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11 **BOARD OF ADMINISTRATION**
12 **CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM,**

13 PIER' ANGELA SPACCIA,

14 Applicant,

15 v.

16 CITY OF BELL,

17 Respondent.

) Case No. 2011-0789 OAH No. 2012020198
)
) **RESPONDENT CITY OF BELL'S**
) **CLOSING BRIEF**
)
) Date: January 28, 2013
) Loc.: Calpers Regional Office, Orange CA
) ALJ: James Ahler
)
)

18 Respondent CITY OF BELL ("City" or "Bell") hereby submits its CLOSING BRIEF
19 supporting the position that Applicant/Appellant PIER' ANGELA SPACCIA's ("Spaccia") "final
20 compensation" for purposes of calculating her retirement benefits should be \$8526/month, which
21 was her compensation as set forth in her original contract with Bell---the **ONLY** Spaccia
22 employment contract publicly vetted and approved by the City Council, thereby constituting a
23 publicly available pay schedule.

24 **I.**

25 **INTRODUCTION**

26 In calculating Spaccia's retirement benefit, Calpers used Spaccia's compensation from all
27 public entities that she worked for except the City of Bell, where she worked from 2003 to 2010.
28 CalPERS' reasoning is that none of her employment contracts with Bell qualified as "final
compensation" under CalPERS' rules. Spaccia challenged CalPERS' determination

1 administratively and, after the customary pleading and discovery phases, hearing on such challenge
2 was had on August 27-30 and December 28, 2012 at CalPERS Regional Office in Orange, CA.

3 II.

4 **PROPOSED FINDINGS OF FACT**

- 5 1. Spaccia joined the City on July 1, 2003 via an employment agreement
6 (“Original Agreement”) (CalPERS Exhibit 7) Such Original Agreement set
7 Spaccia’s salary at \$3935/bi-weekly pay period, which is $26 \times \$3935/12 =$
8 \$8526/month. Her title was Assistant to the CAO. The Original Agreement
9 was properly agendized for City Council approval on June 30, 2003,
10 properly made available to the public as part of the “agenda packet” for the
11 City Council’s June 30, 2003 meeting, and properly approved by the City
12 Council. (City’s Exhibit 7, doc Bate stamp #s B035041, 69-74). Spaccia was
13 part of a management group/class on a pay schedule of all city employees
14 that was part of the agenda packet and approved by the City Council on June
15 30, 2003. (CalPERS Exhibit 20, Bate stamp B017156) At the time, Bell
16 was a “general law” city.
- 17 2. Addendum Number One to the Original Agreement, dated July 1, 2004 was
18 duly adopted by the City Council on June 28, 2004 (City Exhibit 9, Bate
19 stamp B035191); however, such Addendum Number One was not in the
20 agenda packet for the City Council Meeting, and there is no evidence that
21 Addendum Number One was otherwise made available to the public for
22 vetting prior to its consideration by the City Council.
- 23 3. Addendum Number Two to the Original Agreement was effective July 1,
24 2005. (CalPERS Exhibit 9). Although such Addendum Number Two
25 appears to be fully executed, there is no evidence that Addendum Number
26 Two was ever agendized for approval at a City Council meeting, actually
27 approved by the City Council, contained in an agenda packet or otherwise
28 made available to the public.

1 low-level administrator is not credible and is not supported by her level of
2 compensation.

3 11. Spaccia had no job description and her position was not on an organization
4 chart. She was assigned “special projects” by CAO Robert Rizzo.

5 **III.**

6 **SPACCIA’S POST 2005 CONTRACTS ARE VOID**

7 Art XI. section 3(a) of the California Constitution authorizes the adoption of a city charter
8 and provides that such charter has the same force and effect as state law. The “home rule”
9 provision of the California Constitution grants charter cities power over municipal affairs,
10 including the compensation of municipal officers and employees. *Art. XI section 5(b)*

11 However, a charter city may not act in conflict with its charter. Any act that is violative of
12 or not in compliance with the charter is void. *Katsura v. City of Buenaventura* (2007) 155
13 Cal.App.4th 104, 108. Specifically as to contracts, a contract made in disregard of the prescribed
14 mode set forth in the charter is unenforceable. *Id. at 109*. “A contract entered into by a local
15 government without legal authority is wholly invalid, ultra vires, and void.” *Mezzetta v. City of*
16 *American Canyon* (2000) 78 Cal.App.4th 1087, 1092 In this case, Addendum Number Three and
17 all subsequent employment agreements and addenda thereto were void *ab initio* because they were
18 made in violation of the City’s Charter.

19 Courts construe a city charter in the same manner as they construe a statute, first looking to
20 the language of the charter, giving effect to their plain meaning. As relevant to the matter at bar,
21 the Bell Charter states as follows:

22 Section 519. CONTRACTS. EXECUTION....

23 “By ordinance or resolution, the City Council may authorize the Chief Administrative
24 Officer or authorized representative to bind the City, with or without a written contract, for the
25 acquisition of equipment, materials, supplies, labor, services or other items included within the
budget approved by the City Council.”

26 Thus, under the Charter, the City Council may delegate contracting authority to the CAO, and did
27 so via Resolution No. 2006-42 which states, in pertinent part:

28

1 Addendum Number Two was not on any City Council Agenda, not approved by the City Council
2 as required, and not in any agenda packet that provides back up documents to assist the City
3 Council members and the public in understanding agenda items. Thus, not only is Addendum
4 Number Two void *ab initio* as set forth above, it also fails to be a “publicly available pay schedule”
5 for purposes of determining final compensation.

6 The same argument holds true for Addendum Number One, for although such Addendum
7 was agendized and approved by the City Council as a consent item, it was *not* in an agenda packet;
8 as such, it was impossible for Addendum Number One to be available to the public at all prior to
9 the time it was approved by the City Council.”

10 V.

11 **SPACCIA’S ORIGINAL AGREEMENT SHOULD BE USED TO DETERMINE**
12 **HER FINAL COMPENSATION**

13 Spaccia’s Original Agreement in 2003 is the only one that was (1) properly agendized for
14 consideration by the City Council, (2) approved by the City Council, and (3) was readily available
15 to the public by its inclusion in an agenda packet that was provided to the public on the day when
16 the City Council considered the matter. It also placed Spaccia in a “group or class” with other City
17 management personnel, including Spaccia’s protégé, Lourdes Garcia, who was the Finance
18 Director at the time. Accordingly, Spaccia’s \$8,526/month salary should be deemed her “final
19 compensation” for purposes of calculating her retirement benefits.

20 VI.

21 **CALPERS’ INITIAL DETERMINATION SHOULD BE DISALLOWED**

22 While the City understands CalPERS’ position in determining that no compensation at Bell
23 should be used in computing her “final compensation,” the City contends that CalPERS’ position
24 that duly-agendized, duly-adopted and publicly vetted employment agreements, without more, do
25 not constitute “publicly available pay schedules” is too narrow. All cities in California, whether
26 charter cities or general law cities, are subject to the Ralph M. Brown Act, Government Code
27 section 54950 *et seq.* (“Brown Act”). This law requires that cities take certain and very specific
28 steps to promote transparency of the conduct of city business. While it is possible for corrupt

1 elected officials and senior staff to attempt to circumvent the law, and violations are likely to only
2 be identified and remedied by actions of a concerned citizenry, absent such anomalies, the properly
3 enacted legislative decisions of the elected body should be upheld. Many cities do not have formal
4 pay schedules for senior city management, and they rely on employment contracts. In such
5 circumstances, such employment contracts are brought before the city council for approval in
6 accordance with Brown Act requirements: agendas are posted publicly far in advance of meetings,
7 agenda packets are prepared and distributed, and a discussion of agenda items is had in a public
8 forum prior to a vote of the council members. This procedure should be deemed to satisfy the
9 “publicly available pay schedule” requirement in the narrow instance where (1) a senior
10 management employee’s employment is by contract and there are no other existing applicable pay
11 schedules within the jurisdiction, and (2) the “final compensation” to be determined was earned
12 prior to the 2011 amendment to 2 CCR section 570.5. ¹

13 In this case, it is undisputed that Ms. Spaccia’s Original Agreement was adopted in 2003,
14 prior to 2 CCR section 570.5 being amended, and in full compliance with the Brown Act. Further,
15 there is no evidence to show that at that time there was any effort to hide the compensation paid to
16 City employees or otherwise circumvent the intent of the Brown Act as to Ms. Spaccia’s
17 employment. Accordingly, CalPERS’ initial determination disallowing Spaccia’s Original
18 Agreement should not be affirmed.

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24 ¹ Note that even under 2 CCR section 570.5(b), as amended, the Original Agreement can be used to
25 calculate “final compensation.” Section 570.5(b) (1) states: “Whenever an employer fails to meet
26 the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an
27 amount that will be considered to be payrate, taking into account all information it deems relevant
28 including, but not limited to, the following:...(1) Documents approved by the employer’s
governing body in accordance with requirements of public meetings laws and maintained by the
employer.”

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VII.

EQUITY CANNOT SAVE SPACCIA

From an equity standpoint, Spaccia argues that her final compensation should be the full amount she received under her most recent contracts with Bell because otherwise she would be a victim of Bell's malfeasance. In response, the City notes (1) that Spaccia, herself, was *part* of the malfeasance and, as such, should not profit from her "unclean hands;" and (2) our California Supreme Court expressly rejected Spaccia's argument, for "persons dealing with a public agency are presumed to know the law with respect to any agency's authority to contract." *Amelco Electric v. City of Thousand Oaks* (2002) 27 Cal.4th 228, 234. The contractors enter into agreements at their own risk--if they enter into void contracts with public entities, they get no relief. And in the case at bar, Spaccia is certainly not a "babe in the woods" because throughout her career she worked in the finance area for the public sector or consulting in the municipal finance area for public sector clients.

VII.

**SPACCIA HAS NOT MET HER BURDEN OF PROOF AS TO ALL COMPENSATION
SUBSEQUENT TO HER ORIGINAL CONTRACT**

The law is clear that an applicant for retirement benefits has the burden of proof to establish such benefits. *Greator v. Board of Administration* (1979) 91 Cal.App.3d 54, 57. Here, Spaccia must prove "compensation earnable" which is defined as "pay rate" pursuant to a "publicly available pay schedule" plus special compensation. *Government Code section 20636(g)(1);2 CCR section 570.5* As set forth above, she has not done so. Because Spaccia's employment at the City was entirely by contract, the ALJ's "playing field" of possible options to find "final compensation" is limited to (1) Spaccia's final compensation at her *previous employer* and (2) one of her employment agreements at Bell. Save for her Original Agreement, Spaccia fails to make out a *prima facie* case that any other employment contract is a valid one both as to authority and as to Brown Act compliance. Therefore, all options except the City's and CalPERS' positions here are eliminated.

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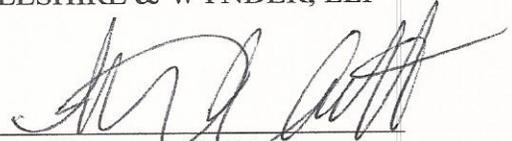
VIII.

CONCLUSION

For all of the foregoing reasons, Spaccia's final compensation at Bell should be determined to be \$8,526/month.

Dated: January 28, 2013

ALESHIRE & WYNDER, LLP



STEPHEN R. ONSTOT

Attorneys for Respondent, City of Bell