

DATE FILED

APR 29 2009

**BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS**

COMMISSION ON ETHICS

In re **JOSEPH RUSSO,**)
)
 Respondent.)
)
 _____)

Complaint No. 04-021
DOAH Case No. 08-1567-EC
COE Final Order No. 09-072

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DIVISION OF ADMINISTRATIVE HEARINGS
FILED

FINAL ORDER

This matter comes before the Commission on Ethics, meeting in public session on April 24, 2009, pursuant to the Recommended Order of the Division of Administrative Hearings' Administrative Law Judge rendered in this matter on March 4, 2009. The Recommended Order (a copy of which is attached and incorporated herein by reference), recommends that the Commission enter a final order dismissing the complaint.

BACKGROUND

This matter began with the filing of an ethics complaint in 2004 alleging that the Respondent, Joseph Russo, a member of the Palm Beach Gardens City Council, participated in and voted on a number of issues involving the Mirasol development in Palm Beach Gardens, while at the same time serving as the business accountant for one of Mirasol's largest builders, Carl Sabatello. 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 25, 2007, the Commission issued an Order finding probable cause to believe that the Respondent violated Section 112.3143(3), Florida Statutes, by voting as a member of the Palm Beach Gardens City Council on April 18, 2002, for Resolution 54, 2002, when he knew that the measure voted on inured to the special private gain or loss of one of his principals, and by voting

as a member of the Palm Beach Gardens City Council on April 18, 2002, for Resolution 57, 2002, when he knew that the measure voted on inured to the special private gain or loss of one of his principals.

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. The case was consolidated for purposes of the hearing with Complaint No. 04-022, In re Carl Sabatello, DOAH Case No. 08-0782EC. The parties filed a Joint Prehearing Stipulation, and a formal evidentiary hearing was held before the ALJ on November 13 and 14, 2008. 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 March 4, 2009, and the parties were notified of their right to file exceptions to the Recommended Order. No Exceptions were filed.

Having reviewed the Recommended Order and 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. Based upon our review of the complete record, there is competent substantial evidence to support the ALJ's findings of fact and his ultimate finding that the Respondent did not violate Section 112.3143(3), Florida Statutes.

Accordingly, the Commission on Ethics finds that the Respondent, as a member of the Palm Beach Gardens City Council, did not violate Section 112.3143(3), Florida Statutes, as alleged in the complaint. Therefore, the complaint is hereby dismissed.

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 Forchilli
CHERYL FORCHILLI
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. Mark Herron, Counsel for Respondent
Mr. James H. Peterson, III, Commission Advocate
Ms. Therese Angrees, Complainant
The Honorable Stuart M. Lerner, Administrative Law Judge
Division of Administrative Hearings