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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

COMMISSION ON ETHICS

DIVISION OF
ADMINISTRATIVE
HEARINGS
In re BETTY BURNEY,)
Respondent.)
_____)

AT

Complaint No. 00-256
DOAH Case No. 01-4246EC

Final Order No. 02-026

JBC-clw

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics, meeting in public session on April 25, 2002, pursuant to the Recommended Order of the Division of Administrative Hearings' Administrative Law Judge rendered in this matter on February 20, 2002 [a copy of which is attached and incorporated by reference]. The Administrative Law Judge ("ALJ") recommends that the Commission enter a final order and public report finding that the Respondent, BETTY BURNEY, as a former member of the Northeast Florida Planning Council in Jacksonville, violated Section 112.3145(2)(b), Florida Statutes, by failing to timely file a CE Form 1, Statement of Financial Interests, within 30 days of her appointment to the Northeast Florida Regional Planning Council, and by failing to file her 1997 CE Form 1, and recommending the imposition of a civil penalty of \$4,000.00.

BACKGROUND

This matter began with the filing of a complaint on October 23, 2000 by Robert M. Nied alleging that the Respondent, BETTY BURNEY, as a member of the Northeast Florida Regional Planning Council, failed to timely file her Form 1 [Statement of Financial Interests 1999] as required

by Section 112.3145(2)(b), Florida Statutes. The allegations were found to be legally sufficient to allege a possible violation of Section 112.3145(2)(b), Florida Statutes. Commission staff undertook a preliminary investigation to aid in the determination of probable cause. However, during the course of the investigation, facts materially related to the complaint were revealed which tended to show additional violations of Section 112.3145(2)(b), Florida Statutes, by the Respondent relative to her possible failure to file her statement of financial interests within 30 days of her appointment to the Northeast Florida Regional Planning Council and her possible failure to file her Form 1's for 1997 and 1998. Pursuant to Section 112.324(10), Florida Statutes, an Order For Supplemental Investigation of Facts Materially Related to Complaint was signed by the Commission's Executive Director, and an investigation was undertaken of these additional possible violations. On June 7, 2001, the Commission on Ethics issued an order finding probable cause to believe that the Respondent had violated Section 112.3145(2)(b), Florida Statutes, both by failing to timely file her 1997 CE Form 1, Statement of Financial Interests, and by failing to file a CE Form 1 within 30 days of her appointment to the Northeast Florida Regional Plainning Council. This matter was forwarded by the Commission to the Division of Administrative Hearings for assignment of an ALJ to conduct the final hearing and prepare a recommended order. A formal evidentiary hearing was held before the ALJ on January 29, 2002. The Respondent failed to appear at the final hearing. A transcript of the hearing was filed and the Commission Advocate filed her proposed recommended order with the ALJ. The ALJ's Recommended Order was transmitted to the Commission and to the parties on February 20, 2002, and the parties were notified of their right to file exceptions to the Recommended Order. Neither party filed exceptions.

STANDARDS FOR REVIEW

Under Section 120.57(1)(l), Florida Statutes, an agency may reject or modify the conclusions of law and interpretations of administrative rules contained in the recommended order. However, the agency may not reject or modify findings of fact made by the ALJ unless a review of the entire record demonstrates that the findings were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. See, e.g., Freeze v. Dept. of Business Regulation, 556 So. 2d 1204 (Fla. 5th DCA 1990); and Florida Department of Corrections v. Bradley, 510 So. 2d 1122 (Fla. 1st DCA 1987). Competent, substantial evidence has been defined by the Florida Supreme Court as such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusions reached." DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957).

The agency may not reweigh the evidence, resolve conflicts therein, or judge the credibility of witnesses, because those are matters within the sole province of the ALJ. Heifetz v. Dept. of Business Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). Consequently, if the record of the DOAH proceedings discloses any competent, substantial evidence to support a finding of fact made by the ALJ, the Commission is bound by that finding.

Under Section 120.57(1)(l), Florida Statutes, an agency may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretations of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable

than that which was rejected or modified.

Having reviewed the Recommended Order and listened to the arguments, the Commission makes the following findings, conclusions, rulings and recommendations.

FINDINGS OF FACT

The Findings of Fact set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

CONCLUSIONS OF LAW

1. The Conclusions of Law set forth in the ALJ's Recommended Order are approved, adopted, and incorporated herein by reference.

2. Accordingly, the Commission on Ethics concludes that the Respondent, formerly a member of the Northeast Florida Regional Planning Council in Jacksonville, violated Section 112.3145(2)(b), Florida Statutes, by failing to file her 1997 CE Form 1, Statement of Financial Interests, and by failing to file a CE Form 1 within 30 days of her appointment to the Northeast Florida Regional Planning Council.

RECOMMENDED PENALTY

The ALJ's recommendation of a \$4,000.00 civil penalty for Respondent's two violations of Section 112.3145(2)(b), Florida Statutes, is accepted.

In consideration of the foregoing and pursuant to Sections 112.313(7) and 112.324, Florida

Statutes, the Commission recommends that the Governor impose a civil penalty upon the Respondent, BETTY BURNEY, in the total amount of \$4,000.00.

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 25, 2002.

April 30, 2002
Date Rendered

Ronald S. Spencer Jr
Ronald S. Spencer, Jr.
Chair

THIS ORDER CONSTITUTES FINAL AGENCY ACTION. ANY PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER HAS THE RIGHT TO SEEK JUDICIAL REVIEW UNDER SECTION 120.68, FLORIDA STATUTES, BY FILING A NOTICE OF ADMINISTRATIVE APPEAL PURSUANT TO RULE 9.110 FLORIDA RULES OF APPELLATE PROCEDURE, WITH THE CLERK OF THE COMMISSION ON ETHICS, 2822 REMINGTON GREEN CIRCLE, SUITE 101, P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709; AND BY FILING A COPY OF THE NOTICE OF APPEAL ATTACHED TO WHICH IS A CONFORMED COPY OF THE ORDER DESIGNATED IN THE NOTICE OF APPEAL ACCOMPANIED BY THE APPLICABLE FILING FEES WITH THE APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF ADMINISTRATIVE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE DATE THIS ORDER IS RENDERED.

cc: Ms. Betty Burney, Respondent
Ms. Virlindia Doss, Commission Advocate
Mr. Robert M. Nied, Complainant
The Honorable Jeff B. Clark, Administrative Law Judge
Division of Administrative Hearings