BEFORE THE SEATTLE ETHICS AND ELECTIONS COMMISSION

In the matter of	)	No. 11-1-0711-1
	)	
	)	
Chau Phan	)	SETTLEMENT AGREEMENT
	)	
	)	

This settlement is made between Chau Phan and the Executive Director of the Seattle Ethics and Elections Commission (the "Director"). Upon approval by the Seattle Ethics and Elections Commission (the "Commission"), the following findings, conclusions and agreements shall be binding upon Chau Phan, the Director, and the Commission (the "Parties"), and their successors, heirs and assigns, and shall constitute the complete agreement between the Parties.

Phan and the Director agree to the following:

FINDINGS OF FACT

1. Phan worked for Seattle Public Utilities (SPU) from August 1995 to February 2011. Phan last worked in the Project Delivery Branch as an Associate Civil Engineer. In that role, he had access to the City's Consolidated Customer Service System (CCSS).

2. Each time an employee accesses a customer account, a unique user identifier is automatically recorded by the system. The identifier is tagged "_02" for access to a customer's SPU account. Phan's SPU CCSS identifier was PHANJ_02.

3. Phan had access to CCSS so that he could research and issue water availability certifications to property owners or developers.

4. During the time he was employed by SPU, Phan had two SPU utility accounts; one for his residence and one for a rental property.

5. On October 25, 2010, Phan manually posted a $527.69 cash payment to his residential account. He made no payment that corresponded to the posting.

6. On October 28, 2010, Phan manually posted a $521.80 cash payment to his rental property account. He made no payment that corresponded to the posting.

7. SPU terminated Phan's employment on February 11, 2011.

CONCLUSIONS OF LAW

1. SMC 4.16.070.1.a provides that a Covered Individual may not participate in matters in which that individual has a financial interest.

2. SMC 4.16.070.2.a states that a "Covered Individual may not use or attempt to use his other official position for a purpose that is primarily for the private benefit of the Covered Individual …."

3. Decisions regarding Seattle Public Utility customer accounts are City matters.

4. Chau Phan was a City employee in October 2010, and therefore a Covered Individual.

5. When Phan accessed his two utility accounts in October 2010 and recorded payments, he violated SMC 4.16.070.1.a by participating in City matters in which he had a financial interest.

6. When Phan recorded payments on his utility accounts without actually making those payments, he violated SMC 4.16.070.2.a by using his official position primarily for his own benefit.

AGREEMENT

1. Phan acknowledges that he violated the Seattle Ethics Code by participating in matters in which he had a financial interest, and misusing his City position for his own benefit.

2. Phan agrees to pay the City of Seattle $1500 for these violations.

3. The Parties agree that this settlement agreement, upon the Commission's approval, will constitute, insofar as is legally possible, a full and final settlement between the Parties, as to all facts, actions, controversies and matters that have occurred or may have occurred, as described herein, related to Phan's violation of the Seattle Code of Ethics. The Parties, release, acquit and discharge each party, its present or former officials, employees, agents, representatives, heirs and assigns from all present claims, demands, damages, costs (specifically including attorney's fees and costs), actions or causes of action which arise out of the specific facts outlined in this violation of the Ethics Code, and the acts or omissions of the Commission, its members, agents or employees in handling the matter filed under Ethics and Elections Commission Case No. 11-1-0711-1.

4. The Parties agree that the Commission's review of this settlement agreement does not preclude the Commission from hearing this case in the event that the Commission rejects this agreement and calls for a hearing, or in the event that Mr. Phan rejects any Commission modification of this agreement and requests a hearing.

5. The Parties agree that if Mr. Phan breaches this agreement, in any respect, the Commission will be entitled to hold a special meeting or a regular meeting to issue a determination that Mr. Phan has violated the Seattle Ethics Code. Under the municipal code, the Commission may impose a fine of up to $5,000 per violation, and may require costs that do not exceed the amount of any monetary fine.

6. The Parties agree that this settlement incorporates and supersedes any and all other oral and written agreements and assurances of any and all kinds between the parties, and that there are no other written or oral agreements that alter or modify this agreement.

Chau Phan
Date: 11-30, 2011

Wayne Barnett, Executive Director
Date: Nov. 30, 2011