

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

DATE FILED

DEC 06 2006

COMMISSION ON ETHICS

In re **CHUCK CHOCKALINGAM,**)
)
Respondent.)
)
)
_____)

Complaint No. 04-221
DOAH Case No. 06-1667EC
COE Final Order No. 06-375

FILED
DEC - 7 A 11:09
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

This matter comes before the Commission on Ethics, meeting in public session December 1, 2006, pursuant to the Recommended Order of the Division of Administrative Hearings' Administrative Law Judge rendered in this matter on October 10, 2006. The Recommended Order (a copy of which is attached and incorporated herein by reference), recommends that the Commission enter a final order finding that Chuck Chockalingam violated Section 112.313(6), Florida Statutes, in two instances and recommending imposition of a civil penalty of \$10,000 for each violation, restitution in the amount of \$2,481.35, and public censure and reprimand.

BACKGROUND

This matter began with the filing of an ethics complaint in 2004 alleging that the Respondent, Chuck Chockalingam, as Public Works Director for the Town of Dundee, violated Section 112.313(6), Florida Statutes, by making personal use of Town personnel, Town funds, and Town equipment to work on his home. The allegations were found to be legally sufficient and Commission staff undertook a preliminary investigation to aid in the determination of probable cause. On December 7, 2005, the Commission on Ethics issued an order finding

probable cause to believe the Respondent had violated Section 112.313(6), Florida Statutes, by using Town employees to work on his home at the Town's expense, and by using or allowing others to use Town vehicles, equipment, and/or materials for the Respondent's personal benefit. 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 Advocate (representing the Commission on Ethics) submitted a unilateral prehearing statement. The Respondent did not submit a prehearing statement and did not appear for or participate in the final hearing. A formal evidentiary hearing was held before the ALJ on July 25, 2006. A transcript was filed with the ALJ and the Advocate timely filed a proposed recommended order. Although he was provided notice of his right to file a proposed recommended order, the Respondent did not do so. The ALJ's Recommended Order was transmitted to the Commission, the Respondent, and the Advocate on November 11, 2006, and the parties were notified of their right to file exceptions to the Recommended Order. Thereafter, the Advocate filed an Exception to the ALJ's Recommended Order. No Exceptions were filed by the Respondent, nor did the Respondent file any Response to the Advocate's Exception.

Having reviewed the Recommended Order, the record of the proceedings, and Advocate's Exception, 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 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.

RULINGS ON EXCEPTIONS

Exception 1

The Advocate's single exception speaks to the ALJ's penalty recommendation, specifically, the restitution penalty. The ALJ recommended restitution in the amount of \$2,481.35, but did not specify the entity to which the restitution should be paid. Section 112.317(1)(d)3, Florida Statutes, states that punishment for violation of the Code of Ethics may include:

Restitution of any pecuniary benefits received because of the violation committed. The commission may recommend that the restitution penalty be paid to the agency of the public officer or employee or to the General Revenue Fund.

This section previously provided for restitution to be paid only to the General Revenue Fund, but was amended by Section 8 of Chapter 2006-275, Laws of Florida, effective October 1, 2006, to permit restitution to be paid to a respondent's public agency.

It is clear from a review of the record that the Town suffered losses as a result of the Respondent's personal use of its equipment and personal use of the labor of its employees while they were being paid by the Town. The testimony of Town employees John Phillips and Joshua Lauver, as well as the employees' time cards, reflects that the Respondent used \$327.70 in Town funds to pay Mr. Phillips, and \$616.20 to pay Mr. Lauver, for work at the Respondent's home. [Exhibit A-2 (Transcript of Deposition of John Phillips) pp. 40-45 and attachment 2; Exhibit A-1 (Transcript of Deposition of Joshua Lauver) pp. 15-17, 34-47, 51 and attached time cards; Exhibit A-7] Their testimony also reflects that the Town's equipment was used either by the Respondent himself or by them for the Respondent's benefit. [Exhibit A-1 (Transcript of Deposition of Joshua Lauver) pp. 19-33; Exhibit A-2 (Transcript of Deposition of John Phillips)

pp. 18-28] Finally, the testimony of an equipment rental agent established the value of the use of the equipment. [Exhibit A-5 (Transcript of Deposition of Michael Bennett) pp. 6-13]

As the Town of Dundee suffered a detriment as the result of the Respondent's actions, it is appropriate that the restitution penalty be paid to the Town.

The exception is therefore granted.

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 Public Works Director for the Town of Dundee, violated Section 112.313(6), Florida Statutes, by using Town employees to work on the Respondent's home at the Town's expense, and by using or allowing others to use Town vehicles, equipment, and/or materials for the Respondent's personal benefit.

RECOMMENDED PENALTY

The ALJ's recommendation of a public censure and reprimand and a civil penalty in the amount of \$10,000 per violation (for a total of \$20,000) for the Respondent's violation of Section 112.313(6), Florida Statutes, is accepted. The ALJ's recommendation of a restitution penalty in the amount of \$2,481.35 is also accepted, with the modification that the penalty be paid to the Town of Dundee.

In consideration of the foregoing and pursuant to Sections 112.317 and 112.324, Florida Statutes, the Commission recommends that the Governor issue a public censure and reprimand to read:

VEERAPPAN "CHUCK" CHOCKALINGAM a/k/a/ CHUCK CHOCKALINGUM is hereby publicly censured and reprimanded. His exploitation of public resources for personal gain made a travesty of public service and warrants the strongest possible reproach.

and impose a civil penalty of \$20,000 and restitution in the amount of \$2,481.35 upon the Respondent VEERAPPAN "CHUCK" CHOCKALINGAM a/k/a/ CHUCK CHOCKALINGUM.

DONE and ORDERED by the State of Florida Commission on Ethics meeting in public session on Friday, December 1, 2006.

December 1, 2006
Date Rendered

Norman M. Ostrau

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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. Chuck Chockalingam, Respondent
Mr. James H. Peterson, III, Commission Advocate
Mr. Kenneth Vickery, Complainant
The Honorable Don W. Davis, Administrative Law Judge
Division of Administrative Hearings