

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

DATE FILED

DEC 05 2007

COMMISSION ON ETHICS
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In re **DANNY HOWELL,**)

Respondent.)
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_____)

DIVISION OF
ADMINISTRATIVE
HEARINGS
Complaint No. 07-056
DOAH Case No. 05-4333EC
COE Final Order No. 07-147

FINAL ORDER

This matter comes before the Commission on Ethics, meeting in public session on November 30, 2007, pursuant to the Recommended Order of the Division of Administrative Hearings' Administrative Law Judge rendered in this matter on September 7, 2007. The Recommended Order (a copy of which is attached and incorporated herein by reference), recommends that the Commission enter a final order finding that Danny Howell violated Section 112.313(4), Florida Statutes, and recommending imposition of a civil penalty of \$500.

BACKGROUND

This matter began with the filing of an ethics complaint in 2004 alleging that the Respondent, Danny Howell, as a member of the Ocoee City Commission required the Complainant, who was at the time the Ocoee City Manager, to pay a number of the Respondent's personal expenses, including: a fine for the Respondent's late filing of a Campaign Treasurer's Report, unauthorized charges to the Respondent's City credit card, a computer, and water utility charges. The complaint also alleged that the Respondent attempted to borrow \$2,000 from the Complainant. The allegations were found to be legally sufficient and Commission staff undertook a preliminary investigation to aid in the determination of probable cause. On April 26, 2005 Commission issued an Order finding probable cause to believe that the Respondent:

- violated Section 112.313(2), Florida Statutes, by requiring the Complainant to pay a \$150 fine that the Respondent owed due to the Respondent's failure to timely file his Campaign Treasurer's Report;
- violated Section 112.313(2), Florida Statutes, by requiring the Complainant to pay \$354.18 for personal charges that the Respondent made on his city issued credit card;
- violated Section 112.313(2), Florida Statutes, by requiring the Complainant to purchase a computer for the Respondent's son;
- violated Section 112.313(2), Florida Statutes, by requiring the Complainant to take the steps necessary to restore water service to the Respondent's home and to waive all fees and costs associated with the termination of the Respondent's service;
- violated Section 112.313(4), Florida Statutes, by allowing the Complainant to pay a \$150 fine that the Respondent owed due to the Respondent's failure to timely file his Campaign Treasurer's Report;
- violated Section 112.313(4), Florida Statutes, by allowing the Complainant to pay the Respondent's \$354.18 credit card bill;
- violated Section 112.313(4), Florida Statutes, by allowing the Complainant to purchase a computer for the Respondent's son;
- violated Section 112.313(4), Florida Statutes, by allowing the Complainant to arrange to have one of the water service cut-off fees removed from the Respondent's water bill;
- violated Section 112.313(6), Florida Statutes, by requiring the Complainant to pay a \$150 fine that the Respondent owed due to the Respondent's failure to timely file his Campaign Treasurer's Report;
- violated Section 112.313(6), Florida Statutes, by requiring the Complainant to pay \$354.18 for personal charges that the Respondent made on his city issued credit card;
- violated Section 112.313(6), Florida Statutes, by requiring the Complainant to purchase a computer for the Respondent's son; and,

- violated Section 112.313(6), Florida Statutes, by requiring the Complainant to take the steps necessary to restore water service to the Respondent's home and to waive all fees and costs associated with the termination of the Respondent's service.

However, the Commission found, based on the recommendation of the Commission's Advocate, that under the circumstances there is no probable cause to believe that the Respondent violated Section 112.313(2) or (6), Florida Statutes, by allegedly soliciting a \$2,000 loan from the Complainant.

The matter was then forwarded to the Division of Administrative Hearings (DOAH) for assignment of an Administrative Law Judge (ALJ) to conduct the formal hearing and prepare a recommended order. Prior to the hearing the parties submitted a Joint Prehearing Stipulation, and a formal evidentiary hearing was held before the ALJ by video teleconference on August 25 and October 10, 2006. A transcript was filed with the ALJ and the Advocate timely filed a proposed recommended order. The Respondent's proposed recommended order was not timely filed but was considered by the ALJ in preparation of the Recommended Order. The ALJ's Recommended Order was transmitted to the Commission, the Respondent, and the Advocate on September 7, 2007, and the parties were notified of their right to file exceptions to the Recommended Order. An Amended Recommended Order¹ was transmitted on September 12, 2007. No Exceptions were filed.

Having reviewed the Recommended Order, the record of the proceedings, the Commission makes the following findings, conclusions, rulings and determinations:

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

¹ The amendment did not affect the ALJ's ultimate findings.

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. An agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefore in the order, by citing to the record in justifying the action.

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 herein by reference.

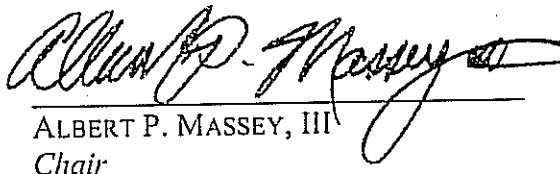
2. Accordingly, the Commission on Ethics concludes that the Respondent, as a member of the Ocoee City Commission, violated Section 112.313(4), Florida Statutes, by allowing the Complainant to purchase a computer for the Respondent's son, and the balance of the allegations against the Respondent are dismissed.

RECOMMENDED PENALTY

The ALJ's recommendation of a civil penalty in the amount of \$500 for the Respondent's violation of Section 112.313(4), Florida Statutes, is accepted.

DONE and ORDERED by the State of Florida Commission on Ethics meeting in public session on Friday, November 30, 2007.

December 5, 2007
Date Rendered


ALBERT P. MASSEY, III
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

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. C. Randall Freeman, Counsel for Respondent
Mr. James H. Peterson, III, Commission Advocate
Mr. Jim Gleason, Complainant
The Honorable Carolyn S. Holifield, Administrative Law Judge
Division of Administrative Hearings