Public Safety Department



From: Eugene Reavis, Manager
Division of Consumer Affairs

RE: **Consumer Affairs Hearing Board Reappointment**

The Consumer Affairs Division is seeking nominations for three **at-large** positions on the Consumer Affairs Hearing Board. The positions and related information are described on the attached chart (Attachment 1). County Commissioners may nominate any other nominees that qualify as a certified contractor, or management/business person interested in consumer protection.

The following are vacant positions:

- **Vacant – Special Technical**
- **Vacant – Certified Contractor**
- **Vacant - Businessperson or Retired Businessperson (5 years or more experience)**

The Consumer Affairs Division is requesting re-appointment for Herbert Milstein to fill the vacant Special Technical position on the Consumer Affairs Hearing Board.

Herb Milstein was first appointed to the Board on April 10, 2007, and was re-appointed on January 13, 2009. Mr. Milstein resigned from the Board prior to his scheduled expiration date on January 13, 2013, for reasons stated in a letter sent to the Commission on July 7, 2011 (Attachment 1)

Inasmuch as all of the issues have been resolved, Herbert Milstein would like to be reappointed to the Consumer Affairs Hearing Board.

Mr. Milstein has been a valued and respected member of the Hearing Board, for many years. Mr. Milstein served as Chairperson during his term, and his knowledge of Consumer Affairs Ordinances and leadership skills are highly commendable. A Palm Beach County Advisory Board Nominee Information Form and related information for Herb Milstein is attached (Attachment 2).

Background/Duties

In 1972, the Board of County Commissioners created the Consumer Affairs Hearing Board. The Consumer Affairs Hearing Board's purposes are:

- To carry out the functions pertaining to alleged unfair or deceptive trade acts or practices as provided for in Ordinance 77-10.
- To assist, advise and cooperate with the Board of County Commissioners and local, state, and federal agencies.
- To protect the interest of Palm Beach County consumers.
- To hear appeals by persons aggrieved by actions of the Consumer Affairs Division not already referred to the State Attorney for criminal prosecution.
- To hear appeals from administrative action taken against companies believed to be in violation of one of the regulatory ordinances assigned to Consumer Affairs: Towing, Vehicle for Hire, Moving and Price Gouging.
- To exercise and perform such other functions, powers and duties as may be deemed necessary or appropriate to protect and promote the welfare of Palm Beach County consumers.

Pursuant to the Ordinance, all of the Board members must be citizens of the United States and qualified electors of Palm Beach County. Members of the Hearing Board cannot hold public employment and cannot be interested financially in the profits or emoluments of any contract, work or service for the county.

A list of current Consumer Affairs Hearing Board Members is attached (Attachment 3). For questions or clarification, please contact Eugene Reavis, Manager, Consumer Affairs Division at 712-6605.

Sincerely,

Vince Bonvento
Assistant County Administrator

Attachments:

Herb Milstein resignation letter
Palm Beach County Advisory Board Nominee Information Form
List and addresses of current Hearing Board members

c: Gentry Benjamin, Assistant County Attorney
Robert Weisman, County Administrator
Commissioner Karen Marcus, District 1
Commissioner Paulette Burdick, District 2
Commissioner Steven L. Abrams, District 4
Commissioner Burt Aaronson, District 5
Commissioner Jess Santamaria, District 6
Commissioner Priscilla Taylor, District 7

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
BOARDS/COMMITTEES APPLICATION**

Section II Continued:

CONTRACTUAL RELATIONSHIPS: Pursuant to Article XIII, Sec. 2-443 of the Palm Beach County Code of Ethics, advisory board members are prohibited from entering into any contract or other transaction for goods or services with Palm Beach County. Exceptions to this prohibition include awards made under sealed competitive bids, certain emergency and sole source purchases, and transactions that do not exceed \$500 per year in aggregate. These exemptions are described in the Code. This prohibition does not apply when the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction and the contract or transaction is disclosed at a public meeting of the Board of County Commissioners. **To determine compliance with this provision, it is necessary that you, as a board member applicant, identify all contractual relationships between Palm Beach County government and you as an individual, directly or indirectly, or your employer or business.** This information should be provided in the space below. If there are no contracts or transactions to report, please verify that none exist. Staff will review this information and determine if you are eligible to serve or if you may be eligible for an exception or waiver pursuant to the code.

<u>Contract/Transaction No.</u>	<u>Department/Division</u>	<u>Description of Services</u>	<u>Term</u>
_____	_____	_____	_____
_____	_____	_____	_____

(Attach Additional Sheet(s), if necessary)

OR

(NONE)


All board members are required to read and complete training on Article XIII, the Palm Beach County Code of Ethics, and read the Guide to the Sunshine Amendment prior to appointment/reappointment. Article XIII, and the training requirement can be found on the web at: <http://www.palmbeachcountyethics.com/training.htm>. Keep in mind this requirement is on-going.

By signing below I acknowledge that I have read, understand, and agree to abide by Article XIII, the Palm Beach County Code of Ethics, and I have received the required Ethics training (in the manner checked below):

- By watching the training program on the Web, DVD or VHS
 By attending a live presentation given on _____, 20____

AND

By signing below I acknowledge that I have read, understand and agree to abide by the Guide to the Sunshine Amendment & State of Florida Code of Ethics:

*Applicant's Signature:  Printed Name: Herbert Milsrein Date: 11/22/11

Any questions and/or concerns regarding Article XIII, the Palm Beach County Code of Ethics, please visit the Commission on Ethics website www.palmbeachcountyethics.com or contact us via email at ethics@palmbeachcountyethics.com or (561) 233-0724.

Return this FORM to:

Palm Beach County Consumer Affairs Division
50 S. Military Trail, Suite 201
West Palm Beach, FL 33415

Section III (Commissioner, if applicable):

HERBERT MILSTEIN

7379 London Lane
Boca Raton
Florida 33433
561.391.9551

July 7, 2011

Dear Commissioner Marcus,

Please consider this my resignation from the Division of Consumer Affairs Hearing Board. Since a Hearing on November 18, 2010, in which the DCA was over ridden on their denial of a towing license , and, the license was issued to a convicted felon, I have attempted to bring out the numerous Irregularities both to common principles of law, and , especially to the Ordinance 77-10 , which governs the DCA and the Hearing Board.

Immediately after the meeting, I wrote to Mr. Hitt, former manager of the DCA . It was my impression of what took place at the meeting. Another letter was sent to Mr. Moore, former Director of the DCA , listing the items that I felt were improper. Mr. Moore informed me that he had forwarded my letter to Ms. Benjamin, Asst. County Attorney and Consumer Advocate and her superior for a response. Never having had an answer, I then wrote to Ms. Nieman, County Attorney with my list of charges. Again, no response..

As a 31 year resident, homeowner, voter and tax payer in Palm Beach County, I feel I am entitled to a response. I don't know if it is arrogance, incompetence or a cover up. In any case, I feel that the only way I can get someone to look into this matter, is to resign from the Board.

I am including in this envelope the three letter that I wrote along with a fact sheet of the Irregularities mentioned. Please note that the dates on the letters are the date I copied them and not the original dates as that's the way my computer operates..

I can fully appreciate the difficult times the Commission is having with the new budget, and, you may not have the time or desire to investigate a department and people directly responsible to the Commission.

Please let me know if you are unable to help me so that I may then file a complaint with the Inspector General. If anyone wishes to speak directly to me I am always available by phone and if a personal meeting is desired, I will make myself available at your convenience.

I feel badly that I am ending an almost 20-year association as a volunteer with the DCA. I believe I have been an asset to both the DCA and the Hearing Board. I was hoping that once I completed my term in 2012 that I could be considered for a position on another Board or Committee within the county government, however, I'm sure this letter will end any possibility of that taking place.

Sincerely,

Herbert Milstein

CC Vincent Bonvento, Director, Public Safety Dept.

QUESTIONS

**Palm Beach County, Florida
CONSUMER AFFAIRS ORDINANCE NO. 77-10**

SECTION 4. POWERS OF THE CONSUMER AFFAIRS HEARING BOARD The Board shall have the following authority and powers:

(4) To hear appeals by persons aggrieved by actions of the Office of Consumer Affairs not already referred to the State Attorney for criminal prosecution. The Board shall reach a prompt decision on such appeals, and may affirm, reverse or modify the action or decision on all such appeals, and may affirm, reverse or modify the action or decision appealed from, provided that such decision shall not be in conflict with the provisions of this Ordinance;

SECTION 13. CONSUMER ADVOCATE A. The County Attorney of Palm Beach County shall designate one Assistant County Attorney to serve as the Consumer Advocate. Said person shall serve as the prosecuting attorney for the Board and Office of Consumer Affairs and shall assist in the negotiation of, and preparation of assurances of voluntary compliance. Said person, when requested, shall assist in the supervision of investigations and shall render such additional assistance as may be requested by the Chairman of the Board and/or Executive Director.

1. Why for the past four years has the Consumer Advocate NEVER acted as the Prosecuting Attorney per Section 13 above?
2. Why for the past four years has the Consumer Advocate and the former Director on numerous occasions told the Hearing Board that if the Office proved their case that it was our responsibility to hold in favor of the Office? It was only at the Gullotta hearing in November 2010 that she quoted the entire Section 4 that stated that we had the right to affirm, reverse or modify the action of the Office. For four years it was drilled into us that we had no choice and in some hearings, Board Members quoted the same to the individuals in the cases we were hearing, and NEVER were we told the information was only partially correct.
3. In the past four years the Consumer Advocate answered question for the Hearing Board and we assumed that she was our attorney. What happened that in the Gullotta hearing that she suddenly stated that she was not the Boards Attorney? Is this correct under Section 13 and why did it take four years for the Hearing Board to be informed of this? If this is correct why was the Hearing Board left without an attorney until May 2011?

4. In the Gullotta case the Defense Attorney presented several character witnesses who testified about the defendants character over the past 10-15 years. When I asked the prosecutor if I could question the witnesses over the same time period I was told that I could only ask questions in the time period after the Towing Ordinance was established. In my limited knowledge of the law, I was under the impression that once the defense opened the door for earlier times, I had the right to question the witnesses for the same time period. In addition was it not the Unlicensed Practice of Law for a non attorney to be giving legal advise?

5. The Defense Attorney presented a different interpretation of an insurance fraud conviction and claimed that in as much as the conviction was of a personal nature and not directly related to the towing industry it could not be used against his client. We were then told by the Consumer Advocate that in the case of a different interpretation of the law that it was up to the Hearing Board to decide which interpretation was correct. This doesn't make any sense that a Board of lay people should be determining law. Years ago I took legal courses at FAU and recall being told that the Trier of Fact is the jury and the Trier of Law is the Judge. Does this not apply here?

6. The defense attorney challenged the ordinance and stated that if his client did not get his license he was prepared to go to court and challenge the ordinance on constitutional grounds. At that point the persecutor stated that the ordinance has flaws and was being reworked. Not only did he not defend the ordinance but added fuel to the fire with his remarks. Since when does a prosecutor help the defense in his case?

7. At the May 25, 2011 meeting the Consumer Advocate appointed the Office manager to act as the prosecutor. I raised a point of order and asked under what authority she had to do this. I was then told that she had talked to her "boss" and was given permission. I then asked if her "boss" had the authority to over ride an ordinance. The answer was again, her boss" said it could be done. Does any attorney including the County Attorney have the authority to ignore or over ride an ordinance that has been approved and adopted by the State?

8. Its my understand, from two reliable sources, that the ethical way of handling a Conflict of Interest is 1. If known before a trial/hearing than the attorney should advise his/her superior and have another attorney handle the case. 2. If the conflict is discovered after the trial/hearing starts the attorney should immediately inform both sides of the conflict and allow both sides the option of continuing or of one objects he/she should recluse him/herself but in no case should a party in the suit continue without representation.

9. If any of these issues are due to inefficiencies in the ordinance than the ordinance should be changed/amended but should not be ignored when it becomes inconvenient to the various parties.

10. This is a very subjective observation, however, many on the Hearing Board felt that when a law suit was threatened the Prosecutor and Consumer Advocate buckled and in an apparent attempt to avoid a law suit wanted the case settled as quickly as possibly. I can appreciate an attorney working for the county wanting to avoid a law suit ,but, I don't think the public is being served by giving a convicted felon, guilty of numerous drug charges plus one for robbery with a weapon, a license in which he is in direct contact with the public. To avoid a law suit is not a reason to totally disregard the safety of the residents of Palm Beach County.

In conclusion Id like to say that our Hearing Board takes its job of protecting the public very seriously. In the four years we have heard a number of cases and the most it ever took was one half hour to forty five minutes to settle. This case took two and one half hours and became very contentious. It did not have to come to this if we had proper legal representation.

Herb. Milstein former Chair of the Hearing Board

**Board of County Commissioners
CONSUMER AFFAIRS HEARING BOARD
As of OCTOBER, 2011**

NAME & ADDRESS	Type	Race/ Sex	FIRST APPOINTED / Current Term	Re- appointed	TERM EXPIRES	Eligible For reappoint- ment
Athavale, Monohor 8712 S. Kendale Circle Lake Worth, FL 33467 561-304-2533 (h) 561-212-7781 (c) 561-304-2818 (FAX) mathavale@msn.com (Seat #4)	Citizen/ Resident	A/M	5/03/2011 1		05/13/13	YES
Domb, Alexander L. 11199 Polo Club Road., Suite 1 Wellington, FL 33414 561-578-8900 (o) 561-901-1799 (c) 561-578-8901 (FAX) alecdomb@gmail.com (Seat #1)	Attorney	W/M	1/13/2009 2	1/11/2011	01/13/13	NO
Guilarte, Pedro M. 6464 Wood Lake Road Jupiter, FL 33458- 2447 667-7696 (o) 575-2878 (h) 745-9159 (FAX) pedro@guilarte.com (Seat #2)	Chamber of Commerce	H/M	4/10/2007 3	1/11/2011	01/13/13	NO
VACANT (Seat #9)	Special Technical		3			

NAME & ADDRESS	Type	Race/ Sex	FIRST APPOINTED / Current Term	Re- appointed	TERM EXPIRES	Eligible For reappoint- ment
Murphy, Harold 13245 Compton Rd. Loxahatchee, FL 33470 Tel: (561) 662-0025 (cell) Fax: (561) 686-8307 <u>dirtyh911@aol.com</u> (Seat #8)	Special Technical	W/M	5/18/2010 1		5/18/2012	YES
VACANT (Seat #5)	Management/ Business skills - 5 years or more		2			
Shapkin, Philip 252 Southampton C Century Village West Palm Beach, FL 33417 686-2086 (h) <u>PhilBarb252@yahoo.com</u> (Seat #7)	Citizen/ Resident	W/M	2/07/2006 3	1/11/2011	1/11/10	NO
Waldron, Jr. James Turner 1425 39 th Street West Palm Beach, FL 33407 561-881-0091 (h) 561-685-3452 (c) <u>Jwald81663@aol.com</u> (Seat #6)	Citizen/ Resident	B/M	03/09/2010 1		03/09/12	YES
VACANT (Seat #3)	Certified Contractor					