

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

DATE FILED

APR 23 2008

COMMISSION ON ETHICS

In re CHARLES DEAN,)
)
 Respondent.)
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)
)
 _____)

Complaint No. 05-154
DOAH Case No. 07-0646EC
COE Final Order No. 08-079

FILED
APR 24 PM 1:24
DIVISION OF ADMINISTRATIVE HEARINGS

FINAL ORDER

This matter comes before the Commission on Ethics, meeting in public session on April 18, 2008, pursuant to the Recommended Order of the Division of Administrative Hearings' Administrative Law Judge rendered in this matter on January 31, 2008. The Recommended Order (a copy of which is attached and incorporated herein by reference), recommends that the Commission enter a final order finding that Charles Dean violated Section 112.313(6), Florida Statutes, and recommending imposition of a civil penalty of \$200.

BACKGROUND

This matter began with the filing of an ethics complaint in 2005 alleging that the Respondent, Charles Dean, as a member of the Oak Hill City Commission threatened the Police Chief's job after a police officer notified Mr. Dean's wife of a parking violation in front of Mr. Dean's business. The allegation was found to be legally sufficient and Commission staff undertook a preliminary investigation to aid in the determination of probable cause. On October 25, 2006, the Commission issued an Order finding probable cause to believe that the Respondent threatened the Police Chief's job after a police officer notified the Respondent's wife of a parking violation in front of the Respondent's business.

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 on July 11 and 12, 2007. A transcript was filed with the ALJ and the parties timely filed proposed recommended orders. The ALJ's Recommended Order was transmitted to the Commission, the Respondent, and the Advocate on January 31, 2008. 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 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

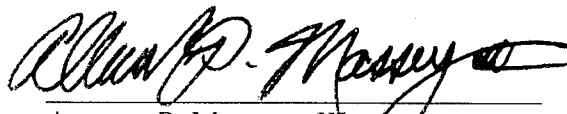
1. The Conclusions of Law as set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.
2. Accordingly, the Commission on Ethics concludes that the Respondent, as a member of the Oak Hill City Commission, violated Section 112.313(6), Florida Statutes, by threatening the Police Chief's employment status during a verbal altercation.

RECOMMENDED PENALTY

The ALJ's recommendation of a civil penalty in the amount of \$200 for the Respondent's violation of Section 112.313(6), Florida Statutes, is accepted.

DONE and ORDERED by the State of Florida Commission on Ethics meeting in public session on Friday, April 18, 2008.

April 23, 2008
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 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. Maureen Sullivan Christine, Counsel for Respondent
Mr. James H. Peterson, III, Commission Advocate
Mr. Walter Zalisko, Complainant
The Honorable P. Michael Ruff, Administrative Law Judge
Division of Administrative Hearings