

official position to influence how the police department handled a routine traffic stop involving her son. 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 by the ALJ on October 7, 2008. A transcript was filed with DOAH and both parties timely filed proposed recommended orders. The ALJ's Recommended Order was transmitted to the Commission and to the parties on February 23, 2009, and the parties were notified of their right to file exceptions to the Recommended Order. Both parties timely filed exceptions but did not file responses to each other's exceptions, and 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, the Commission may adopt the recommended order as its final order. The Commission in its final order 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 conclusion of law or interpretation of administrative rule, the Commission must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule 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. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The Commission may not reject or modify the findings of fact unless it first determines from a review of the entire record, and states with particularity in its order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The Commission 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 therefor in the order, by citing to the record in justifying the action.

Having reviewed the Recommended Order and the complete record of the proceeding, the exceptions filed by Lynum and the Advocate, and having heard the arguments of counsel, the Commission makes the following findings, conclusions, rulings and recommendations.

RULINGS ON LYNUM'S EXCEPTIONS

1. Respondent filed exceptions to the findings of fact contained in Paragraphs 3, 5, 14, and 18. However, none of Respondent's exceptions argue that the ALJ's Findings of Fact were not supported by competent substantial evidence or that the proceedings did not comply with the essential requirements of law. Instead, the Respondent seeks to have the Commission to make supplemental findings of fact. This is not permitted by Section 120.57(1)(l), Florida Statutes. Accordingly, Respondent's exceptions to Paragraphs 3, 5, 14, and 18 of the Findings of Fact are rejected.

2. Respondent excepted to Finding of Fact Paragraph 11, where the ALJ found:

The benefit sought by Respondent was to prevent racial profiling during an ongoing traffic stop by complaining directly to the chief. That was a special benefit or privilege available to Respondent that was not available to a

member of the public through the police department's bias free policing policy.

Respondent excepted to the ALJ's conclusion that protection from illegal police activity is a special benefit or privilege.

This exception is denied, as it misreads the ALJ's finding, which was not that preventing racial profiling was the special benefit or privilege sought by Respondent, but rather the Respondent's complaining to the chief of police directly to prevent racial profiling.

3. Respondent's exceptions to the Conclusions of Law take issue with the ultimate finding in Paragraph 27—that Respondent acted "corruptly" and her actions were inconsistent with the proper performance of her official public duties.

The Commission accepts Respondent's exception and rejects this conclusion. The Advocate argued at trial that Respondent used information and resources and influence to interfere with a routine traffic stop involving her son. However, after weighing the credibility of the witnesses, the ALJ found that the benefit that Respondent sought was to prevent racial profiling during an ongoing traffic stop by complaining directly to the chief, rather than to interfere with her son's receiving the summons he otherwise would have received. Although the ALJ finds in Paragraph 27 that Respondent's actions were inconsistent with the proper performance of her public duties, we have examined the complete record of this case and conclude that there is not competent substantial evidence to support a finding that the

Respondent's complaining directly to the chief in order to prevent racial profiling was inconsistent with the proper performance of her public duties as a Commissioner. Therefore, we cannot conclude that her actions constituted a corrupt misuse of position in violation of Section 112.313(6), Florida Statutes.

FINDINGS OF FACT

Except to the extent that the findings of fact of the ALJ are rejected or modified above, the Commission on Ethics accepts and incorporates into this Final Order and Public Report the findings of fact in the Recommended Order from the Division of Administrative Hearings.

CONCLUSIONS OF LAW

Except to the extent rejected or modified above, the Commission on Ethics accepts and incorporates into this Final Order and Public Report the conclusions of law in the Recommended Order from the Division of Administrative Hearings.

DISPOSITION

Accordingly, the Commission on Ethics rejects the recommendation of the Administrative Law Judge and enters a Final Order and Public Report finding that the Respondent, Daisy Lynum, did not violate Section 112.313(6), Florida Statutes, and dismisses the complaint.

DONE and ORDERED by the State of Florida Commission on Ethics meeting
in public session on Friday, April 24, 2009.

April 29, 2009
Date Rendered

Cheryl Forchille
CHERYL FORCHILLE
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. Rick Janra, Attorney for Respondent Daisy Lynum
Ms. Jennifer M. Erlinger, Commission's Advocate
The Honorable Daniel Manry, Administrative Law Judge
Division of Administrative Hearings
Mr. Richard L. Spears, Complainant