

DATE FILED

APR 20 2016

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

COMMISSION ON ETHICS

In re JAMES L. MANFRE,)
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 Respondent.)
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Complaint No. 14-097
DOAH Case No. 15-4877EC

Final Order No. 16-042

FILED
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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 15, 2016, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on February 16, 2016.

Background

This matter began with the filing of an ethics complaint by Linda Bolante ("Complainant") against James L. Manfre ("Respondent" or "Manfre") indicative of the Respondent's having violated Sections 112.313(6) and 112.3148(8), Florida Statutes, as Sheriff of Flagler County. 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. The matter was subsequently heard by the ALJ at DOAH and resulted in the RO, which recommends that the Commission enter a final order and public report finding that the Respondent violated Section 112.313(6), Florida Statutes, in his use of an agency credit card, and violated Section 112.3148, Florida Statutes, by failing to report a gift. The RO recommended a civil penalty of \$5,000 for the violation of Section 112.313(6) and a civil penalty of \$1,200 for the violation of

Section 112.3148(8) (total, \$6,200), as well as a public censure and reprimand for the violation of Section 112.313(6). 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 three exceptions. Each will be treated below via numbering corresponding to that in the exceptions.

In exception 1, the Respondent takes exception to paragraph 11 of the RO, which finds that during all times pertinent to the allegations concerning credit card misuse, the Sheriff's Office maintained a policy on credit card purchases. Paragraph 11 goes on to state the policy allowed the Respondent—acting as Sheriff—to make only "agency-related" purchases. The Respondent argues this finding is not supported by competent substantial evidence. This exception is rejected. The finding is based on competent substantial evidence including but not limited to testimony from the accounting specialist for the Sheriff's Office that from 2005 until January 2014, a guideline concerning credit card use was kept in a binder in the finance office. The accounting specialist testified that the Respondent approved this guideline, that it was used to calculate all credit card

charges, and that it determined what was and was not to be charged on the agency credit cards. Exhibit 15 contained a copy of this guideline, which clearly states the agency credit cards should be used only for "agency-related purchases." Testimony from the accounting specialist and the undersheriff indicated this guideline was not changed until January 10, 2014, at which time a new policy concerning credit card use was instituted. Because the allegations concerning the Respondent's use of the agency credit card pertained to purchases made in 2013, competent substantial evidence supports the finding that the Sheriff's Office had a policy concerning credit card use during the time in question which only allowed "agency-related" purchases.

In exception 2, the Respondent takes exception to paragraph 95 of the RO, which finds he admitted to being on notice that the amounts that he charged to the agency credit cards exceeded the per diem rates established by Florida law, and that accumulating such charges was inconsistent with his public duties as Sheriff. The reasoning behind the Respondent's exception is unclear. The Respondent appears to be arguing this finding does not support the "corrupt intent" needed to indicate a violation of Section 112.313(6). The Respondent combines this argument with the claim that the ALJ departed from the essential requirements of the law in finding this conduct violated Section 112.313(6) as the RO does not "include a specific conclusion that the Respondent acted with corrupt intent."

To the extent that the Respondent is challenging the evidentiary basis for finding "corrupt intent," this finding is one of ultimate fact and, therefore, can be altered only if it is not supported by competent, substantial evidence. See Goin v. Commission on Ethics, 658 So. 2d 1131 (Fla. 1st DCA 1995); Holmes v. Turlington, 480 So. 2d 150 (Fla. 1st DCA 1985). Here, the finding of "corrupt intent" was supported by competent substantial evidence including but not limited to the

Respondent's admission that his charges exceeded the per diem amount for meals, as well as his testimony that there was no public purpose for using the agency credit card to purchase alcohol and meals for non-agency employees. Although the Respondent claims that he was unaware that such charges were improper, the credibility of his testimony was within the sole province of the ALJ and cannot be reweighed at this time.

To the extent that the Respondent claims the RO departed from the essential requirements of the law by failing to include a specific finding that he acted with "corrupt intent," paragraph 96 of the RO states "[t]he totality of the evidence proved, clearly and convincingly, that Respondent acted with reasonable notice that his conduct was inconsistent with the proper performance of his public duties." Therefore, the RO employed the definition of acting "corruptly" when finding a violation.¹

In exception 3, the Respondent takes exception to paragraph 116 of the RO, which recommends a civil penalty of \$5,000 for the violation of misuse of office, along with public censure and reprimand, and a civil penalty of \$1,200 for failing to disclose a reportable gift. The Respondent argues the penalty recommended here for failing to disclose a reportable gift is greater than the penalty imposed for the same offense in a previous final order issued by the Commission on Ethics.² However, while it is within the province of the agency to alter the recommended

¹ Section 112.312(9), Florida Statutes—which is quoted in paragraph 83 of the RO—defines "corruptly" as an action "done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties."

² The Respondent also claims that he reimbursed a portion of the expenses associated with the reportable gift, although the claimed reimbursement in question appears related to charges placed on the agency credit cards, which formed the basis for the misuse violation, as opposed to the use of the undersheriff's cabin, which formed the basis for the gift violation.

penalty, the ALJ in the instant case heard the entirety of the evidence and was in the best position to judge the credibility of the witnesses. Because of the ALJ's unique perspective, and considering the ALJ's unchallenged fact findings regarding the Respondent's failure to timely report the gift, we are not persuaded by the Respondent that this penalty recommendation should be altered. Further, the penalty recommended is not in excess of that allowed under Section 112.317, Florida Statutes.

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 16, 2016. 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 16, 2016.

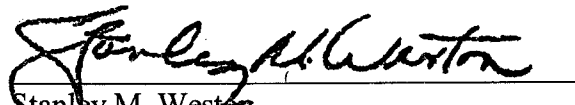
Disposition

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, James L. Manfre, violated Section 112.313(6), Florida Statutes, in his use of the agency credit card, and Section 112.3148, Florida Statutes, by

failing to report a gift, and that it recommend imposition of a civil penalty against the Respondent in the total amount of \$6,200, together with public censure and reprimand.

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 15, 2016.

April 20, 2016
Date Rendered


Stanley M. Weston
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: Ms. Linda Bond Edwards and Mr. John D. Marsey, Attorneys for Respondent
Ms. Elizabeth A. Miller, Commission Advocate
Mr. Robert L. Mcleod, II, Attorney for Complainant
The Honorable Suzanne Van Wyk,
Division of Administrative Hearings