

OMETRIAS D. LONG & ASSOCIATES, P.A.
ATTORNEYS AT LAW

DATE: JUNE 19, 2007

Send to:

Doug Starcher (407 425-8377)
Bob Gilbert (407 825-4073)

From: Ometrias D. Long & Associates, P.A.

Office Location: 400 Park Ave S. Ste 150,
Winter Park, FL 32789

Re: Hojeij DBE status

Number of Pages, Including Cover: 6

URGENT

REPLY ASAP

PLEASE COMMENT

PLEASE REVIEW

FOR YOUR INFORMATION

COMMENTS:

Dear Bob & Doug,

Please find enclosed a memorandum reflecting our analysis of Mrs. Hojeij's \$450,000.00 net worth exemption, as claimed per her arrangement with Omni National Bank. The final decision is yours, but here, nevertheless is our opinion on the matter.

-Deon

Please distribute this facsimile accordingly.

Thank you.

Ometrias D. Long & Associates, P.A.
400 Park Avenue South, Suite 150
(407) 647-0823 | (407) 647-6282
odlong@cfl.rr.com | www.odlassociates.com

EXHIBIT A

MEMORANDUM OF RESEARCH

FROM: Ometrias Deon Long, Esq.; Ometrias D. Long & Associates, P.A.

FOR: Greater Orlando Aviation Authority

DATE: June 18th, 2007

RE: Carol Hojeij DBE Decertification action; possible exemption of \$450,000 from personal net worth

Facts

Based on current analyses, Carol Hojeij failed to list key information concerning her personal net worth, on Mrs. Hojeij's initial application for Disadvantaged Business Enterprise ('DBE') status, with the Greater Orlando Aviation Authority ('GOAA'). Subsequent requests for information have revealed that Mrs. Hojeij's actual net worth exceeds the \$750,000.00 limit. Mrs. Hojeij now submits a letter from Omni National Bank, referencing a potential loan to Mrs. Hojeij.

Issue

Whether Carol Hojeij's solicitation for a loan, as evidenced by a letter from Omni National Bank, enables Mrs. Hojeij to exclude \$450,000.00 in income from personal net worth calculations under 49 CFR §23.3 (2006), so as to enable Mrs. Hojeij to remain under the \$750,000.00 net worth limit.

Brief Answer

No, because Mrs. Hojeij has no current and verifiable obligation in place, as is required under 49 CFR §23.3 (2006).

Discussion

In order to be certified as a DBE, one of the criteria to be used when evaluating whether an applicant is truly a 'socially and economically disadvantaged individual' is that they have a personal net worth of less than \$750,000.00. Any individual with a net worth of over this amount is presumed to not be disadvantaged, and is therefore ineligible to be awarded DBE status.¹ Further explanation of the 'personal net worth' criteria is found in 49 CFR §23.3, which defines 'personal net worth' as the net value of the assets of an individual remaining after total liabilities are deducted. Section 23.3 then goes on to explain that specifically excluded from an individual's net worth calculation are:

¹ 49 CFR §23.33 (2006)

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...other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individuals' ACDBE business), to a maximum of \$3 million.

Final clarification of this \$3 million exemption to the net worth calculations is provided by the Federal Department of Transportation (the 'Department'), which clarifies that "Only assets supporting obligations for which the individual is currently liable, which are properly documented, and for which his or her personal assets are encumbered, should be counted toward this exclusion."²

The Department provides three examples to illustrate whether an obligation is one for which an individual is 'currently liable,' which is 'properly documented,' and for which 'his or her personal assets are encumbered.' (1) In the first example, the point is made that even the existence of a line of credit, with personal assets pledged to secure that line of credit, is not sufficient for an exclusion from net worth calculations: only the amount actually drawn on the line of credit is counted. (2) In the second example, the point is made that only the outstanding balance of a loan already closed is to be counted as an exclusion from net worth calculations. And (3) in the third example, the point is made that the assets securing a loan in connection with developing a concession must be personal assets, not those of a concession corporation.

The Department further makes clear that the ACDBE applicant bears the burden of demonstrating eligibility. It is therefore reasonable—for example—for certifying agencies to request all supporting documentation for each claimed financial obligation, including loan agreements, and supporting lien and/or letter of credit documents. Certifying agencies "should pay particular attention" to the terms of a financial obligation, to determine the extent to which the individual owner, as distinct from a corporation, is obligated to repay the obligation.³

In the instant case then, the analysis must start with the recognition that as per the financial information most recently submitted by Mrs. Hojeij, Mrs. Hojeij's net worth, both at the time of her application and after, has been around in excess of the \$750,000.00 upper limit for 'socially and economically disadvantaged' individuals. In order to deal with this overage, Mrs. Hojeij therefore claims that \$450,000.00 worth of additional funds should be allowed, since they fall under the \$3 million exception of 49 CFR §23.3 (2006). As proof, Mrs. Hojeij submits a letter from Omni National Bank ('Omni'), Georgia, ostensibly to show that Mrs. Hojeij has incurred \$450,000.00 in debts, related to the expansion of her ACDBE business.

Close analysis however, indicates that, at best, the recent interaction with Omni National Bank amounts to a *solicitation* for a loan, and not an actual obligation, as is required for the \$3 million net worth exception. As explained above, the first hurdle that

²<http://osdbuweb.dot.gov/OSDBUSERVICES/DBEPROGRAM/GuidanceforDBEProgramAdministrators/FAQsonDBEProgramRegs49CFR23/tabid/303/Default.aspx>.

³ *Id.*

must be met is to determine that an obligation actually exists. Here, there is no obligation for which Mrs. Hojeij is 'currently liable,' and for which her personal assets 'are encumbered.' The letter from Omni merely states that Mrs. Hojeij has "approached the bank" for a loan, and that the letter is "not to be construed as a commitment" for Omni to make the actual loan.

Indeed, no indicia of an actual obligation on the part of Mrs. Hojeij, exists. As examples, (drawing from the Department's hypotheticals), (1) there is no currently liable loan that is already drawn, for the purpose of developing Mrs. Hojeij's company; (2) there is no outstanding loan already closed; and (3) it is not known whether the assets securing any obligation to Omni are personal or corporate assets, since Omni merely states that "Our bank would require that Mrs. Hojeij pledge \$450,000.00 in assets before we will loan her monies..." (See attached, Exhibit 'A,' June 14th, 2007, Letter from Omni National Bank).

By solely providing this non-obligatory letter, Mrs. Hojeij fails her burden of proof for eligibility for the \$3 million exclusion. It is impossible for the GOAA (as the Department suggests) to request any supporting documentation for this purported obligation, because no loan agreements, lien, or letter of credit documents, exist. It can never be known to the GOAA the terms of the financial obligation, and the extent to which Mrs. Hojeij, rather than a corporate entity, is obligated for repayment.

Conclusion

In order to have \$450,000.00 of her funds excluded from her personal net worth, at a minimum, Mrs. Hojeij should have provided evidence of a line of credit that was already drawn on, or a loan that was already closed. If such evidence had been presented, the GOAA would then have proceeded to verify—for example—that Mrs. Hojeij—rather than a company—was personally obligated. No such loan exists however, since the letter from Omni National Bank is explicitly "not to be construed as a commitment." Mrs. Hojeij has therefore failed to meet the burden of proof required for any exemption in assets under 49 CFR §23.3 (2006).

EXHIBIT A

RECEIVED 06/15/2007 14:42 4876476282

OMETRIAS D LONG
8.7



**Omni National Bank
Six Commerce Parkway
Suite 2000
Atlanta, GA 30329
770-395-6000 Telephone
678-291-6000 Facsimile**

June 14, 2007

To Whom It May Concern:

[illegible]

Mr. Hays told him it was to \$250,000 on the basis of the building cost. By understanding it was that that amount of the bank was withdrawing in the amount of \$1,400,000 for the Siles Bank Federal Trusting Building. Our bank would require the plan. They would require \$250,000 in cash and they would take the plan for the purpose. Finding those funds is necessary for the plan. It is a building that is built. Therefore, the bank for Mr. Hays would be in the amount of \$250,000.

There should not be confusion as to the purpose of this letter. It is not to be used as a threat or a demand for information. It is to be used as a statement of the facts and to inform you of the results of the investigation.

Spoken

**Strikes County
Sells Via Palace
Daily Market Store**



GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Airport Boulevard
Orlando, Florida 32827-4399

MEMORANDUM

TO: Members of the Aviation Authority
FROM: Steve Gardner, Executive Director
DATE: June 20, 2007

ITEM DESCRIPTION

Recommendation of the Concessions/Procurement Committee to Award Airside 3 Food Court and Sit Down Restaurant Concession

BACKGROUND

On November 7, 2006, Staff issued Request for Proposal (RFP) documents for the Airside 3 food court and sit down restaurant to be located in the airside 3 hub. The term of the concession is 15 years and includes the following financial issues applicable to the successful proposer:

- A Minimum Annual Concession Fee (MACF) payable to the Aviation Authority of \$1 million or specified percentages of food and beverage sales, whichever is higher
- A minimum of \$2.4 million for tenant build out
- A payment of \$2.5 million as key money paid to the Aviation Authority for the cost of shell space construction by Aviation Authority contractors

The successful proposer will be granted the non-exclusive right and obligation to operate and maintain, at its own expense, the concession for the display and sale of food and beverage for consumption on the premises where sold. The total space involved represents some 19,147 square feet of which 7,880 square feet represents available commissary with the remainder available for food preparation, sales, and seating.

The Airside 3 hub and concourses are undergoing construction rehabilitation. Accordingly, the RFP specifies the successful proposer will have access for the new food court shell space on approximately December 2007, with the food court to be constructed and operational by April 2008. The proposed sit down restaurant shell space is currently occupied by the existing food service provider and cannot be abandoned until the new food court is open. Allowing for demolition of the existing food court, construction of the new expanded shell space by the Aviation Authority's contractor, and build out of the sit down restaurant by the successful proposer, the sit down restaurant should be operational by January 2008.

Accordingly, the Minimum Annual Concession Fee can be proposed for the time period that only the food court is operational with the ultimate fee applicable for full build out of all the concession space to include the sit down restaurant.

At the Aviation Authority board meeting on December 6, 2006, Staff was directed to add language to the RFP to allow favorable consideration to proposers who incorporate a local food concept.

Among other basic submittal requirements, the RFP provides the following evaluation criteria for selection of the successful proposer:

- Evaluated as satisfactory or unsatisfactory
 - Financial responsibility
 - Reputation
 - DBE goal attainment or good faith effort
- Evaluated and ranked for preference
 - Demonstrated experience
 - Depth of management
 - Concepts, price ranges, variety of menu
 - Concession improvements
 - Financial return to the Aviation Authority

ISSUES

Staff received 5 proposals in response to the RFP as listed below in alphabetical order and with the Minimum Annual Concession Fee (MACF) as noted:

<u>Proposer</u>	<u>Food Court MACF</u>	<u>Sit Down Restaurant MACF</u>	<u>Total MACF</u>
Areas/Hojeij, JV	\$1,100,000	\$1,100,000	\$2,200,000
Creative Host Services of Florida, LLC	\$ 950,000	\$ 550,000	\$1,500,000
Delaware North, Inc.	\$ 860,000	\$ 565,000	\$1,425,000
Orlando Hometown Concessions, LLC	\$1,300,000	\$ 880,050	\$2,180,050
OTG MCO Venture, LLC	\$1,060,000	\$ 940,000	\$2,000,000

On May 4, 2007, the Concessions/Procurement Committee met to consider, evaluate, and rank the proposals for recommendation to the Aviation Authority Board. At the meeting, Staff reported that all 5 proposals achieve the minimum requirements specified in the RFP and were thus responsive and eligible for further consideration by the Committee. The Committee considered the proposals and recommended that Areas/Hojeij, JV as the first ranked firm and Orlando Hometown Concessions, LLC as the second ranked firm. The Areas/Hojeij proposal was given favor over the second ranked firm based on financial return to the Aviation Authority with all other evaluation criteria considered equal between the 2 proposals. No other firms were ranked on the basis that the proposals of the top 2 firms were far superior to the other proposals in one or more categories.

On May 8, 2007, Orlando Hometown Concessions, LLC appealed the Concession/Procurement Committee recommendation. I heard the appeal on May 10, 2007. The appeal raised issues regarding "preference ranking" by the Concessions/Procurement Committee, the method for determining the best financial return to the Aviation Authority, the use of an interim bar for alcoholic beverages during the food court only phase, and the DBE certification of Hojeij Branded Foods, Inc.

By letter dated June 13, 2007, I responded by denying Orlando Hometown Concessions, LLC appeal regarding the method for determining the financial return to the Aviation Authority and allowable use of the interim bar during the food court only phase. Issues regarding the "preference ranking" were upheld and this matter was referred back to the Concession/Procurement Committee for action. A decision regarding the DBE certification of Hojeij Branded Foods, Inc. was deferred. Please refer to the attached decision letter.

On June 14, 2007, the Concessions/Procurement Committee met and re-evaluated those criteria components requiring a ranking for preference. The results were similar to the initial findings of the Committee on May 4, 2007. No further appeals were received.

The issue regarding DBE certification of Hojeij Branded Foods, Inc. required procedural compliance with federal regulations and requests for additional information. Ultimately, the process was completed on June 19, 2007, with a determination that Hojeij Branded Foods, Inc. would not be decertified as a DBE. Any appeal of such decision is required by regulation to be made to, and heard by, the U. S. Department of Transportation, and not the Aviation Authority.

During the course of the appeal it became apparent that irregularities in the DBE certification process occurred with impact to both of the ranked proposers. Those irregularities included completeness of applications, timeliness of

submittal for requested additional information from the proposers, timeliness of requests for DBE certification, and timeliness of DBE certification by Staff. While these issues are of concern, it is my opinion that both of the ranked proposers achieved the requirements of the Aviation Authority's DBE policy by having made "good faith efforts" to meet the goal.

Based upon the Concession/Procurement Committee's actions on May 4 and June 13, and the review and analysis of the appeal by Orlando Hometown Concessions, LLC, I concur with the recommended ranking by the referenced Committee of Areas/Hojeij, JV first and Orlando Hometown Concessions, LLC second be upheld. Please refer to the attached decision letter.

ALTERNATIVES

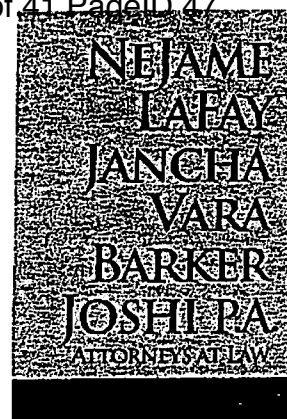
The Aviation Authority Board can (a) reject the Concessions/Procurement Committee's recommendation and change the ranking of the proposers or (b) in accordance with the Aviation Authority's Concession Policy, reject all proposals and issue a new RFP.

FISCAL IMPACT

The first ranked proposer, Areas/Hojeij, JV provided a Minimum Annual Concession Fee of \$2,200,000 at full build out of all facilities.

RECOMMENDED ACTION

It is respectfully requested that the Aviation Authority Board resolve to (1) approve the ranking of the Concessions/Procurement Committee as follows: first - Areas/Hojeij, JV and second - Orlando Hometown Concession, LLC; (2) award the Airside 3 food court and sit down restaurant concession to the first ranked proposer, Areas/Hojeij, JV; (3) negotiate a contract with the top ranked firm and, if unsuccessful, negotiate a contract with the second ranked firm, and (4) authorize an Aviation Authority Officer or the Executive Director to execute the necessary documents, following satisfactory review by legal counsel.



January 18, 2008

Custodian of Public Records
Greater Orlando Aviation Authority
One Airport Blvd.
Orlando, Florida 32827-4399

Via US Mail &
Facsimile (407)825-2526

RE: Request for Public Records

Dear Custodian:

Pursuant to the State of Florida's Public Records Act (the "Act"), I request that you, as the Custodian of Public Records of the Greater Orlando Aviation Authority ("GOAA"), provide to me in compliance with such law, a copy of the following public records in the possession of GOAA, or any agent(s) thereof, including legal counsel:

All legal memoranda and/or reports, regardless of their physical form, drafted and/or prepared by Douglas E. Starcher, Esquire, and/or Ometrias Deon Long, Esquire, between May 8, 2007, and June 29, 2007, and addressed to and/or copying Messrs. Steve Gardner, Kevin Dillon, Robert L. Gilbert and/or C. Christian Schmidt at GOAA, in connection with, and in any way relating to, Hojeij Branded Foods, Inc., and its eligibility and/or ineligibility for DBE certification with and/or by GOAA.

Please be advised that, even though GOAA may consider the above requested public records to be subject to attorney-client privilege, long-standing Florida law clearly provides that the requested records are nevertheless still subject to public production under the Act. *See City of N. Miami v. Miami Herald Publishing Co.*, 468 So. 2d 218 (Fla. 1985); *Wait v. Fla. Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

I understand that this Request for Public Records may be maintained as a portion of GOAA's public records. Further, if requested, I agree to pay GOAA the allowed costs for providing copies of the requested public records.

Please let me know as soon as possible when the requested public records will be ready for pick-up and the total cost, if any, for copying same. In an effort to avoid undue delay in the production of the requested public records, please note that I am copying Messrs. Starcher, Long,

EXHIBIT C

Pg. 2

RE: Request for Public Records

Gardner, Dillon, Gilbert and Schmidt with this letter so that they may immediately begin reviewing their files and gathering the requested public records in furtherance of this Request and in compliance with Florida law.

Thank you for your attention to this matter. I look forward to your prompt response.

Sincerely,



Rick L. Jancha

RLJ/mmr

cc: Douglas E. Starcher, Esquire
O. Deon Long, Esquire
Mr. Steve Gardner
Mr. Kevin Dillon
Mr. Robert L. Gilbert
Mr. C. Christian Schmidt

01/23/2008 14:41 4078252526

DAYCI SNYDER

PAGE 01



GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Airport Boulevard
Orlando, Florida 32827-4399

VIA FACSIMILE (407) 245-2980

January 23, 2008

Mr. Rick Jancha
Nejame, LaFay, Jancha, Vara, Barker, Joshi, PA
Suite 1800
189 South Orange Avenue
Orlando, FL 32801

Dear Mr. Jancha:

RE: PUBLIC RECORDS REQUEST - JANUARY 18, 2008

I am responding to your public records request dated January 18, 2008, for the following:

"All legal memoranda and/or reports, regardless of their physical form, drafted and/or prepared by Douglas Storch, Esquire, and/or Ometrias Deon Long, Esquire, between May 8, 2007, and June 29, 2007, and addressed to and/or copying Messrs. Steve Gardner, Kevin Dillon, Robert L. Gilbert, and/or C. Christian Schmidt at GOAA, in connection with, and in any way relating to, Hojeij Branded Foods, Inc. and its eligibility and/or ineligibility for DBE certification with and/or by GOAA."

As acknowledged in your letter, I will be coordinating this request with the individuals named above.

Please note that payment is due before or at the time the copies are picked-up or mailed.

Sincerely,

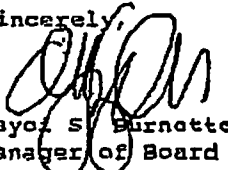
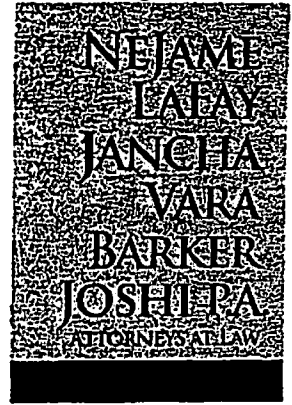

Dayci S. Burnette-Snyder
Manager of Board Services

EXHIBIT D



January 31, 2008

Ms. Dayci S. Burnette-Snyder
Manager of Board Services
Greater Orlando Aviation Authority
Orlando International Airport
One Airport Boulevard
Orlando, Florida 32827-4399

VIA FACSIMILE & U.S. MAIL
(407) 825-2526

RE: Public Records Request-January 18, 2008

Dear Ms. Burnette-Snyder:

On January 18, 2008, I sent a very specific and limited Public Records Request to the Greater Orlando Aviation Authority. On January 23, 2008, you responded by facsimile acknowledging my earlier request and indicating that you would be coordinating the response.

It now has been 13 days since my request. I have not received any documentation in response to my request. I do not understand this failure to produce the requested documentation.

Please provide the documents requested in my public records request of January 18, 2008. Please let me know the cost for reproducing this material and I will immediately have a member of my staff come to pick up the documents and have the appropriate check for payment.

I thank you in advance for your prompt attention to this matter.

With regards,


Rick L. Jancha, Esq.

RLJ/mmr

EXHIBIT E

01/31/2008 17:19

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DAYCI SNYDER

PAGE 01



GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Airport Boulevard
Orlando, Florida 32827-4399

VIA FACSIMILE (407) 245-2980

January 31, 2008

Mr. Rick Jancha
Nejame, LaFay, Jancha, Vara, Barker, Joshi, PA
Suite 1800
189 South Orange Avenue
Orlando, FL 32801

Dear Mr. Jancha:

RE: PUBLIC RECORDS REQUEST - JANUARY 18, 2008

In follow-up to my letter of January 23, 2008, that responded to your letter of January 18, 2008, for the following:

"All legal memoranda and/or reports, regardless of their physical form, drafted and/or prepared by Douglas Starcher, Esquire, and/or Ometrias Deon Long, Esquire, between May 8, 2007, and June 29, 2007, and addressed to and/or copying Messrs. Steve Gardner, Kevin Dillon, Robert L. Gilbert, and/or C. Christian Schmidt at GOAA, in connection with, and in any way relating to, Hejeij Branded Foods, Inc. and its eligibility and/or ineligibility for DBE certification with and/or by GOAA."

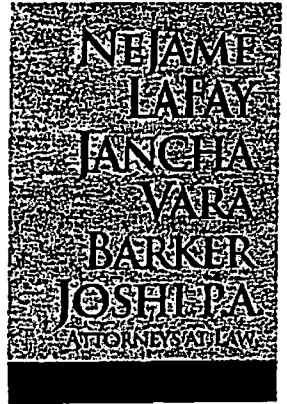
Please note that there is one memorandum that falls under this public records request. However, we are prohibited by federal law, particularly 49CFR26.67.iv, from disclosing it to you, as the memorandum directly relates to the personal net worth of a ACDRE applicant. We are prohibited from disclosing this memorandum to you without the written consent of the applicant.

Sincerely,

A handwritten signature in black ink, appearing to read "Dayci S. Burnette-Snyder".

Dayci S. Burnette-Snyder
Manager of Board Services

EXHIBIT F



February 1, 2008

Ms. Dayci S. Burnette-Snyder
Manager of Board Services
Greater Orlando Aviation Authority
Orlando International Airport
One Airport Boulevard
Orlando, Florida 32827-4399

VIA FACSIMILE & U.S. MAIL
(407) 825-2526

RE: Public Records Request-January 18, 2008

Dear Ms. Burnette-Snyder:

I have received your "response" to my records request of January 18, 2008. Thank you for at least acknowledging on behalf of GOAA that there is "one memorandum that falls under this public records request."

The next issue we must address is when will this memorandum be produced? I am quite familiar with 49 C.F.R. § 26.67 (iv), and must respectfully submit that such C.F.R. does not apply to the memorandum in question but is limited only to non-disclosure of "...an individual's net worth statement or any document supporting it." Certainly, GOAA can not be contending that its' attorney's prepared the net worth statement for an ACDBE applicant.

In any event, rather than "split hairs" on this issue, when will GOAA be providing me a redacted version of this memorandum? Pursuant to Florida Statutes §119.07(1)(d), "A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying."

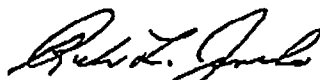
EXHIBIT G

Page 2

RE: Public Records Request-January 18, 2008

When will GOAA be providing me a redacted copy of the memorandum that it now concedes does in fact exist? I look forward to your prompt compliance.

With regards,



Rick L. Jancha, Esq.

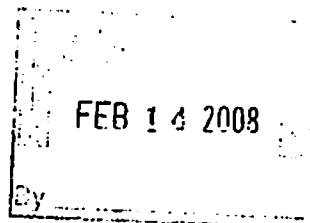
RLJ/mmr



GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Airport Boulevard
Orlando, Florida 32827-4399

VIA CERTIFIED MAIL



February 12, 2008

Mr. Rick Jancha
Nejame, LaFay, Jancha, Vara, Barker, Joshi, PA
Suite 1800
189 South Orange Avenue
Orlando, FL 32801

Dear Mr. Jancha:

RE: PUBLIC RECORDS REQUEST - JANUARY 18, 2008

In follow-up to my letter of January 31, 2008, that responded to your letter of January 18, 2008, for the following:

"All legal memoranda and/or reports, regardless of their physical form, drafted and/or prepared by Douglas Starcher, Esquire, and/or Ometrias Deon Long, Esquire, between May 8, 2007, and June 29, 2007, and addressed to and/or copying Messrs. Steve Gardner, Kevin Dillon, Robert L. Gilbert, and/or C. Christian Schmidt at GOAA, in connection with, and in any way relating to, Hojeij Branded Foods, Inc. and its eligibility and/or ineligibility for DBE certification with and/or by GOAA."

Please note that I have never seen the memorandum that responds to your request but was told one exists and what its subject matter was. As to your "statement" of February 1, 2008, that such C.F.R. does not apply to the memorandum in question, I have asked legal counsel to look again to determine whether it can be disclosed and whether part of it may be redacted to enable disclosure without violating federal law.

Sincerely,

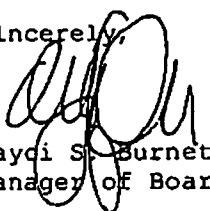

Daydi St. Burnette-Snyder
Manager of Board Services

EXHIBIT H

1 IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
2 IN AND FOR ORANGE COUNTY, FLORIDA

3 CASE NUMBER: 2008-CA-6025

4 NEJAME, LAFAY, JANCHI, VARA
5 BARKER, JOSHI, P.A., a Florida
6 Professional corporation

7 Plaintiff,

8 vs.

9 GREATER ORLANDO AVIATION
10 AUTHORITY, an agency of the City
11 Of Orlando,

12 Defendant.

13 DEPOSITION OF: OMETRIAS DEON LONG

14 DATE TAKEN: November 30, 2010

15 TIME: 10:08 a.m. to 1:19 p.m.

16 TAKEN BY: The Defendant

17 PLACE: The Office of NeJame, LaFay, Jancha,
18 Ahmed, Barker, Joshi, P.A.
19 189 South Orange Avenue, Suite 1800
20 Orlando, Florida 32801

21 REPORTED BY: Jennifer Fernandez, Court Reporter
22 and Notary Public
23
24
25

1 A P P E A R A N C E S :

2 MICHAEL MOORE, ESQUIRE
3 OF: The Law Offices of Michael L. Moore
4 2208 Hillcrest Street
Orlando, Florida 32803
(407) 894-6447

5 APPEARING ON BEHALF OF CAROL HOJEIJ

6 JOHN ZIELINSKI, ESQUIRE
7 MARK NEJAME, ESQUIRE
8 Of: NeJame, LaFay, Jancha, Ahmed, Barker & Joshi, P.A.
189 South Orange Avenue, Suite 1800
Orlando, Florida 32801
(407) 245-1232

9 APPEARING ON BEHALF OF THE PLAINTIFF

10 A. ANTHONY GIOVANOLI, ESQUIRE
11 OF: A. Anthony Giovanoli, P.A.
1565 Orange Avenue
12 Winter Park, Florida 32789
(407) 539-6259

13 APPEARING ON BEHALF OF TYRONE NABBIE

14 DOUG STARCHER, ESQUIRE
15 KEITH WHITE, ESQUIRE
16 OF: Broad and Cassel
390 North Orange Avenue, Suite 1400
Orlando, Florida 32801
17 (407) 839-4200

18 APPEARING ON BEHALF OF THE DEFENDANT

19 Also Present:

20 Ethan Halpern (Intern with the Law Offices of
21 Michael L. Moore)

22

23

24

25

CERTIFIED QUESTIONS
DEPOSITION OF OMETRIAS DEON LONG

(By Mr. NeJame) (Direct Examination of Ometrias Deon Long)

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(By Mr. Zielinski) (Further Direct Examination of Ometrias Deon Long)

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Page 100, Line 25

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Jennifer Fernandez

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17	S T I P U L A T I O N S	
18	It is hereby stipulated and agreed by and	
19	between counsel for the respective parties and the	
20	deponent that the reading and signing of the	
21	deposition transcript be waived.	
22		
23		
24		
25		

1 truth, the whole truth and nothing but the truth, so
2 help you God?

3 THE WITNESS: I do.

4 OMETRIAS DEON LONG,
5 having been first duly sworn, testified under oath as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. ZIELINSKI:

9 Q. Let the record reflect this is the discovery
10 deposition of -- and I may hurt the name, I'm sorry,
11 Ometrias --

12 A. That's perfect.

13 Q. -- Deon Long, taken pursuant to subpoena and
14 continued to today's date by agreement of the parties
15 and the deponent. And the deposition is taken pursuant
16 to Florida Code of Civil Procedure and is available for
17 trial as well as discovery purposes.

18 Would you state your full name for the record
19 and spell your name, please?

20 A. Ometrias O-m-e-t-r-i-a-s. Deon, D-e-o-n.
21 Long, L-o-n-g.

22 Q. And you are an attorney in the state of
23 Florida?

24 A. Yes.

25 Q. And so you're familiar with the deposition

1 Q. And how about undergraduate?

2 A. University of Florida.

3 Q. Now, you have worked with Greater Orlando
4 Aviation Authority in the past?

5 A. Yes.

6 Q. You're not currently associated with them at
7 this point in time?

8 A. Not at this time, no.

9 Q. And just for the purposes of the deposition, so
10 it goes a little more quickly, I hope, I'm going to
11 refer to Greater Orlando Aviation Authority as GOAA,
12 G-O-A-A. And so when I say GOAA, you'll understand that
13 that means the Greater Orlando Aviation Authority,
14 correct?

15 A. Right.

16 Q. When is the last time you were associated with
17 GOAA?

18 A. I can't remember. A couple years ago.

19 Q. And when did you first become associated with
20 GOAA?

21 A. Probably when I was an associate with Foley &
22 Lardner, and that would have been in 1994, something
23 like that.

24 Q. So when you came -- when you got your license,
25 you were initially practicing with Foley & Lardner?

1 A. Well, at the time that I was doing it. They
2 may have changed in the last two years.

3 Q. Okay. But you haven't been doing it since
4 2008?

5 A. Not for the airport. I think I had one thing I
6 did with FDOT, so yeah. But I haven't really been up to
7 date on if anything's changed from what I told you.

8 Q. Okay. But all of the federal regulations apply
9 to GOAA, as far as you understand it?

10 A. Yeah. For DBEs, yeah.

11 Q. Why is the qualification as a DBE important?

12 A. Why is the qualification?

13 Q. Yes, sir.

14 A. Again, I guess just public policy was trying to
15 get more diversity and vendors for entities that get
16 federal funding. So one of the things that they do is
17 have this special category of entity that allows these
18 companies to be able to participate. So they used to
19 have set aside. They don't have those now but there are
20 certain percentages of participation that they look
21 for -- or looked for.

22 Q. Does GOAA have a process to qualify persons,
23 entities as DBEs in awarding its bids?

24 A. Yeah, it has to be an entity. A person can't
25 get qualified as DBE, so it has to be an entity. Yeah,

1 hear him talk about any of the Maali family? Are you
2 familiar with the Maali family, M-a-a-l-i?

3 A. Yeah.

4 Q. Did you ever hear him under the same
5 circumstances comment that they were in some way, shape,
6 or form terrorists, or that they had terrorist ties and
7 they would never get a contract with GOAA?

8 MR. WHITE: I'll object to the question. If
9 he's asking you about a communication with Chris
10 Schmidt, if he answers no, you can answer.
11 Otherwise, I'm instructing you not to answer.

12 THE WITNESS: I can't answer.

13 MR. NeJAME: All right. Certify the question,
14 please.

15 BY MR. NeJAME:

16 Q. Let's do a -- was there ever a public meeting
17 with Mr. Schmidt and you where there was a discussion
18 about this contract as it relates to Tyrone Nabbie or
19 the Maalis?

20 MR. WHITE: I'm going to object to the
21 question. I don't know that it's clear what a
22 public meeting is.

23 THE WITNESS: There was a hearing as far as --
24 there was -- I guess trying to get them decertified,
25 there was a hearing. But there were a lot of people

1 employee aspect at this time.

2 MR. WHITE: I'm going to object to the question
3 and instruct you not to answer. I believe it
4 calls -- is involving privileged information
5 perhaps.

6 Mark, I really think we may be able to expedite
7 it if I can have a moment with him.

8 BY MR. NeJAME:

9 Q. Are you refusing to answer that?

10 A. In an abundance of caution.

11 Q. All right. We'll certify the question.

12 MR. NeJAME: It's up to you guys, however you
13 want to handle that.

14 We appreciate your generous offer but we'll
15 defer for a bit, if we could, and continue on with
16 our line of questioning.

17 MR. WHITE: Sure.

18 BY MR. NeJAME:

19 Q. Do you remember a public hearing on this
20 matter?

21 A. Yeah. Well -- yeah.

22 Q. And was there anything said at that public
23 hearing that was not recorded to your knowledge?

24 A. Not to my knowledge.

25 Q. Okay. Do you remember if Mr. Schmidt was at

1 that public hearing?

2 A. Like I said before, I think he was -- when the
3 appeal was done, I think he was -- either he or Garnder,
4 one of the two, but I think it was Schmidt.

5 Q. Have you ever heard Mr. Chris Schmidt say to
6 anybody who was not an attorney at GOAA something to the
7 extent that the Maalis were terrorists or supported
8 terrorism?

9 MR. WHITE: Object to the question and instruct
10 you not to answer.

11 BY MR. NeJAME:

12 Q. To anybody that wasn't an attorney.

13 MR. WHITE: Same objection. Same instruction.

14 THE WITNESS: Uh-huh. I mean, I'm not going to
15 answer. I mean, if there's still a privilege. -

16 BY MR. NeJAME:

17 Q. So you're not answering yes or no, you're
18 just --

19 A. Right, right, right.

20 MR. NeJAME: Certify the question, please.

21 BY MR. NeJAME:

22 Q. Did you ever hear Mr. Schmidt say to anybody
23 who was merely an employee of GOAA any words to the
24 effect of anybody in the Maali family, or Mr. Tyrone
25 Nabbie's partners, being terrorists or supporting

1 opinion because you were not the attorney at the moment.

2 A. Right.

3 Q. And you got an opinion from the bar that is
4 inconsistent with that representation?

5 A. Right, right.

6 MR. WHITE: Object to the form of the question.

7 MR. NeJAME: Too late.

8 MR. WHITE: I didn't have time.

9 THE WITNESS: I was supposed to pause.

10 BY MR. NeJAME:

11 Q. And, in fact, contemporaneous while you were
12 working, while you were preparing this memorandum, GOAA
13 was asking you to provide other legal services to them
14 on other matters; is that correct?

15 MR. WHITE: Object to the extent it's calling
16 for verbal communications. Those are privileged.

17 BY MR. NeJAME:

18 Q. Were you billing GOAA for other legal services
19 contemporaneous --

20 A. Right.

21 Q. Thank you.

22 A. And just to clarify, that's the reason we did
23 the bar thing, because there was an issue as to whether
24 you could get paid while you had a gap and so we got an
25 opinion from them saying it was okay to be paid. But

1 the date -- I think the date that this memo or whatever
2 was done was after we had been reinstated.

3 Q. Okay. So if they had represented that you were
4 not -- that there was a gap period that you were
5 unlicensed during that time, they would be incorrect to
6 your knowledge?

7 MR. WHITE: Object to the form. Go ahead.

8 THE WITNESS: As of the date the memo was
9 prepared, we were fine.

10 BY MR. NeJAME:

11 Q. And you were paid for this?

12 A. Oh yeah.

13 Q. This being the memo.

14 A. Yes.

15 Q. So as it relates then to -- was Chris Schmidt
16 considered the person who would make the decision
17 whether this memo was to be disclosed at the hearing?

18 MR. WHITE: Object to the form of the question
19 to the extent it calls for information you got
20 through verbal communications. It's privileged for
21 the reasons we've talked about.

22 BY MR. NeJAME:

23 Q. It was Chris Schmidt's duties --

24 A. I just know I was working directly -- because I
25 see the memo went to Bob Gilbert, so what they did after

1 Q. And why the two of them?

2 A. Because that's who I was working on day-to-day,
3 who I was dealing with the issues with.

4 Q. All right. You were not dealing with Chris
5 Schmidt, as you indicated, on any of this? There was --

6 A. I mean, I wasn't working directly with him, no.

7 Q. Or even indirectly?

8 A. No, not on this.

9 Q. All right. So your -- the representatives for
10 GOAA that you were dealing with, as evidenced by who you
11 sent this to, were Doug Starcher and Bob Gilbert; am I
12 correct?

13 A. Right.

14 Q. All right. And who sent you the initial memo
15 that a challenge had come in?

16 A. I can't remember. We were talking on the phone
17 and stuff back and forth so it could have been just --

18 MR. WHITE: Object to the form. You're going
19 into telephone conversation. If somebody sent you
20 something, that's different.

21 THE WITNESS: I mean, unless you show me
22 something, I don't know how I got it.

23 BY MR. NeJAME:

24 Q. Well, you still have the time records from
25 this?

1 their participation was going to be two minority firms.
2 And it was Ponchos and some soul food restaurant people.

3 Q. And when Aries or whatever entity joined up
4 with Hojeij Branded Foods, it was at that point that --

5 A. Yeah, but I think that was part of the
6 conflict, unless you know something I don't.

7 Q. Okay.

8 A. I think it had to do with the minority partner;
9 I don't think it had to do with Aries.

10 Q. Okay. But there was somebody beneath Aries
11 that was a part of Aries?

12 A. Right. The way DBE comes, you can have 51
13 percent but they also were going to bring DBEs on since
14 Hojeij's -- and this is just from memory -- had over 50
15 percent or 51 percent. So I think it was a company
16 called Ponchos, if I recollect, and then there was
17 another company called -- some woman's name, I think,
18 that was, like, a soul food restaurant.

19 Q. And then one of those entities was represented
20 by Marchena & Graham.

21 A. I think it was Ponchos, if I'm not mistaken. I
22 thought it was Ponchos.

23 Q. And from review of your memo, which I think is
24 dated June 19th of 2007, does that help you in figuring
25 out whether the recusal of Mr. Marchena occurred before

1 Q. And in the event that there were discussions
2 that involved Mr. Nabbie with Chris Schmidt present,
3 were there any other GOAA employees or non-GOAA
4 employees or non-GOAA attorneys present for any
5 discussions, if there were?

6 A. There were conversations that may have had
7 employees or GOAA people present. There may have been a
8 conversation with Mr. Schmidt and myself, and then I
9 don't know if there was one with any non-GOAA people
10 present.

11 MR. ZIELINSKI: And then the assertion of GOAA,
12 for the record, is that -- you're asserting that
13 even if it's just a lowly employee, GOAA is
14 instructing him not to answer even if our position
15 is that that would not qualify as corporate
16 management and not qualify as grounds for an
17 attorney/client privilege?

18 MR. WHITE: Well, let me take a quick break and
19 get some clarification.

20 MR. ZIELINSKI: Okay.

21 (A break was taken.)

22 MR. WHITE: So I -- if you could, reask --
23 rephrase your question. I think what you're trying
24 to get at is if there was a conversation that
25 Mr. Long had with Mr. Schmidt, was there anyone else

1 with any other representative from the joint venture --

2 A. Yeah.

3 Q. -- other than myself?

4 A. Right.

5 Q. All right. And I think you had described my
6 contact with you as being significant on this issue?

7 A. Right, correct.

8 Q. And Mr. Bierman's being minimal, if that?

9 A. Well, he was at that meeting. I forget what
10 the context was, but he was at that one meeting that we
11 had.

12 Q. All right. And the meeting dealt specifically
13 with personal net worth issues of Carol Hojeij, correct?

14 A. Right.

15 Q. How critical do you believe that the personal
16 net worth issue was to the outcome of this selection
17 process?

18 A. I think it was very critical.

19 Q. And that's your opinion?

20 A. Right, right.

21 Q. During the process of doing the analysis of
22 whether Ms. Hojeij was qualifiable as an MWBE --

23 A. Right. Or was it DBE?

24 Q. Whatever we're talking about, we need to make
25 sure it's consistent with the federal standard as

1 person not directly working for the Greater Orlando
2 Aviation Authority?

3 A. Uh-uh.

4 Q. No?

5 A. No.

6 Q. Okay. You ever give a copy of that memorandum
7 to any media outlet?

8 A. No.

9 Q. Did you ever discuss the contents of the memo
10 with anyone outside of GOAA officials or GOAA attorneys?

11 A. Not that I can remember. There was a time that
12 Tony Pipitone showed up.

13 Q. And for the record, Tony Pipitone is a reporter
14 for a local television channel?

15 A. Uh-huh, right.

16 Q. All right. Did you speak with Mr. Pipitone?

17 A. Yeah.

18 Q. Did he ask you specifically about Ms. Hojeij's
19 personal net worth?

20 A. I don't know what he -- he was going to do it
21 but he ended up -- at least he didn't end up doing the
22 story or anything with me involved. But somehow he got
23 my name and he showed up at my office one day.

24 Q. All right. Did he speak with you about
25 Ms. Hojeij?

1 A. I think more so he was trying to find out about
2 Nabbie.

3 Q. Okay. So the subject of Ms. Hojeij's personal
4 net worth never came up?

5 A. No, he was asking about what was going on with
6 the bidding process or something like that and he said
7 something about -- I don't know if he had the memo or --
8 he said -- they had done an article in the paper about
9 the thing with me not being with the bar, not doing the
10 CLE credits. And somehow all of that, he said that. So
11 he showed up and said somebody told him I played some
12 kind of big role in this and he had seen the thing in
13 the paper.

14 And I can't -- and I just remembered this
15 because you brought it up, but I can't remember exactly
16 what we talked about. But it was kind of like this and
17 he seemed like he was privy to this but I didn't give it
18 to him.

19 Q. Okay. So is it your recollection as you sit
20 here today that he had some knowledge of the
21 memorandum that you have in front of you?

22 A. Well, he had some knowledge that I recommended
23 that they not -- that they decertify. He asked me about
24 what was the process and I talked in hypotheticals.
25 Like, for example, he was asking, was it normal that

1 once somebody did a sworn affidavit for you to allow
2 people to give additional information, so it was kind of
3 like that.

4 Q. And did you ever disclose to him what the
5 numbers were -- the relevant numbers in your memorandum?
6 For example, the \$450,000 difference?

7 A. No, I don't remember that. If it was, I was
8 just dealing with the \$750,000, whether you were over or
9 above it, but nothing specific about her. I don't even
10 know if her name came up. It was more so about Nabbie,
11 Convention Center, all of this. And I think the context
12 of this story was following-up surrounding Nabbie and
13 all this stuff, from what I can remember.

14 MR. MOORE: Okay. I don't have any further
15 questions, thank you.

16 CROSS-EXAMINATION

17 BY MR. WHITE:

18 Q. I just have a few for you, Mr. Long.

19 A. All right.

20 Q. Do you recall the dates when this issue came up
21 about you not having your CLE credits?

22 A. It must have been in June, like right before
23 this, so maybe between -- I know it was a Friday because
24 I had a hearing up in Tallahassee and around 3:30 or
25 4:00, I got a call from the Sentinel reporter. And she

1 standing?

2 A. Right, because what had happened was it was
3 with the airport and with the expressway. They were
4 saying well, it's public monies, if you weren't a lawyer
5 at the time, we can't pay you, you can go do this. So
6 that's when I had to go to the Bar and ask them and they
7 sent a letter and it sufficed for GOAA and all them so
8 they paid me after that.

9 MR. WHITE: Okay. We don't have any questions
10 at this time.

11 REDIRECT EXAMINATION

12 BY MR. ZIELINSKI:

13 Q. Did Mr. Pipitone mention to you whether there
14 were any negative statements made at that -- by
15 anyone -- did Mr. Pipitone -- strike that.

16 Did Mr. Pipitone in your discussions with him
17 mention that there were negative statements made about
18 Mr. Nabbie or any of his entities that we've talked
19 about today?

20 A. Yeah.

21 Q. What were the statements that Mr. Pipitone
22 shared with you?

23 A. About hiring illegal aliens, about issues with
24 Homeland Security.

25 Q. Who specifically was he talking about?

1 A. Either Nabbie, Superior Homeland, whatever he
2 was doing.

3 Q. And did Mr. Pipitone mention Mr. Maali at all
4 in those discussions?

5 A. Maybe.

6 Q. Or the Maali family?

7 A. Maybe.

8 Q. Do you recall any of what was said about the
9 Maali family?

10 A. About Homeland Security issues, about hiring
11 illegal aliens or undocumented workers.

12 Q. And who provided, if you know, the information
13 to Mr. Pipitone?

14 A. I have no idea. I just remember getting a
15 phone call from him and he was going to show up anyway.
16 He said, can I come by and talk to you? And he came by.

17 Q. Do you know anything about any relationship
18 that Chris Schmidt may have with Mr. Pipitone?

19 A. No. I just know that Chris used to work in
20 news media, so I don't know if they had a relationship.

21 Q. Okay.

22 A. You know, I think he did. Somehow his name did
23 come up in the conversation but I don't know how.

24 Q. Okay. But you don't recall the nature of how
25 his name came up?

1 A. I don't know if they were friends, but they
2 knew -- known each other. The name -- now that you
3 bring it up, Chris Schmidt's name did come up with Tony
4 Pipitone.

5 Q. Okay. Was it in regards to these statements?

6 A. It was in regards to the airport. I don't know
7 if it was specifically -- he didn't attribute them to
8 Chris, I don't think. But the gist of what he was
9 trying to -- at least what he told me was he was looking
10 at what was going on at the airport or things that were
11 going on with concessions and about how they chose
12 people and he thought I got caught up in the middle of
13 this whole thing with this Hojeij thing.

14 MR. ZIELINSKI: Okay. I don't have anything
15 further.

16 MR. MOORE: Nothing from Plaintiff.

17 MR. WHITE: We're done.

18 MR. ZIELINSKI: Read or waive?

19 THE WITNESS: I don't care. I'll waive.

20 (This deposition was concluded at 1:19 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF OSCEOLA

I, Jennifer Fernandez, Notary Public, State of
Florida, certify that OMETRIAS DEON LONG personally
appeared before me on the 30th day of November, 2010 and
was duly sworn.

WITNESS my hand and official seal this 28th day
of January, 2011.

Jennifer Fernandez

Jennifer Fernandez
Notary Public, State of Florida
My Commission No. EE23877
Expires: September 26, 2014

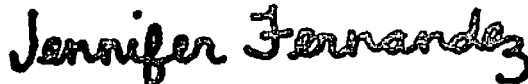
1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA4 COUNTY OF OSCEOLA
5

6 I, Jennifer Fernandez, Notary Public in and for
7 the State of Florida at large, HEREBY CERTIFY THAT I was
8 authorized to and did stenographically report the
9 deposition of OMETRIAS DEON LONG; that a review of the
10 transcript WAS NOT requested, and that the foregoing
11 transcript, pages 5 through 120 is a true and accurate
12 record of my stenographic notes and recordings thereof.

13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney, or counsel of any of the parties,
15 nor am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED THIS 28th day of January, 2011 at
19 Kissimmee, Osceola County, Florida.
20

21 
2223 _____
24 Jennifer Fernandez
25