

DATE FILED

'APR 26 2006'

BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS

COMMISSION ON ETHICS

In re **LISA MARIE PHILLIPS,** )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

Complaint No. 04-023  
DOAH Case No. 05-1607EC  
COE Final Order No. 06-026

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS  
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**FINAL ORDER AND PUBLIC REPORT**

This matter came before the State of Florida Commission on Ethics, meeting in public session on April 21, 2006, pursuant to the Recommended Order of the Division of Administrative Hearings' Administrative Law Judge rendered in this matter on February 1, 2006.

**BACKGROUND**

This matter began with the filing of a complaint on February 13, 2004 by Ronald F. Ockerman alleging that the Respondent, Lisa Marie Phillips, as a member of the Bradenton Beach City Commission, violated Section 112.313(6), of the Code of Ethics for Public Officers and Employees (Part III, Chapter 112, Florida Statutes). The allegations were found to be legally sufficient to allege a possible violation of this provision and Commission staff undertook a preliminary investigation to aid in the determination of probable cause. On June 8, 2004, the Commission on Ethics issued an order finding probable cause to believe that the Respondent had violated Section 112.313(6), Florida Statutes, by using her public position to threaten and/or intimidate the Complainant during a traffic confrontation. The matter was then forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge (ALJ) to

conduct the formal hearing and prepare a recommended order. A formal evidentiary hearing was held before the ALJ on October 28, 2005. No transcript was filed with DOAH but both parties timely filed proposed recommended orders. The ALJ's Recommended Order was transmitted to the Commission and to the parties on February 1, 2006, and the parties were notified of their right to file exceptions to the Recommended Order. The Respondent filed exceptions to the ALJ's Recommended Order on February 20, 2006, and the Advocate filed a Response to Respondent's Exceptions on February 24, 2006. On March 10, 2006, Respondent filed the original transcript of the hearing with the Commission. The matter is now before the Commission for final agency action.

#### **STANDARDS FOR REVIEW**

Under Section 120.57(1)(l), Florida Statutes, an 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 interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusions of law or interpretations of administrative rules, the agency must state with particularity its reasons for rejecting or modifying such conclusions of law or interpretations of administrative rules 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 the available record of the proceeding, the exceptions filed by Phillips and the Advocate's responses thereto, and having heard the arguments of counsel, the Commission makes the following findings, conclusions, rulings and recommendations

### **RULINGS ON EXCEPTIONS**

1. Respondent's first exception is directed to the third and fourth sentences of Finding of Fact Paragraph 10, for which she offers an alternative view of the evidence.

As noted by the Advocate in his Response, all of the Respondent's exceptions fail to comply with Section 120.57(1)(k), Florida Statutes, by not identifying the legal basis for each exception and by not citing to the record. Because of these deficiencies, the Commission is not legally required to rule on Respondent's exceptions. Notwithstanding, our review of the late-filed transcript of the hearing convinces us that the proceedings complied with the essential requirements of law and that there is competent substantial evidence to support Finding of Fact

Paragraph 10. R. 12, 13, 25, 26, 27, 54, 56, 68, 69, 77, 78. Therefore, Respondent's Exception No. 1 is rejected.

2. Respondent's Exception No. 2 is directed to the second and third sentences of the ALJ's Finding of Fact Paragraph 12 but contains no legal grounds for excepting to Paragraph 12. There is competent substantial evidence in the record to support the finding. R. 12, 13. Therefore, Respondent's Exception No. 2 is rejected.

3. Respondent's Exception No. 3 states only that she "takes exception" with the first clause of the first sentence of Finding of Fact Paragraph 13. There is competent substantial evidence to support Finding of Fact Paragraph 13. R. 26, 28. Accordingly, Exception No. 3 is rejected.

4. Respondent's Exception No. 4 is directed to Finding of Fact Paragraph 14 without any legal basis for the exception. There is competent substantial evidence to support Finding of Fact Paragraph 14. R. 31. Exception No. 4 is therefore rejected.

5. Respondent's Exception No. 5, directed at Finding of Fact Paragraph 17 but without any legal grounds, is rejected. There is competent substantial evidence to support the ALJ's Finding of Fact Paragraph 17. R. 29, 30, 31.

6. Respondent's Exception No. 6 is directed to Finding of Fact Paragraph 20 but no legal grounds for the exception are provided. There is competent substantial evidence in the record to support the ALJ's finding. R. 88, 89, 90, 101, 107, 115, 116. Exception No. 6 is therefore rejected.

7. Exception No. 7 is directed to the ALJ's ultimate finding, in Finding of Fact Paragraph 21, in which she found that the Respondent misused her position as a member of the

Bradenton Beach City Commission to threaten and/or intimidate the Complainant. Respondent offers no legal basis for the exception and it is rejected. Further, our review of the record convinces us that the ALJ's ultimate finding was based upon competent substantial evidence and the proceedings complied with the essential requirements of law.

8. Respondent's Exception No. 8 is directed to Conclusion of Law Paragraph 30. No legal basis for the exception is offered other than Respondent's contrary view of the evidence. Our review of the record confirms that there is competent substantial evidence to support the finding of what Respondent told the Complainant during the confrontation, and further, the ALJ's legal conclusions are correct. Exception No. 8 is thus rejected.

9. Respondent's Exception No. 9, directed to Conclusion of Law Paragraph 31, states only that she "takes exception to this paragraph in its entirety." We discern no legal error in the ALJ's conclusion. Exception No. 9 is rejected.

10. Exception Nos. 10 and 11 are directed to Conclusion of Law Paragraphs 32 and 33. The Respondent insists she had "no corrupt intent because her statement was an invited response to [the Complainant's] made in the heat of an angry, but private, confrontation." We find no legal error in the ALJ's conclusions and therefore, reject Exception Nos. 10 and 11.

11. Exception No. 12 is directed to Conclusion of Law Paragraph 34, where she asserts that the ALJ erred in concluding that Respondent knew at the time she made her intimidating statements that they were inappropriate and inconsistent with the proper performance of her public duties. There does not appear to be any legal error in the ALJ's conclusion and Respondent has not alerted us to any. Thus, Respondent's Exception No. 12 is rejected.

12. Respondent's final exception is to the ALJ's concluding statement, in Conclusion of Law Paragraph 35, that the clear and convincing evidence presented at the hearing proved that Respondent violated Section 112.313(6), Florida Statutes. No legal basis for Respondent's Exception No. 13 is given and we have not independently uncovered any legal basis to reject the ALJ's conclusion. Accordingly, Exception No. 13 is rejected.

### **FINDINGS OF FACT**

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

### **CONCLUSIONS OF LAW**

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

2. Accordingly, the Commission on Ethics concludes that the Respondent, as a member of the Bradenton Beach City Commission, violated Section 112.313(6), Florida Statutes, by using her position to threaten and/or intimidate the Complainant.

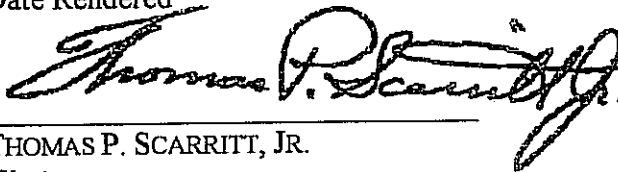
### **RECOMMENDED PENALTY**

The ALJ's recommendation of \$2,000 as a civil penalty for Respondent's violation of Section 112.313(6), Florida Statutes, is accepted.

In consideration of the foregoing and pursuant to Sections 112.317 and 112.324, Florida Statutes, the Commission recommends that the Governor impose a civil penalty upon the Respondent, LISA MARIE PHILLIPS, in the total amount of \$2,000.

DONE and ORDERED by the State of Florida Commission on Ethics meeting in public session on Friday, April 21, 2006.

April 26, 2004  
Date Rendered

  
THOMAS P. SCARRITT, 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, 3600 MACLAY BOULEVARD SOUTH, SUITE 201, 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: Mr. Matthew P. Farmer , Attorney for Respondent Lisa Marie Phillips  
Mr. Ronald F. Ockerman, Complainant  
Mr. James H. Peterson, III, Commission's Advocate  
The Honorable Carolyn S. Holifield, Administrative Law Judge  
Division of Administrative Hearings