



Joseph M. Centorino, Inspector General

TO: Honorable Mayor and Members of the City Commission
FROM: Joseph Centorino, Inspector General

DATE: February 4, 2022
PROJECT: Review of Termination of Tai Chi Instructor's Independent Contract Agreement
OIG No. 21-42

BACKGROUND

The Office of the Inspector General (OIG) received an e-mail on October 8, 2021, from City Commissioner Mark Samuelian sharing the concern of a business owner related to the termination of the City's agreement with Juan Alberto Amaro, a Tai Chi instructor at City Parks and Recreation Department facilities. The OIG initiated a review of the underlying facts and circumstances, as reflected below.

Mr. Amaro initially contracted with the City around 2011 to provide free classes for City residents. The City later began paying him as his classes gained in popularity. On January 22, 2021, the City entered into an agreement with Mr. Amaro, effective from October 1, 2020, through September 30, 2021, to provide Tai Chi classes for Miami Beach residents and visitors at the following location(s):

- Flamingo Park (999 11th Street, Miami Beach, FL 33139)
- Scott Rakow Youth Center (2700 Sheridan Avenue, Miami Beach, FL 33140)
- North Shore Park Youth Center (501 72nd Street, Miami Beach, FL 33140)
- Muss Park (4300 Chase Ave, Miami Beach, FL 33140)
- UNIDAD Senior Center (7251 Collins Ave, Miami Beach, FL 33141)

On September 10, 2021, Anthony Quinones, the owner of Miami Fitness Group I, Inc. (Miami Fitness), sent an email to the City's Parks and Recreation and Human Resources Departments requesting that all Mr. Amaro's classes be put on hold or cancelled. The email stated that Mr. Amaro, signed a non-compete contract with Miami Fitness, where he was also employed as an instructor, and posted a note on its business door notifying all members that he was teaching at a City facility only a short distance away. Mr. Quinones claimed that this practice needed to be immediately stopped, as it might appear that these changes had been approved by Miami Fitness.

The signed non-compete agreement, presented in Exhibit A at the end of this report, states, "*Alberto Amaro agrees that, during the term of employment, relationship with Miami Fitness Group, I, II, Inc., he/she will not engage in competing business in the industry of personal training, fitness coaching, fitness instructor or with fitness related activity or any other business that can in*

any way be deemed a competitor of Miami Fitness Group I, Inc. during his/her employment relation with Miami Fitness Group I, Inc. and a for a period of 2 year(s) after termination of employment with Miami Fitness Group I, Inc.” Furthermore, this agreement broadly defines a competing business as one that operates, in any capacity, in the Health and Fitness industry, within a seven-mile radius of Miami Fitness. Subsequent inquiries found that the City was unaware of Mr. Amaro’s non-compete agreement, prior to Mr. Quinones’ assertions, which was executed in 2015, or approximately four years after he began teaching classes for the City.

On September 13, 2021, the Assistant Parks and Recreation Department Director forwarded the Quinones e-mail and the non-compete agreement to the Miami Beach City Attorney’s Office, requesting a Legal Opinion. Before the City Attorney’s Office had prepared its response, Mr. Quinones spoke at the September 17, 2021 City Commission meeting during the Stanley Sutnick Citizens’ Forum, repeating his assertions and again requesting the City to suspend or terminate its contract with Mr. Amaro. This action was followed by the City’s termination of Amaro’s contract later that day.

OIG REVIEW

OIG staff contacted Mr. Amaro on October 11, 2021, to get his account of the events that led to his contract termination. He explained that the City had hired him to teach Tai Chi classes at the City of Miami Beach to Seniors for years, and that Miami Fitness management was aware and did not object. He believed that their objections started due to COVID-19 restrictions and space limitations.

Furthermore, Mr. Amaro said that he performed Silver Sneakers¹ classes at Miami Fitness, which is different from the Senior Tai Chi classes offered at the City. He also said that he does not use the equipment of Miami Fitness in his Senior Tai Chi classes. Mr. Amaro stated that his non-compete contract with Miami Fitness was no longer valid; however, he did not provide OIG staff with any written evidence to support his claim or release him from the signed non-compete contract.

The City’s Parks and Recreation Department obtained a copy of Mr. Amaro’s recent paystub for the period of July 16, 2021 to July 31, 2021, from Miami Fitness, which indicated that the two-year period specified in the non-compete agreement had not elapsed.

On September 17, 2021, the City Administration, following the Office of City Attorney’s recommendation, terminated Mr. Amaro’s independent contractor agreement, which states in Section 3: *“This agreement may be terminated by either party, with or without cause, by giving written notice to the other party of such termination, which shall become effective upon fourteen (14) days following receipt by the other party of the written termination notice.”* Based on this provision, the City Administration acted within its contractual prerogatives in terminating Mr. Amaro’s independent contractor agreement.

On October 13, 2021, a group of Miami Beach Seniors appeared before the City Commission to complain about the termination of Mr. Amaro. After listening to their complaints, the Mayor and Commissioners requested that the City Administration find a solution that would enable Mr. Amaro to continue teaching his Tai Chi classes at the City, where, based on input from a number of Seniors, there is a popular demand for his services. The item was to be added to the October

¹ Silver Sneakers is a health and fitness program that provides gym access and fitness classes for older adults that is covered by some Medicare plans.

27, 2021 City Commission agenda, to be discussed further if the employment issue remained unresolved.

In the interim, OIG staff contacted the Parks and Recreation Department Assistant Director about the solutions being considered. She replied by email on October 19, 2021, that Mr. Amaro, the City Attorney's Office and Park and Recreation staff had met, and that Mr. Amaro was given additional time to submit more information for consideration.

Based on the fact that, at the time of its recommendation to terminate, the City Attorney's Office was not aware of the defenses that Mr. Amaro had relating to the non-compete; Amaro's long-standing work history with the City since 2011 at multiple locations before, during and after his service at the private gym; and Miami Fitness's knowledge of his work for the City; it was decided that Mr. Amaro could continue providing Tai Chi classes to Miami Beach Seniors, and that the Parks and Recreation Department would continue to pay him for these services.

The only response received by the OIG to its Draft Report came in the attached email from Mr. Quinones, owner of Miami Fitness who had instituted litigation against Amaro based on the non-compete agreement. Mr. Quinones expressed his dissatisfaction with the City's response to his complaint. He also alleged that Mr. Amaro was involved in criminal misconduct of which the City may have been unaware.

OIG investigative staff checked into Mr. Amaro's background and determined that he had been the subject of misdemeanor charges, unrelated to his City services, which had been dismissed without any conviction. The Human Resources Department confirmed that it was aware of the information, which did not disqualify Amaro. Information was also received that Mr. Amaro's background was run through the Department of Children and Families Clearing House Level 2 Screening, which determines eligibility for an individual to work with vulnerable populations, and he was deemed eligible.

The Parks and Recreation Department has also informed that the litigation over the non-compete issue has resulted in a ruling against Mr. Amaro, to be followed by an injunction against his teaching for the City in North Beach, but allowing him to continue to teach classes for the City outside of North Beach.

Approved by:

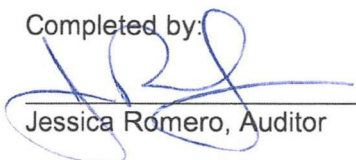
Joseph Centorino, Inspector General

02/07/2022
Date

Reviewed by:

F0957FFE6C2D49B...
Mark Coolidge, Chief Auditor

2/7/2022 | 11:02 AM EST
Date

Completed by:

Jessica Romero, Auditor

02/07/2022
Date

cc: Alina T. Hudak, City Manager
Rafael Paz, City Attorney
John Rebar, Parks and Recreation Department Director
Juan Alberto Amaro, Tai Chi Instructor
Tony Quinones, Miami Fitness Group I, Inc.

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Centorino, Joseph

From: Anthony Quinones <commit2fitnessinc@gmail.com>
Sent: Tuesday, December 21, 2021 9:24 PM
To: Centorino, Joseph; Coolidge, Mark; Romero, Jessica; Paz, Rafael
Subject: Fwd: Reminder --- Draft Report: OIG No. 21-42 Review of Termination of Tai Chi Instructor's Independent Contract Agreement

[THIS MESSAGE COMES FROM AN EXTERNAL EMAIL - USE CAUTION WHEN REPLYING AND OPENING LINKS OR ATTACHMENTS]

----- Forwarded message -----

From: Anthony Quinones <commit2fitnessinc@gmail.com>
Date: Tue, Dec 21, 2021 at 9:14 PM
Subject: Re: Reminder --- Draft Report: OIG No. 21-42 Review of Termination of Tai Chi Instructor's Independent Contract Agreement
To: Alonso, Elisa <ElisaAlonso@miamibeachfl.gov>

Evening

I find it interesting that the city now shows an interest in this case, since the lawsuit was filed. I have made over 20 phone calls and emails to every official in the city of Miami Beach. My initial request was to move Mr. Amaro's classes from the Unidad to another location or for his schedule to be on different days. The city needs to understand one thing, Mr. Amaro COERCED THE MAJORITY OF OUR MEMBERS TO FOLLOW HIM NEXT DOOR TO UNIDAD. WE HAVE PROOF FROM MANY MEMBERS who decided not to follow him and have written statements describing Mr. Amaro's actions during the previous days. WE went to the city seeking a solution. We weren't looking to terminate his employment, but the city didn't care. That's when we had to make the use of our valid contract and enforce our non-compete agreement. Mr. Amaro stated his non-compete agreement with our company was no longer valid, however, he failed to provide you with supporting evidence. I wonder why? Maybe because it's not in his best interest. I don't know WHAT ELSE WOULD YOU EXPECT FROM A CRIMINAL? I'M SURE IF YOU ARE AWARE THAT COINCIDENTLY HIS CRIMINAL CASE WAS CLOSED ON 8/31/2021. THEN THE VERY NEXT DAY HE POSTED A SIGN ON MY BUSINESS DOOR DETOURING OUR MEMBERS FROM OUR CLUB TO HIS NEW CLASS AT UNIDAD. MR. AMARO KEPT THE SAME SCHEDULE, SAME DAY OF THE WEEK, SAME HOUR, SAME CLASSES, SAME CLIENTS, JUST AT A DIFFERENT LOCATION (3 minute walk from our business). We opened one year and one month before Unidad. We faced the same restrictions every other business faced due to the outbreak. We had to implement new rules in order to comply with the city regulations. We did what every other small business had to do during a difficult struggle. Yet, we managed to continue offering FREE SENIORS CLASSES AND FREE ACCESS TO OUR HEALTH CLUB FACILITY. THE SENIORS NEVER PAID FOR ANY OF OUR SERVICES. WE STARTED THIS PROGRAM 12 YEARS AGO AND WE HAVE RECORDS OF EVERYONE WHO EVER CAME THROUGH OUR DOORS. The mayor claims it's a private matter between both parties, but sends a group of attorneys to my court proceedings TO DEFEND A NON CITY EMPLOYEE, BUT A SUBCONTRACTOR WITH A CRIMINAL RECORD. We were surprised to see them in court since our lawsuit wasn't filed against the city. The city attorneys filed a motion "filled with misinformation and lies". We will respond to their false allegations in a motion and during the trial. As of today NO ONE FROM THE CITY HAS EVEN TRIED TO FIND A RESOLUTION THAT SUITS BOTH PARTIES. UNBELIEVABLE

Tony Quinones
President
Miami Fitness Group, Inc
(954) 205-8502