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CHIEF

the acting state retirement director, told Velken in a March 2019 letter. "As a result, your [Florida Retirement System] DROP retirement is voided."

Judge McKinney disagreed, citing the arrangement Velken struck with village officials to be paid by a temporary staffing agency — which was run by his longtime friend, Stephanie Leon, and where Velken was the only client — in a concerted effort to maintain his retirement status in the eyes of the state. Velken had already been working for Leon's property management and maintenance company as an independent contractor.

Under the deal, the village agreed to pay Leon about \$130,000 per year. Leon passed on about 32% of that money to Velken. As an "independent contractor working for a private employer," McKinney wrote, Velken "did not violate the terms of the DROP agreement and should maintain his pension."

The judge pointed to Velken's loosely regulated daily routine to support her argument that he wasn't a municipal employee. The village didn't provide training or set work hours, she said, and Velken did outside work beyond his role as chief without seeking permission from village officials.

Plus, he only wore his uniform "at the most twice," the judge said, and he "dressed daily in street clothes or a shirt and tie, which he purchased, putting himself out to the public as a regular citizen, not police chief."

McKinney concluded: "The credible evidence above demonstrates that Velken had greater control than the Village over the

way he carried out his work."

H.B. Stivers, an attorney for Velken, told the Miami Herald the decision is "vindication" for Velken, a former longtime officer in the Miami-Dade Police Department.

"As much as Mr. Velken's name was dragged through the mud, it is some vindication for that and [shows] he did nothing wrong," Stivers said.

Now, it's up to the Department of Management Services, which oversees the state-run pension, to decide whether to heed the judge's recommendation or continue pursuing repayment. Department officials did not immediately respond to a request for comment on what they plan to do next.

If they do follow the judge's lead, it would be a win not only for Velken, but also for the tiny village tucked between Miami and Miami Beach. Velken has vowed to hold the village liable for full repayment of his benefits if he's ordered to return them.

"If it comes down to that, we would want as much as possible from North Bay Village," Stivers said. He added that, if state officials do keep pursuing repayment, Velken could file a new appeal in district court.

Brent Latham, the mayor of North Bay Village, said from the dais when the investigation first came to light last year that the situation "stinks," calling it an "ethical and moral issue." But on Tuesday, he said he was pleased with the decision because it could eliminate the village's liability. Latham said he would wait until the state's final ruling comes down to comment further.

Velken was hired as the village's interim police chief in April 2018 and then as the interim manager a few months later. He

resigned last February after the revelation that he was under investigation by the Florida Retirement System.

Finger-pointing followed. A village commissioner, Andrea Jackson, suggested former manager Marlen Martell had committed fraud while hiring Velken. Martell, in turn, blamed Village Attorney Norman Powell, who is now the attorney for the village of El Portal, saying he approved the plan. And Powell called the accusation that he was involved in the process "a complete fabrication."

NOVEMBER HEARING

McKinney tried to sort through it all at a hearing this past November, listening to testimony from Velken, Leon and Martell, among others. Martell had fired the previous police chief, Carlos Noriega, and was under pressure to find a replacement as quickly as possible in April 2018, the judge said.

Martell offered Velken the job on April 16, but Velken learned the next day that the village participated in the state-run pension. He told Martell he couldn't accept the position because he would lose his retirement benefits.

Next, Martell recommended that Velken meet with the village's human resources coordinator, Ana DeLeon, which he agreed to do on April 18. DeLeon called a Florida Retirement Services hotline to ask how the village could bring Velken on board without him losing his benefits. But a Florida Retirement System representative told them Velken couldn't work for the village without violating state rules.

After the phone call, Velken again told Martell he had to turn down the job. That's when Martell suggested that Velken become a contracted employee, saying this "would not interfere with his re-

tirement because he would not be a Village employee" in the Florida Retirement System, according to the judge's ruling.

Martell then brought Velken upstairs at Village Hall to Powell, the village attorney, to discuss a potential arrangement. Powell told them he "did not see any problems" with the idea but would research it further. Soon after, according to the judge, Martell told Velken that the village attorney had given his blessing to contract out Velken's job as chief.

That's when Velken approached Leon, his longtime friend, about expanding her business to include a temporary staffing service and "making the service available to the village to help increase her bottom line." When Leon learned a license wasn't required to run such a service, she amended her company's articles of incorporation to include it, the judge said.

Velken didn't contact the Florida Retirement System again to review the arrangement, "because the village attorney, Powell, had approved the legality of his employment relationship as an independent contractor. Velken followed his advice," McKinney said.

Powell told the Herald on Tuesday that the ruling "clearly evidences that the horrible treatment and character assassination tactics [Velken] was unfairly subjected to was simply wicked."

The Department of Management Services now has 60 to 90 days to enter a final order, said Stivers, the lawyer for Velken.

"The way the administrative law judge reached her conclusion and entered her order, defying that order is going to be extremely difficult," he said.

MIAMI BEACH

Miami Twerk Tour allowed at high school by basketball coach

BY COLLEEN WRIGHT
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Nastya Nass is a celebrity in the world of twerking. She has 6.8 million followers on Instagram who watch the high-definition videos of her twerking classes.

The video from her Feb. 22 "Twerk Tour" stop in Miami is an example of her oeuvre. A group of 47 diverse twerkers rapidly gyrate their glutes in tight shorts, in a variety of positions and techniques, while flanked by a hyped-up crowd to Nicki Minaj's "Yikes."

Miami-Dade County Public Schools has a problem with this particular video, however.

It was filmed at the Miami Beach Senior High School gym.

The specific location wasn't tagged, but the scarlet-and-silver championship banners, scarlet hardwood basketball court and neutral wall tiles give it away.

The high school gym

served as the backdrop for the 13-minute video uploaded to YouTube last week. A shorter version garnered 3.4 million views on Instagram.

The school district says the Hi Tides boys' basketball coach, Jacob Shaw, allowed them to use it, unauthorized. District spokeswoman Daisy Gonzalez-Diego said there could be legal ramifications if the video was used for promotional purposes.

She said to the district's knowledge, no students were present, but Shaw, 39, has been reassigned and is under investigation by the district's Office of Professional Standards. Reached by phone Tuesday, Shaw declined to comment.

"I'm not at liberty to talk about that right now," he said. "My administration, they gotta talk about it."

Still unclear is how Shaw came into contact with Nass and her crew. Nass, the film company Typo and other twerkers identified in other posted videos did not immediately respond to requests for comment.



A frame grab from the twerking video filmed at Miami Beach High School.



**TOWN OF CUTLER BAY
NOTICE OF ADOPTION OF AN ORDINANCE
AMENDING THE TOWN COMPREHENSIVE PLAN**

NOTICE IS HEREBY GIVEN that the Town Council of the Town of Cutler Bay, Florida, sitting in its capacity as the Local Planning Agency, will hold a public hearing on **Wednesday, March 18, 2020 at 7:00 p.m.**, or as soon as thereafter as possible in the Council Chambers, 10720 Caribbean Boulevard, Cutler Bay, Florida. The purpose of the public meeting is to consider the Ordinance described below.

PLEASE NOTE that immediately following the meeting of the Town Local Planning Agency the Town Council will hold a public hearing and first reading of the Ordinance described below:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA UPDATING THE TOWN WATER SUPPLY PLAN AND ADOPTING WATER SUPPLY PLAN RELATED AMENDMENTS TO THE TOWN GROWTH MANAGEMENT PLAN; PROVIDING FOR TRANSMITTAL; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The Town Council may continue or defer the hearing to a new date and time certain without further notice provided the date and time of the continuance or deferral is announced at the hearing. The Ordinance in its entirety may be inspected at the Office of the Town Clerk during regular business hours.

Persons wishing to appeal any decision made by the Town Council with respect to any matter considered at such hearing will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

Any and all interested parties may appear at the above meeting and be heard with respect to the proposed items.

In accordance with the Americans with Disabilities Act of 1990 (ADA), persons needing special accommodations to participate in these proceedings should contact the Town Clerk's Office for assistance at (305) 234-4262, no later than four (4) business days prior to such proceeding.

Debra E. Eastman, MMC
Town Clerk