

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: AL PARUAS,) Case No. 04-3831EC
)
 Respondent.)
)
_____)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on April 12, 2005, in Fort Lauderdale, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Advocate: James H. Peterson, III, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

For Respondent: James J. Birch, Esquire
Stuart R. Michelson, Esquire
Law Office of Stuart R. Michelson
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STATEMENT OF THE ISSUE

Whether the Respondent, Al Paruas (Respondent), as a member of the town council for the Town of Golden Beach, Florida, improperly used his influence, as a public officer, to have his wife's parking ticket voided in violation of Section 112.313(6), Florida Statutes (2002).

PRELIMINARY STATEMENT

This case began on October 21, 2003, when the Florida

Commission on Ethics (Commission) issued a finding of probable cause against the Respondent. The Commission found that the Respondent had used his influence as a public officer of the Town of Golden Beach, Florida (Town), to have a parking ticket, which had been issued to his wife, voided. Such action purportedly violated Section 112.313(6), Florida Statutes (2002). The Respondent timely challenged the Commission's determination of probable cause and the case was forwarded to the Division of Administrative Hearings for formal proceedings on October 22, 2004. The Advocate presented evidence in support of the probable cause decision (See § 112.322(6), Fla. Stat. (2002)).

Based upon a stipulation of the parties set forth in a Joint Motion to Continue Final Hearing filed on January 21, 2005, the hearing was scheduled for April 12, 2005. At the hearing, the Advocate presented testimony from Dagmarra Paruas, the Respondent's wife; Leo Santinello, a policeman employed by the Town; and the Respondent. Eight Joint Exhibits (numbered 1-8) were admitted into evidence. The Advocate for the Commission also submitted its Exhibit 1, which was received in evidence. The Respondent testified in his own behalf, and Respondent's Exhibit 1 was admitted into evidence.

The transcript of the proceedings was filed with the

Division of Administrative Hearings on April 26, 2005. By stipulation, the parties agreed that proposed recommended orders would be filed no later than June 30, 2005. The Respondent filed his proposed order on July 1, 2005, but it has been considered along with the timely filed proposal submitted by the Advocate. The Joint Prehearing Stipulation filed by the parties on April 8, 2005, has also been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material to the allegations of this case, the Respondent was an elected member of the Town council. As such, the Respondent is subject to the mandates of the Code of Ethics for public officers and employees found in Chapter 112, Florida Statutes (2002).

2. On February 10, 2000, at approximately 5:25 p.m. within the Town of Golden Beach, Florida, Dagmarra Paruas (the Respondent's wife) illegally parked her motor vehicle in a handicapped zone at the public beach pavilion. Mrs. Paruas exited her vehicle for a short amount of time (to see about some tables at the pavilion) and when she returned to the car, Officer Santinello was at her vehicle preparing a citation.

3. Had Mrs. Paruas been respectful, remorseful or apologetic at the time, Officer Santinello would have written only a citation warning as it is his policy to warn persons

before writing a citation. Instead, Mrs. Paruas was disrespectful toward the officer.

4. Based upon Mrs. Paruas' parking violation and the disrespectful manner in which she exited the beach parking area, Officer Santinello decided he would let the citation stand. Factors contributing to the officer's decision were: the aggressive backing out of the parking space causing Officer Santinello to move quickly out of Mrs. Paruas' vehicle's path; Mrs. Paruas' demand to speak to Hernan (Hernan Cardeno, the Town's police chief); and the way Mrs. Paruas threw the ticket back at him after he attempted to hand the citation to her.

5. Mrs. Paruas is a member of the Town's beach committee. At or near the time of the citation, Mrs. Paruas was checking on arrangements at the beach pavilion for the beach committee. She did not believe the citation was fair because she was at the pavilion for a short time and was there in her capacity as a Town beach committee member.

6. After Mrs. Paruas advised the Respondent that she had received a citation for parking at the pavilion, the Respondent telephoned the Town's chief of police. During the conversation with the chief (Hernan Cardeno) the Respondent stated he was unhappy with the way the police department was being run and was unhappy his wife had received a parking

citation. Mr. Paruas did not understand why his wife had received the citation.

7. At a subsequent meeting with the police chief at the police department, the Respondent asked when the Town started giving councilmen's wives tickets.

8. The Respondent again reminded the police chief that he was unhappy with the police department. At the time, the Respondent was serving as vice mayor for the Town.

9. The Respondent was not persuaded by the information provided to him regarding the ticket. He continued to complain regarding the citation to the police chief and to Officer Santinello. At some point during the meeting at the police office, Officer Santinello was told it would be in his best interests to take back the citation.

10. When Officer Santinello asked whether his job was being threatened, he advised the Respondent and the police chief that he would contact the police union.

11. The Respondent told Officer Santinello to take back the ticket and apologize to his wife.

12. A short while later (after the Respondent had left the police office), the police chief suggested to Officer Santinello that he should void Mrs. Paruas' ticket.

13. The next day, Officer Santinello voided the citation by preparing a County Court Cancellation Form for the ticket.

Mrs. Paruas was not required to pay the citation or appear in court or have any adverse entry on her driving record.

14. Officer Santinello voided the citation because he was afraid of losing his job. He did not want additional conflict over the matter. Officer Santinello did not want to get on the Respondent's bad side, given his position in the Town. Officer Santinello would like the entire incident to be forgotten. Officer Santinello expressed regret over the incident as it has potentially damaged his employment future with the Town.

15. Mrs. Paruas and the Respondent benefited from the cancellation of the citation.

16. Had the Respondent not challenged Officer Santinello as he did, and had he not been a member of the Town council, the citation would not have been voided.

17. Neither Mrs. Paruas or the Respondent took responsibility for the fact that she had, in fact, parked illegally at the beach pavilion.

18. Mrs. Paruas is not entitled to park in a handicapped zone. Members of the Town council and their spouses are not entitled to park illegally as an extra benefit of their public roles within the Town.

CONCLUSIONS OF LAW

19. The Division of Administrative Hearings has

jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569, 120.57(1), and 112.322, Fla. Stat. (2002).

20. As the party asserting the affirmative of the issue, the Advocate bears the burden of proof in this matter. See Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). As the Advocate seeks a penalty against a public officer, the standard of proof to be applied in the instant case requires that the allegations be established by clear and convincing evidence. See Latham v. Florida Commission on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997). Accordingly, the standard that must be applied in this matter is whether the Advocate has established by clear and convincing evidence that Respondent used his official position as a Town council member to cause a citation issued to his wife to be voided.

21. In order to meet the "clear and convincing" standard, evidence must be of such a weight and nature that it produces in the mind of the trier of fact a firm belief or conviction without hesitancy as to the truth of the allegation. Such standard is more than a "preponderance of the evidence," but less than "beyond," and to the exclusion of a reasonable doubt." See In Re Davey, 645 So. 2d 398 (Fla. 1994).

22. Section 112.313(6), Florida Statutes (2002), provides:

MISUSE OF PUBLIC POSITION.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

23. Section 112.312(9), Florida Statutes (2002), provides:

"Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

24. It is undisputed the Respondent was a public officer and is subject to the mandates of Chapter 112, Florida Statutes (2002). Further, it is undisputed that the Respondent's wife received a benefit from the cancellation of the ticket. When the citation was voided, the Respondent and his wife were not required to appear in court (had they sought to challenge the ticket) or pay the fine imposed for the violation.

25. The real issue, then, is whether the Respondent was using his public position to obtain the benefit of having the

ticket voided or was merely exercising his right of free speech to speak out against the ticket. The weight of the credible evidence supports the former. Average citizens entitled to challenge tickets are not able to bully police officers. They may not telephone the chief of police and participate in a conference over the issuance of a ticket. Moreover, neither the Respondent nor his wife has denied the underlying fact of the issue: that Mrs. Paruas was illegally parked.

26. In this case, the clear and convincing weight of the credible evidence supports the conclusion that the Respondent used his public position to persuade the officer to void the ticket. Mrs. Paruas did not believe she should be ticketed despite the fact that she parked illegally. She made no attempt to apologize for her rudeness to the officer, and showed little remorse for her conduct during the formal hearing of this cause. Mrs. Paruas maintained that because the main entrance to the parking area was closed (or under construction) and she was required to enter the lot through the exit she was unable to park in an appropriate parking space. Given the layout of the pavilion parking lot, such explanation is simply not credible. There were ample parking spaces available to Mrs. Paruas. In fact, she moved her vehicle into one such space before leaving the parking lot.

27. The Respondent's efforts to discredit Officer Santinello by suggesting that the confrontation in Chief Cardeno's office was not documented in the memorandum drafted to memorialize the citation is not persuasive. First, neither the chief nor the officer wanted to recount the circumstances of the Respondent's interference in the matter. Second, had they documented more specific information regarding the Respondent's conduct, additional allegations may have been appropriate. In short, by agreeing to void the citation, Officer Santinello was trying to let the whole matter be done with. He did not want to pursue the citation or the instant complaint against the Respondent at any time. A third party, not a party to this case, brought the matter before the Commission.

28. Section 112.317, Florida Statutes, provides, in pertinent part:

(1) Violation of any provision of this part, including, but not limited to, any failure to file any disclosures required by this part or violation of any standard of conduct imposed by this part, or violation of any provision of s. 8, Art. II of the State Constitution, in addition to any criminal penalty or other civil penalty involved, shall, pursuant to applicable constitutional and statutory procedures, constitute grounds for, and may be punished by, one or more of the following:

(a) In the case of a public officer:

1. Impeachment.

2. Removal from office.
3. Suspension from office.
4. Public censure and reprimand.
5. Forfeiture of no more than one-third salary per month for no more than 12 months.
6. A civil penalty not to exceed \$10,000.
7. Restitution of any pecuniary benefits received because of the violation committed.

29. The Advocate has recommended penalties consistent with the foregoing statute and the case law applicable to this type of charge.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Ethics Commission enter a Final Order and Public Report concluding that the Respondent, Al Paruas, violated Section 112.313(6), Florida Statutes (2002). The Respondent should be subject to a public reprimand and the imposition of a civil penalty not to exceed \$10,000.

DONE AND ENTERED this 29th day of July, 2005, in
Tallahassee, Leon County, Florida.



J. D. Parrish
Administrative Law Judge
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Filed with the Clerk of the
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this 29th day of July, 2005.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.