

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: GLENDA PARRIS,) Case No. 12-2329EC
)
Respondent.)
)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted by video teleconference between West Palm Beach and Tallahassee, Florida, on November 20, 2012, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Advocate: Melody A. Hadley, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399

For Respondent: No appearance

STATEMENT OF THE ISSUE

Whether Glenda Parris (Respondent), while employed as a West Palm Beach Code Enforcement Officer, violated section 112.313(6), Florida Statutes,^{1/} by using her position to rent property and/or gain preferential treatment at a court proceeding and, if so, the appropriate penalty.

Whether Respondent, while employed as a West Palm Beach Code Enforcement Officer, violated section 112.313(7), by having a

contractual relationship that conflicted with her official responsibilities and, if so, the appropriate penalty.

PRELIMINARY STATEMENT

On May 9, 2012, the Florida Commission on Ethics (the Commission) issued an Order Finding Probable Cause to believe that Respondent committed the two violations at issue in this proceeding. Respondent timely requested a formal administrative hearing to challenge the alleged violations, the matter was referred to DOAH, and this proceeding followed.

At the final hearing, the Advocate for the Commission presented the testimony of Dr. Rhonda Nasser, John Alford, and John Frasca. The Advocate offered 14 exhibits, each of which was admitted into evidence.

Respondent made no appearance at the formal hearing.

A Transcript of the proceedings, consisting of one volume, was filed on December 20, 2012. Also on December 20, the Respondent filed a notice that she was unavailable between November 19, 2012, and January 18, 2013, due to medical reasons. In response to that notice, the undersigned extended the deadline for the filing of proposed recommended orders to close of business on January 28, 2013. The Advocate timely filed its Proposed Recommended Order, which has been duly considered by the

undersigned in the preparation of this Recommended Order. The Respondent has not filed a proposed recommended order.

FINDINGS OF FACT

1. At the times relevant to this proceeding, Respondent was employed as a West Palm Beach Code Enforcement Officer.

2. Respondent is subject to the requirements of part III, chapter 112, which consists of sections 112.311 - 112.326, and is known as the Code of Ethics for Public Officers and Employees.

3. Respondent's assigned duties included inspecting, observing, reporting, and enforcing the City of West Palm Beach's code regulating zoning, housing, and the environment

4. Respondent's was assigned a work zone in West Palm Beach that included 231 Lytton Court (the subject property).

5. At the times relevant to this proceeding, Dr. Rhonda Nasser was the owner and/or principal of El Nasco II, a limited liability company. El Nasco II owned the house at 231 Lytton Court.

6. In the summer of 2010, Respondent issued multiple notices of violation to Dr. Nasser relating to the subject property.

7. In July 2010, Respondent and Dr. Nasser met at the subject property to discuss the notices of violation. At that meeting, Respondent asked Dr. Nasser if she could rent the

subject property. Respondent was on duty and in her uniform when she negotiated the lease of the subject property.

8. Dr. Nasser entered into an agreement with Respondent for Respondent to rent the subject property for \$1,200.00 per month beginning in August 2010.

9. As soon as she moved in to the subject property, Respondent began to complain to Dr. Nasser as to items that needed to be repaired or replaced. Respondent wrote a demand letter on August 31, 2010, that referenced code requirements. On November 3, 2010, wrote a second demand letter that also referenced code requirements.

10. Dr. Nasser testified, credibly, that she believed that Respondent was threatening to use code violations to support her demand as to items that needed to be impaired or replaced. Dr. Nasser's belief was reasonable.

11. Respondent began to withhold rent because Dr. Nasser would not make the improvements Respondent had demanded. At the end of January or the beginning of February 2011, Dr. Nasser initiated eviction proceedings against Respondent due to Respondent's failure to pay rent.

12. John Frasca has been employed as a West Palm Beach Code Enforcement Officer for more than 11 years. Respondent asked Mr. Frasca on two separate occasions prior to May 26, 2011, to inspect the subject property. At the first inspection,

Respondent deliberately withheld the fact that she lived at the subject property.

13. At the time of the second inspection, Respondent pressured Mr. Frasca to complete the inspection and informed him that she needed the inspection report for her attorney.

14. A rental license for a residence is the official authorization from the City of West Palm Beach that an owner may rent its residence and that the residence will be inspected. A rental license guarantees to a renter that the residence has been inspected and maintained, and is meeting all current codes. A rental license is required by the city code.

15. Mr. Frasca discovered that the owner of the subject property had no rental license. Respondent should have known that the owner did not have a rental license, and she should have refused to rent the property until the owner obtained a rental license.

16. The eviction proceedings initiated by Dr. Nasser progressed to a court hearing before a judge. At the eviction hearing, Respondent wore her work uniform, which consisted of dark colored pants, a code enforcement badge on her belt, and a shirt with "City of West Palm Beach, Code Enforcement" written on it. Dr. Nasser believed that Respondent wore the uniform in court to give the appearance that Respondent was an expert in code enforcement. Alleged code violations came up as an issue

during the eviction hearing. Respondent argued that she withheld the payment of rent because Dr. Nasser would not correct perceived code violations.

17. Following the eviction hearing, Dr. Nasser contacted John Alford, who was, at that time, the Director of Public Works for West Palm Beach. Mr. Alford supervised the West Palm Beach Code Enforcement Department, including the code enforcement officers.

18. There existed an unwritten policy that code enforcement officers were not to wear their uniforms on unofficial business. Mr. Alford had admonished the code enforcement officers, including Respondent, to "take care while wearing the badge."

19. The City of West Palm Beach investigated Respondent's actions and prepared a document titled "Timeline - 231 Lytton Ct., WPB." That document, which is in evidence as Exhibit 9, reflects Respondent's actions regarding the subject property.

20. West Palm Beach uses a computer tracking system called Community Plus System that tracks all activities relating to a building code complaint and/or violation. A code officer puts in all information related to an inspection plus action taken for the property by its owner or a magistrate. The public can go to a website to view the status of a property in the City.

21. The City prepared a report based on the Community Plus System for the subject property. Mr. Alford determined that

Respondent had manipulated entries for the subject property in the Community Plus System by changing information relating to inspections.

22. On June 7, 2011, Mr. Alford notified Respondent in writing that he was going to terminate her employment.

23. On July 6, 2011, Respondents' employment was terminated for violations of the City's Employee Handbook and Code of Ethics.

24. Mr. Alford determined that Respondent's actions of proposing and negotiating a lease agreement while on duty and in uniform violated subparagraph 6 of the City's Ethics Policy 4.4, which is as follows: "City representatives shall not engage in financial transactions using non-public information or allow the improper use of such information to further any private interest or gain."

25. Mr. Alford also determined that Respondent violated the City's Code of Ethics provision 4.4 by wearing her City-issued uniform and badge to court for a personal matter giving the appearance that she was acting on behalf of the City.

CONCLUSIONS OF LAW

26. DOAH has jurisdiction over the subject matter of and the parties to this case pursuant to sections 120.569 and 120.57(1).

27. Section 112.322 and Florida Administrative Code Rule 34-5.0015, authorize the Commission to conduct investigations and to make public reports on complaints concerning violations of Code of Ethics for Public Officers and Employees.

28. The Commission seeks to penalize Respondent for her alleged violations of the Code of Ethics for Public Officers and Employees. Consequently, the Commission has the burden of proving by clear and convincing evidence the allegations against Respondent. See Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); Evans Packing Co. v. Dep't of Agric. & Consumer Servs., 550 So. 2d 112 (Fla. 1st DCA 1989); and Inquiry Concerning a Judge, 645 So. 2d 398 (Fla. 1994).

29. Section 112.313(6) provides as follows:

(6) MISUSE OF PUBLIC POSITION.—No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others

30. The Advocate established, by the requisite standard, that Respondent violated section 112.313(6) by her dealings with Dr. Nasser. Respondent negotiated the lease arrangement while on duty and in uniform. In her dealings with Dr. Nasser, Respondent made repeated references to code violations. Respondent wore her

uniform, including her badge, to the hearing, during which she argued that she withheld rent due to alleged code violations.

31. Section 112.313(7) (a) provides as follows:

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

32. Respondent violated section 112.313(7) (a) by utilizing the threat of code violations to negotiate improvements to the subject property. Respondent had the duty to cite any known code violation in her work zone. Respondent allowed her personal interests to interfere with her job responsibilities.

33. Pursuant to section 112.317(1) (d), the Commission has the authority to impose a civil penalty fine against Respondent up to \$10,000.00 per violation. In its Proposed Recommended Order, the Advocate proposed a civil penalty in the amount of

\$3,000.00 for the violation of section 112.313(6) and a civil penalty in the amount of \$2,000.00 for the violation of section 112.313(7). The Commission has the authority to impose civil penalties in those amounts. However, in making the recommendations that follow, the undersigned has considered that the City of West Palm Beach has imposed a substantial penalty on Respondent by terminating her employment based on the facts at issue in this proceeding.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of Law, it is RECOMMENDED that the Florida Commission on Ethics enter a Final Order and Public Report that finds that Respondent, Glenda Parris, violated section 112.313(6) and imposes against her a civil penalty in the amount of \$500.00. It is further RECOMMENDED that the Florida Commission on Ethics enter a Final Order and Public Report that finds that Respondent, Glenda Parris, violated section 112.313(7) and imposes against her a civil penalty in the amount of \$500.00, for a total civil penalty of \$1,000.00.

DONE AND ENTERED this 4th day of March, 2013, in
Tallahassee, Leon County, Florida.



CLAUDE B. ARRINGTON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of March, 2013.

ENDNOTE

^{1/} All statutory references are to Florida Statutes (2012).

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.