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For Visitor Center Kiosk Owner, Gag's No Joke

By Ronnie Polaneczky

SOMETHING ODD is going on between the Independence Visitor Center and Jon and Leslie Bari, who own the Constitutional Walking Tour of Philadelphia.

Last summer, Jon Bari began negotiations with the center to set up a kiosk inside the center at 6th and Market streets, where he could promote his company's tours of the historic area and sell tickets.

The center gave him a draft lease agreement, which he marked up and gave back. But lawyers for the center said that Bari needed to sign a confidentiality agreement for talks to continue.

Bari was fine with that. Except that the one they gave him forbids him to discuss, with pretty much everyone, everything they discuss in the course of the entire transaction.

And if those talks fail and Bari doesn't get the kiosk, the agreement forbids him to talk about *that* with anyone, either.

In perpetuity.

"Basically, it's a gag order," says Bari, who didn't sign the agreement and, hence, has never gotten that kiosk.

"This is not a normal agreement spelling out things you'd expect to be confidential," like personnel matters at the center. "It's a muzzle."

Indeed, an e-mail that an attorney representing the center sent to Bari's attorney, Howard Morris, kind of reads that way.

Attorney Mark DePillis, who declined comment for this column, wrote that the center wanted to work with Bari, "but only if we can be assured of a level playing field, free from outside influence and interference, and free from the threat of public finger-pointing if we are unable to conclude a transaction."

Which is not what this sort of confidentiality agreement is supposed to be about, says Morris.

"In over 40 years in practice, I have never seen anything like this in the context of executing a lease," says Morris, a real-estate lawyer and developer who has negotiated leases on properties far bigger than the tiny booth Bari hopes to run.

“It seems clear they want to shut Jon up.”

When Jon Bari thinks he’s right about something, he’s like a dog on a hunk of meat.

I learned this last year when he contacted me, angry that he was being prevented from promoting his tours at the center.

The two columns I wrote are too long to recap here, but suffice to say that Bari was absolutely right: by cunningly exploiting a city-ordinance loophole, a handful of motorized-tour operators at the center have a ridiculously unfair advantage over competitors like Bari when it comes to marketing their business to tourists.

But Bari couldn’t get anyone in City Hall to do more than shrug over the discrepancy.

Since the center is run in partnership with Independence National Historical Park, Bari wanted to review the operating agreement that federal law requires between the two. He hoped that it might clarify what equitable vendor policies and practices should look like at the center.

But the document that was supposed to have been forged 10 years ago doesn’t exist. In fact, the center and the park have postponed its completion 20 times in 10 years.

“To be honest, I’m not sure how we got to this point,” says park spokeswoman Jane Cowley. “I do know there are still a handful of issues to be worked out. We’re closer to an agreement than we were five years ago. It’s complicated.”

So is changing presidential administrations. Yet we’ve managed to do it twice in the decade that the park and the center have been dithering around.

In the last few years, Bari has gotten Arlen Specter and Bob Brady to write the National Park Service and the Department of the Interior, demanding an agreement and equitable treatment of his business at the Independence Visitor Center.

All so he can have a concrete document to refer to in cases when fair treatment of entrepreneurs like him seems . . . iffy.

So, yeah, Bari has a habit of contacting his elected representatives when he believes something wrong is going on.

Sometimes, he even talks with the press.

And he’ll be damned if he’ll sign away his First Amendment right to do so.

The center’s acting manager, Christine Keates, hopes that the operating agreement will be done soon, perhaps by summer’s end.

As for Bari, she says, “We have Jon’s booth all ready. We would love him to be our partner. We ask all our vendors to sign a confidentiality agreement before we enter negotiations.”

Except that Bari was six weeks into the negotiations before he was asked to go mum.

Anyway, there are confidentiality agreements. And then there are de facto gag orders.

If I were Bari, I wouldn't sign it either. *

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