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Nonprofit director's compensation raises questions

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Developer BFC Partners' decision to team up with Local Development Corp. of Crown Heights may complicate the very problems it was meant to resolve

By Joe Anuta

Photo: Courtesy of BFC Partners

WHAT'S IN STORE? BFC's plans look good on paper, but locals question how they'll work out.

The executive director of a Brooklyn nonprofit dedicated to providing affordable housing, social services and youth programs has personally received a percentage of profits from past development deals, an arrangement in his contract that charity watchdogs call a red flag.

That is one of several unusual financial details *Crain's* found in the operating statements of the Local Development Corp. of Crown Heights. The nonprofit, considered a trusted resource in the African-American community in Crown Heights, was brought on by developer BFC Partners earlier this month to help overcome local opposition to a proposed mixed-income apartment and recreation complex on city-owned land.

The revelations alarmed experts in nonprofit administration, who said the payouts to Executive Director Caple Spence cast doubts about the organization's management.

"This is not normal," said Ken Berger, the former chief executive of Charity Navigator, the largest nonprofit evaluator in the country, after reviewing the organization's Form 990 financial disclosures from 2015.

The nonprofit's involvement in the city-led effort to redevelop the Bedford-Union Armory in Crown Heights raises questions about why it was selected by BFC Partners and how it will help manage a half-million-dollar fund that is part of the project.

Opening doors

For-profit developers often partner with charities to win over community members who are skeptical of a project's promise of social and economic benefits. When developments undergo public scrutiny, nonprofit partners can deflect criticism because making money is not their primary goal. They also often bring specialized skills and sometimes allow projects to qualify for subsidies that would not otherwise be available to for-profit enterprises.

In late 2015 a team including BFC and Brooklyn nonprofit CAMBA won a competitive bid to transform the city-owned armory with a proposal to build market-rate condos and rentals around it. The developments would help pay for new affordable housing, a low-fee sports and recreation facility, and community and office space. CAMBA, which specializes in housing, economic development and education programs, is set to run the day-to-day operations at the rec center and provide discounted or free activities to nearby residents.

But despite that partnership, community members continue to oppose BFC's $195 million plan. They said the entire project should be dedicated to affordable housing. In September New York Knicks star Carmelo Anthony pulled his support, and another early partner, Slate Property Group, dropped out amid controversy surrounding an unrelated nursing home sale on the Lower East Side.

In reaction to increasingly vocal opponents, BFC principal Donald Capoccia announced in early March that BFC was bringing in the Local Development Corp. of Crown Heights, which has deep roots in the community. The group planned to hold meetings, reassure residents that the development was in their best interest, seek out minority- and women-owned businesses to participate and explain why the market-rate units in the project are vital to its success. In addition, the nonprofit would manage a fund seeded with $500,000 from BFC—and potentially boosted by future revenue from the project—that is designed to build additional affordable housing elsewhere in the working-class but gentrifying neighborhood.

'Rare' arrangement

Spence's employment contract, as detailed in his 2015 state filing, was structured to give him a cut of the nonprofit's development deals, allowing him to take a 10% share of profits the charity earned and 20% of what the nonprofit received from developer fees—money the city or state pays developers for working on affordable-housing projects. It was unclear whether the development corporation and BFC would get developer fees for the Bedford-Union project and if the revenues would be divided between them. The charity is involved only with the condo portion of the project, according to the city. Regardless, Spence's compensation arrangement is rare in the nonprofit world, experts said.

Nonprofit executives' compensation is generally a fixed amount. That ensures they are not pursing deals for personal gain, according to *Nonprofit Compensation, Benefits and Employment Law*, a book by David Samuels and Howard Pianko. And unlike for-profit businesses, nonprofits are required to reinvest any leftover money in the organization. When compensation is based on profit percentages, pay can fluctuate year to year, meaning that in some years extra money might flow to executives, just like at a for-profit business. Berger said such fluctuations could draw the eye of state and federal regulators, who can seek to recover payments they deem improper.

The Local Development Corp. of Crown Heights' 2015 filings stipulate that this arrangement boosted Spence's total compensation to a maximum of $312,000 in a given year, which one lawyer *Crain's* spoke with said makes the arrangement more palatable. But Berger still found it troubling. "The fact that the questionable number has a cap on it doesn't make it any less questionable," Berger said.

And Spence has pulled in quite a bit more than that amount in the past.

Compensation package

In 2014 the nonprofit reported about $752,000 in revenue, mostly in fees from affordable-housing buildings it manages. Yet Spence took home around $1.15 million in total compensation that year, including base pay, bonuses and about $956,000 in retirement and other benefits. The payouts resulted in an operating loss at the charity of more than $1 million.

A lawyer for the group said 2014's compensation was an anomaly that likely stemmed from a split-dollar life insurance policy that was transferred to Spence in lieu of other retirement benefits. Split-dollar policies, which are paid in part or full by an employer,are sometimes used as incentives for high-ranking nonprofit employees. And premiums, which the charity will get back after the policy is paid out by the insurer, can be put down in one year instead of the cost being spread out over several. But the incentive is more often used by larger organizations, according to Gregg Hirsch, an attorney specializing in insurance products at Mound Cotton Wollan & Greengrass. The football coach at the University of Michigan, for example, has a split-dollar life insurance policy.

Even excluding 2014, however, Spence's average compensation was about $318,000 between 2007, the first year he's listed as executive director in the organization's publicly available filings, and 2015, the year when the salary cap is detailed. Executive pay can vary across organizations depending on the work and how prized the person's skills are, but experts noted that Spence's compensation seemed high relative to the size of the nonprofit. In 2015, for instance, the head of a Bronx affordable-housing nonprofit of similar scale made less than half of Spence's average compensation. Even executives at much larger affordable-housing firms, such as the Fifth Avenue Committee and the St. Nicks Alliance, made no more than three-quarters of Spence's compensation.

"I would say this salary falls into the range of screwiness," said Odell Mays, an adjunct lecturer at the Columbia University School of Professional Studies, who reviewed the organization's annual 990 filings for 2007 to 2015 for *Crain's.* "There is a lot of stuff in here that is ripe for being questioned."

If a charity or executive does exceptionally well, he said, high compensation can be justified. But the Crown Heights nonprofit might have a hard time proving it is far outperforming its peers. In 2007, Spence's first year as executive director, he completed the organization's first ground-up development, a 173-unit senior residence in east Flatbush. The project pushed the corporation past $100 million in total construction spending for the first time.

"This award-winning project moved [the organization] beyond its humble beginnings as a redeveloper of old walk-up tenement buildings to a full-fledged developer of modern mid-rise apartments for its community," the group wrote on its website.

Three years later Spence completed a 143-unit senior residence in Crown Heights. In total he has brought in millions in revenue for the nonprofit, his lawyer said, noting that the executive's compensation package was drafted with the help of an outside specialist. Spence has continued to run several education and senior centers.

But Spence has not completed a major project since 2010. And under his leadership, the charity ran an operating loss for seven of the nine years between the beginning of 2007 and the end of 2015.

Plans to open a charter school, which videos on the nonprofit's website show Spence discussing as far back as 2013, never came to fruition. The costs involved made the idea unworkable, the organization said.

Photo: Courtesy of BFC Partners

PRIZE POOL: The armory redevelopment plan includes a recreation complex.

Nevertheless, Spence continued to receive perks that are unusual for small nonprofits. A 2013 filing showed he took out a personal loan of $166,000 from the nonprofit at 5% interest. Although charities sometimes make personal loans to employees, they are typically amounts akin to a paycheck advance, Mays said. At the very least, the board would typically require a written agreement for a loan of that size, yet it was issued without one, according to the state filings. Spence's lawyer said the corporation has largely been paid back.

Potential missteps over executive compensation are often avoided in the tax-exempt world by having a board of directors with a wide range of professional experience who can push back on anything they deem improper. To get Charity Navigator's stamp of approval under Berger's leadership, boards had to consist of at least five people, he said. The Local Development Corp. of Crown Heights has just three. Two of them are also listed as executives of the First Baptist Church of Crown Heights, the religious organization founded by the late Rev. Clarence Norman Sr. The house of worship is the institution from which the charity gets its neighborhood clout.

Strong connections

Norman, who was a highly influential figure in the Crown Heights community, started the local development corporation in 1987 to further the mission of his church. After his death in 2015, a local street was named after him and his wife. The organization has retained its connections in the neighborhood and currently manages about 670 units of affordable housing. "We have been looking out for the community for more than 30 years," Spence told *Crain's* at the announcement of his group's participation in the project. "We have worked with several government agencies, state and city," he added, "and we have a close working relationship with the elected officials." He has since referred all questions to the organization's lawyer, who would speak only on background.

Clarence Norman Jr., son of the late pastor, was a powerful Democratic Party boss in Brooklyn until he was convicted on campaign finance charges and sentenced to several years in prison. Spence said in a recent news report that Norman Jr. acts as a consultant to the local development corporation. He even listed himself as a contact for the organization during a meeting the city hosted for nonprofits interested in a community land trust. But according to reports, he is not working on the armory project.

BFC Partners said it picked the nonprofit because it was seeking to join forces with an organization with "deep community roots."

"After more than a year of community engagement, there was consensus among Crown Heights stakeholders that [it] would be the most appropriate local, nonprofit partner for the Bedford-Union Armory project," BFC said in a statement. "The ... team's deep community roots and our comprehensive approach to this project will ensure that the armory is a success for all Crown Heights families."

Correction: Caple Spence said in a recent news report that Clarence Norman Jr. acts as a consultant to the Local Development Corp. of Crown Heights. The attribution was misstated in an earlier version of this article.

A version of this article appears in the March 13, 2017, print issue of Crain's New York Business as "A curious partnership".