

IN THE MATTER OF LUIS LOZANO,

INFORMATION TECHNOLOGY ASSISTANT,
LAGUARDIA COMMUNITY COLLEGE

SUBSTANTIAL BASIS INVESTIGATION REPORT
AND SETTLEMENT AGREEMENT
CASE NO. 19-193

WHEREAS, the Joint Commission on Public Ethics (“Commission”) is authorized by Executive Law § 94 to conduct an investigation to determine whether a substantial basis exists to conclude that any violations of the Public Officers Law have occurred, to issue a report of its findings of fact and conclusions of law, and to impose penalties for any violation;

WHEREAS, Luis Lozano (“Respondent”), has been employed by LaGuardia Community College (“LaGuardia”), part of City University of New York, as an Information Technology Assistant since 2005;

WHEREAS, on November 26, 2019, following an investigation into the matter, the Office of the Inspector General (“OIG”) sent this matter to the Commission for its consideration;

WHEREAS, on February 3, 2020, a letter was sent to Respondent alleging violations of Public Officers Law §§ 74 (3)(d) & (h), which afforded Respondent fifteen (15) days in which to respond;

WHEREAS, on March 2, 2020, Respondent provided a response to the Commission’s letter;

WHEREAS, on April 28, 2020, the Commission commenced an investigation into this matter;

WHEREAS, on or about March 30, 2022, in resolution of a disciplinary action taken against Respondent by LaGuardia, Respondent accepted a seven (7) day suspension from his employment with LaGuardia, comprising approximately \$1,494 in lost wages;

WHEREAS, Respondent and the Commission, the parties to this Settlement Agreement (“Agreement”), have agreed to resolve this matter in a manner that avoids additional administrative and/or adjudicatory proceedings;

NOW THEREFORE, in consideration of the mutual covenants made herein, as the final settlement of this matter, the parties stipulate and agree that:

1. Respondent admits that, for the purpose of assisting a relative's case in a court proceeding, he used a LaGuardia computer to install and run unauthorized forensic analysis software to examine evidence pertaining to the relative's case. Respondent further used official LaGuardia letterhead – in addition to listing his State email address as a means of contact – in a letter soliciting payment for forensic analysis services in connection with this case. This letter falsely implied that the analysis would be done in Respondent's official capacity as an employee of LaGuardia.
2. Respondent admits that the conduct described in Paragraph 1 violated Public Officers Law §74(3)(d), which provides that no officer or employee of a state agency should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others, including but not limited to, the misappropriation to himself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.
3. Respondent agrees to pay the Commission the amount of one thousand dollars **(\$1,000)** settlement of said violations, to be paid within sixty (60) days of execution of this Agreement.
4. The Commission has agreed to the terms of this Agreement based on, among other things, the representations made by the Respondent. To the extent that such representations made by the Respondent are later found by the Commission to be materially incomplete or inaccurate, the Respondent shall be in breach of this Agreement.
5. If the Respondent fails to timely perform any conditions set forth in the Agreement, Respondent shall be in breach of this Agreement.
6. Respondent agrees not to take any action or to make, permit to be made, authorize, or agree to any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects Respondent's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Commission is not a party. A violation of this Paragraph constitutes a breach of this Agreement by Respondent.
7. Upon a breach of this Agreement, the Commission shall have sole discretion to deem the Agreement null and void in its entirety, issue a new Notice of Substantial Basis Investigation and Hearing, which may include additional charges against Respondent and proceed with an enforcement action, and then issue a new Substantial Basis Investigation Report; or to deem the Respondent in breach of this Agreement and pursue, in court, any other remedy to which the Commission is entitled at law or in equity, including but not limited to, specific performance or injunction. As to any new Notice of Substantial Basis Investigation and Hearing or enforcement action by the Commission pursuant to this paragraph: (1) Respondent waives any claim that such action is time-barred by a statute of

limitations or any other time-related defenses; and (2) Respondent expressly acknowledges and agrees that the Commission may use any statements herein, or any other statements, documents or materials produced or provided by Respondent prior to or after the date of this Agreement.

8. Respondent shall upon request by the Commission provide all documentation and information reasonably necessary for the Commission to verify compliance with this Agreement.
9. Respondent understands and acknowledges that the Commission may investigate any other conduct not covered by this Agreement by Respondent and take any appropriate action.
10. Respondent waives the right to assert any defenses or any challenges to this Agreement, as well as any right to appeal or challenge the determination or conduct of the Commission relating to this matter in any forum.
11. This Agreement and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
12. Respondent consents to the jurisdiction of the Commission in any proceeding to enforce this Agreement.
13. It is understood that this Agreement is not confidential and will be made public within 45 days of its execution in accordance with Executive Law §§ 94(14) & (19).
14. This Agreement constitutes the entire agreement between the parties and supersedes any prior communication, understanding, or agreement, whether oral or written, concerning the subject matter of this Agreement. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been relied upon by any party to this Agreement.
15. Any amendment or modification to this Agreement shall be in writing and signed by both parties.
16. This Agreement shall become effective upon execution by the Commission or its designee.
17. In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.
18. By signing below, Respondent acknowledges reading this Agreement in its entirety, understanding all terms and conditions of this Agreement, and having done so, knowingly, voluntarily, and freely enters into this Agreement. Electronic signatures shall be deemed original for this Agreement. This Agreement may be executed in

two or more counterparts, each of which shall be deemed original, but all of which together shall constitute one and the same instrument. Respondent is represented by Michael Coviello, Esq., of District Council 37, AFSCME, AFL-CIO, Local 1070.

Dated: May 4, 2022



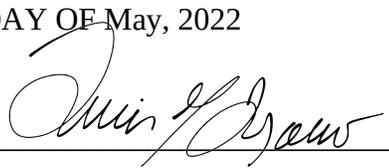
Sanford N. Berland
Executive Director
New York State Joint Commission on Public Ethics

ACCEPTED AND AGREED TO
THIS 3rd DAY OF May, 2022

Respondent

By:

Name: Luis Lozano



Approved:

Jose L. Nieves
Chair

Richard F. Braun
Terryl L. Brown
Colleen C. DiPirro
William P. Fisher
Sharon Stern Gerstman
C. Randall Hinrichs
Marvin E. Jacob
Gary J. Lavine
James W. McCarthy
David J. McNamara
George H. Weissman
James A. Yates
Members