

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.

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 Ghovae was the highest ranked applicant. Cheryl McGrady, assistant to City Manager Shane Crawford, then contacted Mr. Ghovae 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. Ghovae 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. Ghovae 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. Ghovae 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 Ghovae.”

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
day of March, 2017.

TRICE COPY
Original Signed
MAR 06 2017
The Honorable Jack Day
Circuit Court Judge

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