



Any reply or subsequent reference to this communication should be addressed to the Contractor-General and the following reference quoted:-

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February 27, 2007

Mr. Howard S. Mitchell, Esq.
Consultant
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Attorneys at Law
Suite #18, 1D-1E Braemar Avenue
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Dear Mr. Mitchell:

Re: Report of Investigation Conducted into the Procurement of Goods, Works and Services by the Petroleum Company of Jamaica (PETCOM)

I am in receipt of your letter of the 22nd instant which came to hand yesterday.

I must again respectfully advise you that the positions of the OCG which have been communicated in writing to you , to PETCOM and to the media, will not be revised or changed in any way. Copies of the referenced written communications, inclusive of the Statement which was issued by my Office to the media on January 18, 2007, can be reviewed by you on the OCG's website at www.ocg.gov.jm.

It is the OCG's contention that certain representations which have been made to it and to the public, in this matter, have not been fully forthcoming, have not been forthright or are either misleading or false. In particular, the OCG is concerned about the representations which have been made to it about the entity or person to whom the alleged "1998" contract was awarded by PETCOM. It is now clear that no contract was ever awarded by PETCOM to Elegant Traders Limited in 1998.

We must further advise you that the OCG is currently engaged in the process of reviewing the written representations which have been made to it by you in your letters of January 8 and 9, 2007, as well as the representations which have been made to it by PETCOM. This is being done particularly in light of the OCG's preliminary review of the transcripts of certain statements which have been made in the media by two (2) PETCOM officials who are involved in this matter, inclusive of your Client.

The OCG is very disturbed that despite the fact that you have previously written two (2) letters to the OCG, stating your Client's case, you have only now seen it fit to disclose to the OCG that a corporate entity named Barsam Limited, and not Elegant Traders Limited, was the entity or person to whom the "1998 contract" was allegedly awarded by PETCOM. You may very well wish to review the content of the 4th, 5th and 6th paragraphs of your letter of January 8, 2007, to the OCG, to determine exactly what you had previously represented to the OCG in this regard.

The OCG has also taken note of the fact that your Client, despite having made several statements to the print media and having extensively participated in two (2) radio interviews on February 13 and 19, 2007, has failed to be forthright to the Jamaican public about the entity to which the alleged "1998 contract" was allegedly awarded. No where in any of her reported statements in the Observer Newspaper, or in her representations in the referenced radio interviews, has she asserted that which you have now, at this relatively late juncture, deemed it necessary to communicate to the OCG regarding Barsam Limited.



(2)

Indeed, Sir, your Client has left an unsuspecting public with the impression that Elegant Traders Limited was in fact the entity to which the alleged “1998 contract” was awarded by PETCOM. This is an impression which, as we are all now aware, is a manifestly false one, despite the fact that it was brazenly expressed in writing to the OCG by PETCOM.

In support of our contention regarding your Client, we have re-produced, hereunder, the transcript of an excerpt which was taken from a radio interview which was conducted with your Client on February 13, 2007. The interview in question was carried out on the Nationwide News Network (NNN). The excerpt reads as follows:

NNN – Today the Contractor General said he has been calling upon you and your lawyers to substantiate your argument that **the contract awarded to Elegant Traders in 1998** was in fact settled by tender. Let’s listen to this.

(Voice Clip of OCG’s Communications Officer reiterating that the OCG has yet to receive a copy of the alleged 1998 contract which ends: “To date, neither Ms. Clarke, nor her attorneys, has produced **the 1998 contract.**”)

NNN – Is that so Ms. Clarke?

Barbara Clarke – I don’t have a ...copy of **the contract**. I have a copy of our letter, ahm, thanking them for choosing us. As I said, 1998 is a long period ago and we desperately tried to find some stuff. I...we were able to, ahm, locate the letter of...from our company, thanking them for, ahm, awarding us.

NNN – Was the PETCOM able to ...to produce a copy of **the contract**?

Barbara Clarke – They ...I...I’m not sure if they were able to. I know as a fact that they had persons searching their warehouse outside **trying to find, ahm, documents**. As I said 1998 things are under, you know, stuff, so, I...I dunno. I’m not sure where that is.

The excerpt, Sir, speaks for itself.

Finally, it must be emphasized that the OCG’s Report of Investigation, in so far as it relates to your Client, expressly and unequivocally addresses certain contractual engagements which were entered into between PETCOM and a corporate entity which is named Elegant Traders Limited. The OCG’s Report of Investigation does not address any contract which was purportedly entered into by your Client, in her personal capacity, nor does it address any contract which was entered into with Barsam Limited.

Elegant Traders Limited, as you are very much aware, is a separate and distinct corporate entity in respect of which your Client was the majority shareholder, its managing director and principal at all material times. As an attorney, you should be acutely aware that a corporate entity can never be equated with its shareholders nor with another corporate entity since all are regarded, at law, as separate and distinct persons.

To the extent, therefore, that your arguments and contentions have now been disclosed to be premised on the alleged award of a contract by PETCOM, in 1998, to an entity or person which was not Elegant Traders Limited, they can no longer be proffered as valid, relevant or credible arguments.

Since it was Barsam Limited, and not Elegant Traders Limited, which was awarded the alleged “1998 contract” by PETCOM, after allegedly going through the required procurement and tender process, the following should now be beyond dispute:



(3)

1. Elegant Traders Limited, not being Barsam Limited, did not go through the required tender and procurement process, yet curiously it was the beneficiary of several subsequent contract awards from PETCOM.
2. The representations which were made by you, your Client and/or PETCOM, which sought to mis-characterized the 18 Elegant Traders Limited contracts as “engagements” or “training sessions” which were founded in the “1998” Barsam contract, are now clearly proven to be legally flawed and/or false.

A contract which was entered into with Barsam Limited, in 1998, cannot legally or otherwise be the basis for validating a contract or engagement which is subsequently entered into with a separate and distinct corporate entity, in this case – Elegant Traders Limited.

One critical question which therefore arises for answer, is what was the accounting basis upon which the invoices which were tendered to PETCOM by Elegant Traders Limited, were paid, since there was no supporting 1998 contract between PETCOM and Elegant Traders Limited as was previously alleged or inferred.

The same question must also be answered in another very important context since your Client has conceded that neither she nor PETCOM has so far been able to produce the alleged “1998 contract”, it being the same contract which has been claimed by her, yourself and PETCOM as the contract which authorized the referenced work which has been done for PETCOM.

As your Client herself has stated in one Radio Interview which was conducted on February 19, 2007, “... any work (that) I did at PETCOM after being appointed Chair was a continuation of a contract prior to becoming Chair from 1998. (In) 1998 I won a tender”.

3. Your otherwise questionable and unsubstantiated challenges to the OCG’s Report of Investigation, inclusive of your challenges to the OCG’s conflict of interest and potential influence perception findings, are substantially founded upon what has now been established to be a manifestly flawed and/or false contention which was disingenuously hoisted upon the OCG and the people of Jamaica.

In the premises, I must respectfully advise that should you or your Client choose to contend further in respect of any of the foregoing, you will understand that the OCG will consider itself to be under no obligation to respond to you.

Indeed, in light of the provisions which are contained in Section 29 of the Contractor General Act, the OCG is now giving active consideration to the question as to whether there are any actionable grounds for referring this matter to the Director of Public Prosecutions. The OCG is also considering whether an investigation of another type may be warranted into the whole matter. By copy of this letter to the Auditor General, we are also alerting him to our concerns in this matter.

Very respectfully yours,

Greg Christie (Signed)
Contractor General

Copy: Mr. Mr. Adrian Strachan, Auditor General
The Hon. Phillip Paulwell, MP, Minister of Industry, Technology, Energy and Commerce, MITEC
Dr. Jean A. Dixon, Permanent Secretary, MITEC
Ms. Barbara Clarke, Chair, PETCOM
Mr. Desmond Thomas, General Manager, PETCOM
Dr. Ruth Potopsingh, Group Managing Director, PCJ