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July 18, 2017

BY ELECTRONIC MAIL

Fred Townsend, Esq.
Schmittinger & Rodriguez
414 South State Street
Dover, DE 19901

Re: Town of Dewey Beach – “Independent” Investigation

Dear Mr. Townsend¹:

I attended most of the council meeting on Friday (I was on the teleconference with the Chancery Court when the meeting began). At the meeting, you commented that the decision to hire Max Walton to perform the “independent” investigation of the complaints made by my clients was made solely by you. While your comments at the town council meeting are contradicted by prior public comments made by the mayor, I write to express another issue with Mr. Walton’s engagement.

I had spoken to Mr. Walton when he was first hired to do the investigation. I had asked him if he had a previous working relationship with Mr. Appelbaum. He expressly indicated that he did not. None. He did acknowledge previously representing Commissioner Hanson.

¹ I am writing to you in your capacity as Town Solicitor. Although this is not directly related to the Chancery Court litigation, I have copied your attorneys from the Chancery litigation. If you prefer all communications to go through your Chancery attorneys or believe it is more appropriate to be directed to them, please have them let me know.

It has now come to my attention that Mr. Walton and Mr. Appelbaum did have a prior working relationship that appeared to go for a significant period of time. In fact, Mr. Appelbaum described himself as the “point person” for litigation in which Mr. Walton was the attorney. Attached are copies of several emails that I have. I have others.

Mr. Walton’s engagement is just the latest troubling step in the council’s and your purported “independent” investigation of the claims of my client. You first intended to use the Lyons Company, but backed off after we pointed out that Lyons already had a working relationship with Mr. Appelbaum and was seen meeting with him in the days after the initial complaints were made. You now hired a lawyer who had a prior relationship with Mr. Appelbaum and denied such relationship when asked.²

It appears the town has no intention of conducting a truly independent investigation. Rather, the town wants to give the appearance of due process to the claims of my client while “stacking the deck” in favor of Mr. Appelbaum. If the town council has any true interest in an independent investigation, it should join in the request to have the Public Integrity Commission perform that investigation.

Sincerely yours,

/s/Richard H. Cross, Jr.

Richard H. Cross, Jr.

Enclosure

cc: William Manning, Esq.
Richard Forsten, Esq.
Client Copies
File Copy

² In addition, while there have been public comments that the council intends to provide an “open process” in this investigation, there have yet to be any formal disclosures of the scope of the investigation, who will have access to it and how it will be used. The only public statement we have seen is the Mayor’s comment that after the investigation, “everyone will be held accountable.” This suggests that the intention of the town council is to use the investigation against my clients.