

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

DATE FILED

APR 22 2015

COMMISSION ON ETHICS

In re ROBERT SKIDMORE, III,)
Respondent.)
_____)

Complaint No. 11-121
DOAH Case No. 14-1912EC
Final Order No. 15-012

FILED
2015 APR 28 AM 11 09
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on April 17, 2015, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on February 27, 2015.

Background

This matter began with the filing of an ethics complaint by Michael Brown ("Complainant") against Robert Skidmore, III ("Respondent" or "Skidmore") indicative of the Respondent's having violated Section 112.313(6), Florida Statutes, as a Charlotte County Commissioner. Thereafter, the Commission conducted a preliminary investigation of the complaint and, based on the investigation, found that probable cause existed, and the matter was sent to DOAH for hearing. Subsequently, the matter was relinquished back to the Commission, which conducted further investigation, resulting in the probable cause finding which presented issues which were subsequently heard by the ALJ at DOAH and which resulted in the RO, which recommends that the Commission enter a final order and public report finding that the Respondent twice violated Section 112.313(6) and recommending a civil penalty of \$5,000 for each violation (total, \$10,000) and public censure and reprimand. The Respondent timely filed

exceptions to the RO and the Commission Advocate filed a response to the exceptions. Both the Respondent and the Advocate were noticed as to the Commission's consideration of the RO and the exceptions, and both appeared and made argument at the consideration.

Standards of Review of a DOAH Recommended Order

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 the interpretations of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion or interpretation and must make a finding that its substituted conclusion or interpretation is as or more reasonable than that which was rejected or modified.

However, the agency may not reject or modify findings of fact made by an ALJ unless the agency 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 upon which the findings were based did not comply with essential requirements of law. See, e.g., Freeze v. Department 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, may not resolve conflicts in the evidence, and may not judge the credibility of witnesses, because such evidential matters are within the sole province of the ALJ. Heifetz v. Department 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 on Ethics is bound by that finding.

Having reviewed the RO, the record of the DOAH proceeding, the exceptions, and the responses to the exceptions, and having heard argument of both the Respondent and the Advocate, the Commission on Ethics makes the following rulings, findings, conclusions, determinations, dispositions, and recommendations:

Rulings on Respondent's Exceptions

Respondent timely filed seventeen exceptions. Each will be treated below via numbering corresponding to that in the exceptions.

In exception 1, the Respondent takes exception to paragraph 6 of the RO, which finds that Mr. and Ms. Hemmes sought the Respondent's assistance getting approval for their zoning application. The Respondent argues that the finding is not supported by competent substantial evidence. This exception is rejected. The finding is based upon competent substantial evidence.

In exception 2, the Respondent takes exception to paragraph 7 of the RO, which finds that the Respondent called Ms. Mullen-Travis about the application. The Respondent argues that the finding is not supported by competent substantial evidence. This exception is rejected. The finding is based upon competent substantial evidence.

In exception 3, the Respondent takes exception to a portion of paragraph 8 of the RO, which finds that the Respondent told Ms. Mullen-Travis that he had some nice people in his

office and that he needed help getting zoning approval for them. The Respondent argues that the finding is not supported by competent substantial evidence. This exception is rejected. The finding is based upon competent substantial evidence.

In exception 4, the Respondent takes exception to paragraph 9 of the RO, which finds that the Respondent identified the applicant and Ms. Mullen-Travis explained why the zoning had not been approved. The Respondent argues that the findings are not supported by competent substantial evidence. This exception is rejected. The findings are based upon competent substantial evidence.

In exception 5, the Respondent takes exception to paragraph 11 of the RO, which finds that the Respondent implicitly offered a reward if Ms. Mullen-Travis helped the Hemmes. The Respondent argues that the finding is not supported by competent substantial evidence. This exception is rejected. The finding is based upon competent substantial evidence.

In exception 6, the Respondent takes exception to a portion of paragraph 13 of the RO, which finds that the Respondent offered to get Ms. Mullen-Travis an autographed photo of Rusty Wallace (a NASCAR driver) and tickets to a race. The Respondent argues that the finding is not supported by competent substantial evidence. This exception is rejected. The finding is based upon competent substantial evidence.

In exception 7, the Respondent takes exception to paragraph 14 of the RO, which finds that Ms. Mullen-Travis accurately considered that the tickets and photo were offered in exchange for her approval of the application to the benefit of the Hemmes, and which finds that the call from the Respondent in which the tickets and photo were mentioned was made by the Respondent in his official capacity. The Respondent argues that the findings are not supported

by competent substantial evidence. This exception is rejected. The findings are based upon competent substantial evidence.

In exception 8, the Respondent takes exception to paragraph 16 of the RO, which finds that the Respondent's call to Ms. Mullen-Travis was contrary to the Charlotte County Charter and the practice under it, and therefore, that it was not an authorized act pursuant to his duties or authorities as a county commissioner. The Respondent argues that there was no evidence presented which showed that the board of county commissioners ever brought a suit against the Respondent for a violation of the non-interference provision of the County Charter. This exception is rejected. Factual findings of this paragraph are based upon competent substantial evidence. To the extent that the contents of this paragraph contain conclusions of law (as to what are prohibitions within the County Charter or what type of acts are not authorized by the Charter), the Commission cannot reject or modify the conclusions because the Charter (its meaning) is not a law or administrative rule over which the Commission has substantive jurisdiction. Section 120.57(1)(l), Florida Statutes. Also, to the extent that the contents of the paragraph contain findings of ultimate fact, such are within the province of the ALJ to determine and are based upon competent substantial evidence. Goin v. Commission on Ethics, 658 So. 2d 1131 (Fla. 1st DCA 1995).

In exception 9, the Respondent takes exception to a portion of paragraph 17 of the RO, which finds that Ms. Mullen-Travis' account of a telephone call between the Respondent and Ms. Mullen-Travis is more credible than that of the Respondent. The Respondent argues that the finding is not supported by competent substantial evidence. This exception is rejected. The finding is based upon competent substantial evidence.

In exception 10, the Respondent takes exception to a portion of paragraph 19 of the RO, which finds that the Respondent also contacted Ms. Jenkins to ask her to approve the Beach Road Boutique zoning application. The Respondent argues that the finding is not supported by competent substantial evidence. This exception is rejected. The finding is based upon competent substantial evidence.

In exception 11, the Respondent takes exception to a portion of paragraph 20 of the RO, which finds that the Respondent had a conversation with Ms. Jenkins conveying the Respondent's desire that Ms. Jenkins do him a favor by shutting down J.J.'s Restaurant, and which finds that the Respondent wanted Ms. Jenkins to find code violations for J.J.'s Restaurant. The Respondent argues that the findings are not supported by competent substantial evidence. This exception is rejected. The findings are supported by competent substantial evidence.

In exception 12, the Respondent takes exception to paragraph 21 of the RO, which finds that the Respondent said he would make sure that Ms. Jenkins got a pay raise or a pay grade increase for doing the things referred to in paragraph 20 of the RO. The Respondent argues that the finding is not supported by competent substantial evidence. This exception is rejected. The finding is based upon competent substantial evidence.

In exception 13, the Respondent takes exception to paragraph 22 of the RO, which finds that either the ex-boyfriend or ex-husband of the Respondent's wife and father of her child had an interest in J.J.'s Restaurant, that there was conflict between the two families, and that the Respondent had also requested the Charlotte County director of Growth Management, Jeff Ruggieri, to take code enforcement actions against J.J.'s Restaurant. The Respondent argues that the findings are not supported by competent substantial evidence. This exception is rejected. The findings are based upon competent substantial evidence.

In exception 14, the Respondent takes exception to paragraph 27 of the RO, which finds that the Respondent's requests to Ms. Jenkins and Mr. Ruggieri to act against J.J.'s Restaurant were in violation of the Charlotte County Charter and, therefore, not authorized acts pursuant to his duties or responsibilities as a county commissioner. The Respondent argues that the findings are not supported by competent substantial evidence. This exception is rejected. The findings are based upon competent substantial evidence. Further, to the extent that the contents of paragraph 27 contain conclusions of law (as to what are prohibitions within the County Charter or what type of acts are not authorized by the Charter), the Commission cannot reject or modify the conclusions because the Charter (its meaning) is not a law or administrative rule over which the Commission has substantive jurisdiction. Section 120.57(1)(l), Florida Statutes. Also, to the extent that the contents of paragraph 27 contain findings of ultimate fact, such are within the province of the ALJ to determine and are based upon competent substantial evidence. Goin, supra.

In exception 15 (labeled by the Respondent as a second Exception 14 via a scrivener's error), the Respondent takes exception to paragraph 36 of the RO, which finds that clear and convincing evidence proves that the Respondent sought to obtain a benefit for Mr. and Ms. Hemmes, that he sought to do it using his direct access to county employees, even though the Charlotte County Charter prohibited him from doing so, that this establishes his wrongful intent, and that his offer of an inducement also demonstrates wrongful intent. The Respondent argues that there is no evidence that he acted with corrupt intent or that the Hemmes received any special benefit. This exception is rejected. The paragraph primarily is factual in nature and, as such, is based upon competent substantial evidence. To the extent that the paragraph construes

the meaning of Section 112.313(6), Florida Statutes, a law over which the Commission has substantive jurisdiction, we do not disagree with the conclusions of the ALJ.

In exception 16 (labeled as 15), the Respondent takes exception to paragraph 37 of the RO, which finds that clear and convincing evidence proves that the Respondent sought to obtain a personal benefit, harm to the father of his wife's child, using his direct access to county employees, even though the Charlotte County Charter prohibited him from doing so, and that this establishes wrongful intent. This exception is rejected. Assuming in argument that the Respondent takes exception to the factual findings of the paragraph, which he does not expressly do, the paragraph is based upon competent substantial evidence. To the extent that the paragraph contains findings of ultimate fact, the same are based upon competent substantial evidence which we are unable to disturb. Goin, supra. To the extent the paragraph construes the meaning of Section 112.313(6), Florida Statutes, a law over which the Commission has substantive jurisdiction, we do not disagree with the conclusions of the ALJ.

In exception 17 (labeled as 16), the Respondent takes exception to paragraph 38 of the RO, which finds that the Florida Commission on Ethics proved by clear and convincing evidence that the Respondent twice violated Section 112.313(6), Florida Statutes. The Respondent argues that there is no evidence that he acted with requisite corrupt intent or that the Hemmes or anyone else received any special benefit. This exception is rejected. The factual findings, findings of ultimate fact, and legal conclusions of paragraph 38 are based upon competent substantial evidence, are beyond the Commission's statutory ability to disturb, or are sound, for the reasons stated above regarding exception 16.

Findings of Fact

The Commission on Ethics accepts and incorporates into this Final Order And Public Report the findings of fact in the Recommended Order from the Administrative Law Judge of the Division of Administrative Hearings rendered on February 27, 2015. The findings are based upon competent substantial evidence and the proceedings upon which the findings are based complied with essential requirements of law.

Conclusions of Law

The Commission on Ethics accepts and incorporates into this Final Order And Public Report the conclusions of law in the Recommended Order from the Administrative Law Judge of the Division of Administrative Hearings rendered on February 27, 2015.

Disposition

Accordingly, the Commission on Ethics, via rendition of this Final Order And Public Report, accepts the recommendation of the Administrative Law Judge that it enter a final order and public report finding that the Respondent, Robert Skidmore, III, twice violated Section 112.313(6), Florida Statutes, and that it recommend imposition of a civil penalty against the Respondent in the total amount of \$10,000, together with public censure and reprimand.

ORDERED by the State of Florida Commission on Ethics meeting in public session on

April 17, 2015.

April 22, 2015
Date Rendered

Linda M. Robison
Linda M. Robison
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 AND SECTION 112.3241, 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, P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709, OR AT THE COMMISSION'S PHYSICAL ADDRESS OF 325 JOHN KNOX ROAD, BUILDING E, SUITE 200, TALLAHASSEE, FLORIDA 32303); 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. Emmett Mitchell, IV, Attorney for Respondent
Ms. Melody A. Hadley, Commission Advocate
Mr. Michael Brown, Complainant
The Honorable John D. C. Newton, II,
Division of Administrative Hearings