



**MUNICIPALITY OF ANCHORAGE**  
**Board of Ethics**

October 13, 2023

**Ethics Complaint for Potential Violation 2022-17**

Relevant Ethics Topic: Conflicts of Interest – AMC 1.15.060

A complainant<sup>1</sup> alleged that Assembly Chair Chris Constant violated Anchorage Municipal Code (AMC) 1.15.060 by participating in an official action in which he had a substantial private financial interest. Specifically, the complainant alleged that Mr. Constant would financially benefit from approval of the Holtan Hills housing development project and that he did not accurately disclose the nature of his financial interest to other assembly members.

The Board considered the complaint during a deliberative session on April 20, 2023, and accepted it for further investigation.<sup>2</sup> Having completed its investigation, the Board now issues this report concluding that the supported facts do not constitute a violation of the Code of Ethics.

**I. FACTS**

*A. Evidence considered by the Board*

The Board received testimony from the complainant on July 13, 2023, and from Mr. Constant on September 22, 2023. The Board also considered testimony Mr. Constant previously provided to the Board on September 21, 2022, when he sought an advisory opinion on this issue. The complainant attached a statement and business license information obtained from state websites. Mr. Constant provided referral brokerage agreements to the Board. Finally, the Board considered the disclosures that Mr. Constant made at Assembly Meetings and a work session, which are recorded and publicly

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<sup>1</sup> The complainant's name is redacted pursuant to AMC 1.15.160(E) and 3.90.040(D). Mr. Constant waived confidentiality.

<sup>2</sup> The complainant also alleged that the former municipal clerk violated the Open Meetings Act by not maintaining a recording of Mr. Constant's disclosure at an Assembly work session on November 4, 2022. The Board determined that AMC 1.25 (Public Meetings) required advance notice of the work session and that it be open to the public, but it did not require the work session to be recorded. Regardless, the clerk's office did maintain a recording, which is publicly available at <https://www.youtube.com/watch?v=TpsaTWOplI4>. Therefore, the Board declined further review of the complaint against the former municipal clerk pursuant to AMC 1.15.160(A)(2)(f) and (g).

available.<sup>3</sup> The following facts are based on the information that was provided to the board.

*B. Background of the potential conflict of interest*

Proposed Assembly Ordinance 2022-103(S), commonly known as the Holtan Hills project, sought to transfer land from the Heritage Land Bank to a private company, CY Investments, for the development of housing in Girdwood. Ms. Connie Yoshimura owns CY Investments, along with two real estate brokerages relevant to this complaint: (1) Berkshire Hathaway HomeServices, Alaska Realty (Alaska Realty), a real estate listing and selling brokerage; and (2) Berkshire Hathaway HomeServices Alaska Realty Referrals (Berkshire Hathaway Referrals<sup>4</sup>), a real estate referral brokerage.

Mr. Constant is a licensed real estate agent in Alaska. Real estate agents with an active license are required to keep their license with a brokerage. In 2022, Mr. Constant's license was in referral status with Berkshire Hathaway Referrals. Mr. Constant testified that he is not actively involved in listing or selling houses. A real estate agent who is not actively working in the industry may place their license in either "referral" or "inactive" status, which the Alaska Real Estate Commission explains as follows:

**What is the difference between referral and inactive status?**

In a referral status the licensee is still affiliated with a broker and an office. The reason why licensees go into a referral status is to avoid realtor dues and MLS dues/fees. This is a broker issue; therefore, it is up to them if they allow you to go into their referral company. As far as the Commission is concerned, you still have an active license.

In an inactive status, the licensee is **not** affiliated with a broker or an office. The license is placed in an INACTIVE status by the Commission after appropriate paperwork and fees are submitted by the licensee. A licensee can remain in an inactive status up to 24 months and the license can be renewed in this status. However, if you go past the 24-month deadline, by just one day, you will need to re-test and start the licensing process from the beginning. For example, if you are an associate broker or broker and let this inactive status go beyond the 24-months your license will expire and you would need to start all over with testing and pre-

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<sup>3</sup> The December 6, 2022, assembly meeting is available at <https://www.youtube.com/watch?v=sBMCRssDGx4>. The work session on November 4, 2022, is available at <https://www.youtube.com/watch?v=TpsaTWOplI4>. Mr. Constant also made disclosures at various other meetings, including the January 10, 2023, and February 7, 2023, Assembly meetings, but these disclosures simply refer to the disclosure that he made on December 6, 2022, and the Assembly's prior determination that the interest was not substantial.

<sup>4</sup> Some documents use the previous names of the two brokerages: "Dwell Realty, LLC" and "Dwell Realty Referrals." To avoid confusion in this report, the listing brokerage is consistently referred to as "Alaska Realty" and the referral brokerage as "Berkshire Hathaway Referrals."

licensing education as a salesperson. Please be advised of the possible ramifications of putting your license in an inactive status.<sup>5</sup>

Mr. Constant told the Board that he placed his real estate license in referral status with Berkshire Hathaway Referrals to avoid paying realtor dues or Multiple Listing Service (MLS) dues while he is not actively working in real estate. But he also wanted to avoid starting over with the testing and education requirements to become a realtor in the event he resumed his business in the future.

In referral status, Mr. Constant had the ability to earn referral fees from the brokerage. He testified that if he knew a buyer or seller who was looking for a real estate agent, he could refer that person to an agent at Alaska Realty and earn a percentage of the commission for making the referral. All real estate fees are regulated, and he cannot earn any additional fees or participate in the transaction after he makes the referral. The referral fees are standardized by Berkshire Hathaway (typically one percent, minus various fees), and are the same for any agent making the referral. Mr. Constant testified that he files financial disclosures every year that list all referral fees he earns, which are a matter of public record. He said he earned \$4,000 in real estate referral fees in 2022 and has earned \$1,000 so far in 2023.

Mr. Constant said that while he is in referral status, he is not allowed to list and sell properties or participate in any real estate transactions. The Berkshire Hathaway Referrals brokerage policy makes clear that he is not a part of the Alaska Realty brokerage. He does not maintain office space at Alaska Realty's office, nor is he permitted to attend their monthly sales meetings or realtor functions. He does not pay MLS dues and does not have access to Alaska Realty's MLS services. Finally, he receives no information on residential land development projects owned by CY Investments and has no affiliation with CY Investments. He does not obtain any financial benefit from a project that benefits CY Investments.

### C. *Mr. Constant's request for an advisory opinion*

On June 23, 2022, Mr. Constant requested an advisory opinion from the Board about this issue. His request was confidential under AMC 1.15.150(D). As such, the request was not posted on the Board of Ethics website, and Mr. Constant's appearance before the Board on September 21, 2022, was during an executive session. The clerk's office maintains a recording of this session.

Mr. Constant outlined the nature of his association with Ms. Yoshimura and Berkshire Hathaway Referrals, as described earlier. He made clear that he is only associated with the referral brokerage and is not associated with the listing brokerage

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<sup>5</sup> Alaska Real Estate Commission, *Frequently Asked Questions, Applicants and Licensees*. <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/RealEstateCommission/ApplicantsLicensees/FrequentlyAskedQuestions.aspx#:~:text=In%20a%20referral%20status%20the,go%20into%20their%20referral%20company>. (Last accessed October 3, 2023).

(Alaska Realty) or CY Investments. Therefore, he has no personal or financial interest in either company. Mr. Constant told the Board that in the past, he has recused himself from any projects involving Ms. Yoshimura out of an abundance of caution. However, he thought he was too strictly interpreting the conflict rules and had a duty to participate. Therefore, he sought clarification from the Board of Ethics on the matter.

Mr. Constant told the Board that while he knows Ms. Yoshimura professionally, he also knows many people in the real estate or building industries, and nothing about his relationship with Ms. Yoshimura causes him to have any private interest. The Board asked Mr. Constant whether his association with Berkshire Hathaway Referrals provided Ms. Yoshimura and CY Investments the ability to reward him financially for taking actions favorable to the company, or to retaliate against him for taking adverse actions.

He said there was no possibility for him to suffer financial harm for taking actions adverse to CY Investments. Alaska Realty does not refer potential clients to him or control his ability to earn referral fees. Thus, they could not harm his financial interests by refusing to associate with him. He does not obtain financial benefit from being in the Berkshire Hathaway Referral brokerage. Referral brokerages are common, and he could easily place his license with a different one.

He said that he would not obtain any financial benefit from approving the Holtan Hills project or other projects involving CY Investments. For Mr. Constant to obtain any financial benefit from the project, he would need to start actively working in the real estate business, join the Alaska Realty brokerage, and earn commissions from listing and selling properties developed by CY Investments. He has no plans to do that. Even then, future sales commissions would be years down the road and would depend on many independent factors that are speculative and impossible to predict.

The Board advised Mr. Constant that based on the facts presented, his connection to CY Investments and Ms. Yoshimura via the Berkshire Hathaway Referral brokerage seemed attenuated and was unlikely to create a substantial conflict of interest. The Board agreed with Mr. Constant's plan to disclose this situation to the rest of the body to permit the body to determine whether the conflict was substantial. Mr. Constant said he planned to disclose the situation at an assembly work session and when the matter came before the assembly at a meeting.

#### D. *The disclosures*

The Assembly held a work session for the Holtan Hills proposal on November 4, 2022.<sup>6</sup> At the start of the work session, Mr. Constant disclosed that he had a relationship with the project developer. He said his real estate license is in referral status, meaning that he is not an active licensee and does not list or sell real estate. He can make a fee for making a real estate referral, and his license is placed in Ms. Yoshimura's referral business. He pointed out that Ms. Yoshimura's referral brokerage and real estate listing

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<sup>6</sup> This work session was recorded and is available at <https://www.youtube.com/watch?v=TpsaTWOplI4>.

brokerage were different businesses, which are both different from CY Investments. Mr. Constant said he discussed the situation with the ethics board and, based on the information presented, his relationship with Ms. Yoshimura was too attenuated to create a substantial interest because he was only in the referral brokerage, which does not actively list and sell properties. The Chair ruled that Mr. Constant did not have a conflict and could participate in the work session.

The Holtan Hills project came before the assembly for debate and action at the regular assembly meeting on December 6, 2022.<sup>7</sup> Mr. Constant made the following statement when the matter came up:

As previously disclosed at a work session in November, I have a relationship with the applicant, Connie Yoshimura. I have a real estate license that's in referral status. My license is not active. I haven't actively transacted real estate since June 12, 2020. At that time, I left the real estate business, I left my office, I left the Alaska MLS system, and I am no longer a member of the Anchorage Board of Realtors. What I am able to do is make referrals to other brokerages. If I have a friend or know somebody who wants to buy a house or sell a house, I can make a referral. As I discussed in my previous disclosures, CY Investments is a corporation that does land subdivision. If you look up their [NAICS] codes under their business license, you can see that is the operation that business is under. The real estate brokerage is in two parts. One is the active real estate brokerage, the other is the referral real estate brokerage. Under the referral brokerage, I cannot list nor sell real estate, and I don't. I did visit the ethics board to have a discussion of this item with the ethics board and in that discussion, it was far ranging, and we covered many topics. They suggested that in this case, there isn't a conflict. That if I were in the active brokerage, it would be a closer question, but still not a clear conflict because I do not have a personal or financial stake in any of the business of CY Investments.

The chair then asked Mr. Constant the questions outlined in AMC 1.15.060(E), and he answered as follows:

1. Whether the financial interest or private interest is a substantial part of the matter under consideration? *No.*
2. Does the financial or private interest directly and substantially vary with the outcome of the official action? *There is none.*
3. Is the financial or private interest immediate and known or conjectural and dependent on factors beyond the official action? *So this is the one area where the discussion with the ethics board was very interesting. The question was if I activated my license, would there be a conflict? The question really turns on*

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<sup>7</sup> The agenda for the meeting is available at <https://meetings.muni.org/AgendaOnline/Meetings/ViewMeeting?id=4479&doctype=1>. The Holtan Hills project is listed as new business in item 14.E and discussion begins at 3:31:00 of the recording.

*several steps of conjecture. If I went active; if I had a client that was interested in buying; if I were to sit in one of the houses that will eventually possibly be developed in that subdivision, then there may be a conflict. The conjecture is so far out into the future as to be non-existent.*

4. Is the financial or private interest significant monetarily? *No, there is none.*
5. Is the financial or private interest a type which is generally possessed by the public or a large class of persons to which you or a member or your household belongs? *There is none.*
6. Are there any other factors deemed appropriate under the specifics of the disclosure and nature of the action? *No.*

The chair then asked all other assembly members if they had any questions for Mr. Constant. When none did, the chair ruled that Mr. Constant did not have a substantial or private interest in the matter before the assembly (item 14.E, the Holtan Hills project).

Mr. Constant made additional disclosures at future assembly meetings regarding the issue. Those disclosures were more cursory, and referred to the December 6, 2022, disclosure.

#### *E. Developments after the disclosures*

Mr. Constant said that he became aware of this complaint in July of 2023. On July 20, 2023, he switched his license to a different referral brokerage, and he is no longer part of Berkshire Hathaway Referrals. He said this supports his earlier statement that switching brokerages would be easy and being in Ms. Yoshimura's referral brokerage does not provide him any particular financial benefit. He said he would have switched brokerages sooner to avoid the whole issue, but he thought the matter was resolved after he made the disclosures.

## **II. DISCUSSION**

### *A. Because Mr. Constant made the required disclosures, the only issue before the Board is whether they were sufficient*

A public servant may not participate in an official action in which the public servant or a member of the public servant's immediate family has a substantial financial or private interest.<sup>8</sup> "Official action" means participation in a process, including deliberation, in which a decision or recommendation is reached.<sup>9</sup> An assembly work session is a gathering of assembly members "for the purpose of obtaining information and discussing an announced topic."<sup>10</sup> Thus, a work session is part of the process in

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<sup>8</sup> AMC 1.15.060(D). The section regarding conflicts of interest was significantly revised by AO 2023-37 on April 11, 2023. For the purpose of resolving this complaint, unless otherwise stated, all citations to 1.15.060 reference the previous version that was in existence in November and December of 2022 at the time the disclosures were made.

<sup>9</sup> AMC 1.15.060(C).

<sup>10</sup> AMC 1.25.005.

reaching a decision or recommendation. Before participating in the November 4, 2022, work session or the December 6, 2022, assembly meeting, Mr. Constant was required to disclose any private or financial interest. The disclosures must be in sufficient detail to permit the other members of the body to determine if the interest is substantial.<sup>11</sup>

Here, Mr. Constant disclosed the potential private interest at both the assembly work session and the regular assembly meeting. In both cases, the presiding officer made a determination that the interest was not substantial, and the decision was not overridden by majority vote of the body. Therefore, under AMC 1.15.060(F)(2)(e), the jurisdiction of the Board of Ethics to determine a violation of the Code of Ethics in this complaint is “expressly limited to the sufficiency of the disclosure.”

*B. The disclosures were sufficient*

The board finds that both disclosures were sufficient. Both provided the other members of the assembly with the essential facts and the potential link that Mr. Constant had with Ms. Yoshimura: that his real estate license was in referral status at a referral brokerage owned by Ms. Yoshimura. In both disclosures, Mr. Constant correctly informed the body that he had no connection to CY Investments. He also did not stand to gain financially from the Holtan Hills project because he is not a member of Ms. Yoshimura’s listing brokerage and does not actively list or sell properties. The attenuated nature of Mr. Constant’s interest was sufficiently disclosed and permitted the other members of the body to determine the interest was not substantial.

The complainant took issue with Mr. Constant’s statements that he was not an “active” licensee, did not have an active license, and was not actively engaged in listing or selling real estate. The complainant correctly pointed out that the Alaska Real Estate Commission considered Mr. Constant’s license to be active at the time. But Mr. Constant clearly and unequivocally stated that his license was in referral status, and outlined how he may earn a referral fee by referring a buyer or seller to another brokerage. This left no doubt about the state of his license. His reference to being “inactive” was an attempt to describe the nature of his current real estate practice and his inability to list or sell properties. The disclosures fully and fairly outlined the connection he had to Ms. Yoshimura, which is the key issue. Approval of the Holtan Hills project had no impact on the small and occasional referral fees Mr. Constant earns from sending a buyer or seller to a real estate agent who is actively involved in listing and selling properties.

Aware that he had an attenuated business relationship with a developer who could benefit from official action likely to come before the assembly, Mr. Constant sought the advice of the Ethics Board before proceeding. He then acted in accordance with the guidance he received by disclosing his interest at the assembly work session and assembly meeting. His disclosures provided sufficient detail to permit the body to decide whether the conflict was substantial and the body concluded it was not. Therefore, under

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<sup>11</sup> AMC 1.15.060(F)(2)(a).

AMC 1.15.060(F)(2)(d), Mr. Constant cannot be sanctioned for acting in compliance with the determination of the body and participating in the officials actions at issue.

### **III. CONCLUSION**

The board concludes that the supported facts do not consistute a violation of the Code of Ethics.

APPROVED by the Municipality of Anchorage Board of Ethics this 13<sup>th</sup> day of October, 2023.



Rebecca Windt Pearson, Chair  
Kelly Moghadam, Vice Chair  
Abram Goodstein  
Terrence Kelly  
Patrick Teagarden

Copy to:

- (1) Complainant
- (2) Mr. Constant
- (3) Municipal Clerk for electronic publication