

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DALE CASSIDY,

Petitioner,

vs.

Case No. 16-7342

FLORIDA A & M UNIVERSITY BOARD  
OF TRUSTEES,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on February 15, 2017, in Tallahassee, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings ("DOAH" or the "Division").

APPEARANCES

For Petitioner: Dale Lange Cassidy, pro se  
3474 East Falcon Drive  
Meridian, Mississippi 83642

For Respondent: Ana Margarita Gargollo-McDonald, Esquire  
Florida A & M University  
1700 Lee Hall Drive, Suite 304 FHAC  
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STATEMENT OF THE ISSUES

The issue in this case is whether Respondent, Florida A & M University Board of Trustees ("Board of Trustees"), improperly reassigned Petitioner, Dale Cassidy, to an alternative position at Florida A & M University ("FAMU" or the "University"); and,

if so, whether Petitioner is entitled to damages or other relief.

PRELIMINARY STATEMENT

On December 2, 2016, Petitioner filed a request for formal administrative hearing regarding actions taken by the University on March 16, 2016, concerning Petitioner's employment at FAMU. The request for hearing was forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge ("ALJ") in accordance with a contract between the University and the Division. Pursuant to notice, a hearing was conducted by the undersigned ALJ on the date set forth above.

At the final hearing, Petitioner testified on his own behalf and called the following additional witnesses, each of whom is an employee of FAMU: Richard Givens, vice president of Audit and Compliance; Timothy Moore, vice president of Research; and Joyce Ingram, chief human relations ("HR") officer. Petitioner's Exhibits 1, 7, 8, and 9 were admitted into evidence. The University did not call any witnesses to testify at final hearing. The University's Exhibits 4, 5, and 7, along with "rebuttal" exhibits A, B, C, M, N and O were admitted into evidence. The rebuttal exhibits were introduced during Petitioner's case in chief and were used to establish facts to prove FAMU's case, but counsel designated them as "rebuttal"

exhibits and they were accepted as such. All 19 joint exhibits were also accepted into evidence.

The parties indicated that a transcript of the final hearing would be ordered. By rule, the parties are allowed up to 10 days after the transcript of the final hearing has been filed at DOAH to submit a proposed recommended order ("PRO"); however, the parties asked and were granted an additional 10 days. The Transcript was filed on March 17, 2017, and the PROs were due on or before April 6, 2017. Each party timely submitted a PRO and each was duly considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner is a former employee of the University. He was hired in 2014 as vice president of Finance and Administration/Chief Financial Officer ("vice president of Finance/CFO"). He assumed the position at a starting annual salary of \$195,000. In August 2015, he assumed additional duties and his salary was increased to \$220,000 in recognition of the additional responsibilities. Petitioner served as vice president of Finance/CFO until March 14, 2017.

2. Respondent is the Board of Trustees for FAMU, a university within the State University System. FAMU is a nationally known, historically black college located in Tallahassee, Florida.

3. On Friday, March 11, 2016, Petitioner was visited in his office at FAMU by two individuals: Jimmy Miller and Santoras Gamble. The two came into his office as emissaries of the then-President of FAMU, Elmira Mangum. Miller was President Mangum's chief of staff; Gamble was a "special assistant" to the President. The purpose of Miller and Gamble's visit was to hand-deliver to Petitioner a letter signed by the President notifying Petitioner of a "change-in-assignment."

4. Specifically, Petitioner was being removed from his position as vice president of Finance/CFO and reassigned to the newly created position of Chief External Compliance and Ethics Officer (referred to herein as the "Ethics Officer"). His annual salary in that position would be reduced to \$176,000 and he would receive normal (as opposed to enhanced) fringe benefits.<sup>1/</sup> He would no longer be eligible to participate in the Executive Service pay plan which existed for certain high-level administrative and professional ("A&P") staff. Petitioner's change in assignment was to take effect the following Monday, March 14, 2016.

5. Petitioner read the letter from President Mangum and dropped it on his desk. The two emissaries asked if he had any questions about the letter. He either told them he did not have any questions or he told them, "[no questions] that you can answer." Either way, that was the end of the discussion between

Petitioner and the two representatives of President Mangum. Miller, Gamble, and Petitioner then left Petitioner's office and toured Lee Hall, purportedly looking for a new office for Petitioner once he assumed his new role. President Mangum's office is also located in Lee Hall. Petitioner was ultimately moved to an office in the Foote-Hilyer building.

6. On the day after the reassignment took effect, Jimmy Miller, as President Mangum's chief of staff, issued a memorandum to the Board of Trustees. The memorandum outlined the changes in senior leadership assignments, including Petitioner's reassignment to the position of Ethics Officer.<sup>2/</sup>

7. Over the next couple of weeks, Petitioner made his displeasure with the reassignment made known to a number of people. He was, however, especially unhappy that news of his reassignment (and presumptive demotion) was reported in the Tallahassee Democrat, the local newspaper.

8. Petitioner moved into his new office on the fourth floor of the Foote-Hilyer building, in a suite of offices occupied by the vice president of Research, within two weeks of receiving the job change notice. On the day before he moved into his new office, Petitioner drafted a memorandum to his personnel file concerning his reassignment. The memo included the statement, "I accept this new role and pledge to perform the related duties . . . to the best of my ability."

9. On the day he assumed the new position, Petitioner wrote another memo that he asked to be placed in his personnel file. In the memo, Petitioner essentially complained that he had not been given any specific reason for the reassignment from the position of vice president of Finance/CFO. The memo did not mention that President Mangum's emissaries had asked him if he had questions about the letter or that he had no questions for them. Petitioner did not point to any requirement in University regulations (or otherwise) that the President was required to give him a specific reason for the transfer. In fact, all A&P employees serve at the pleasure of the President and could have their employment terminated at any time, with or without cause.

10. Petitioner received a request from President Mangum for him to meet with her concerning the change in assignment. The meeting was held (albeit on a day other than proposed by the President, pursuant to Petitioner's request). At the meeting, ultimately held on March 21, 2016, Petitioner was presented with his new employment contract for the Ethics Officer position. He refused to sign the contract, citing his reasons, to wit: 1) He had not been told specific reasons why he could no longer serve as vice president of Finance/CFO; and 2) the President had not shared with him her vision of how she expected him to perform his duties in the new role. By not signing the employment contract, he knew that President Mangum would be within her

rights to terminate his employment altogether. Petitioner seems to acknowledged that President Mangum "consulted" him about the new job classification at the meeting. He maintains, however, that it was too late to hold the consultation at that time. He provided no support or rationale for his stance.

11. Petitioner then attempted to negotiate a different job description for the position to which he had been assigned. He asked for more salary, that the position be "interim" in nature, and that he retain his Executive Service benefits. President Mangum informed him that the University's human relations department had "market priced" the salary and that it would not be changed. There is no evidence the other issues he raised were discussed at that time (or later, for that matter).

12. As noted, Petitioner moved into his new office space on March 14, 2016, and by all appearances, assumed his duties as the Ethics Officer. He nevertheless maintains he did not believe he had ever formally served in that capacity. This testimony contravenes a memo he wrote on the day of his meeting with President Mangum. The memo, written to his personnel file, said, "I currently plan to accept the role [of Ethics Officer]." On June 21, 2016, Petitioner attended a seminar in Orlando relating to ethics and compliance officer regulations. In his travel request form, Petitioner identifies himself as "Officer, Compliance" and affirmed that the seminar constituted official

business. His travel was approved and he attended the seminar. At final hearing, Petitioner said he attended the seminar as "an employee of the university" but not as the Ethics Officer. There is no evidentiary support for that contention and it seems unlikely in light of his travel documents.

13. From March 14, 2016, until his resignation from employment, effective December 29, 2016, Petitioner was considered by the University to be its Ethics Officer. He performed duties associated with that position, operated out of the office assigned to that position, and accepted compensation for serving in that position. The University human resources officer (who was called as a witness by Petitioner at final hearing) opined that Petitioner's actions clearly confirmed that he had accepted the position.

14. A further example: On August 19, 2016, Petitioner issued a report on matters relating to his position as Ethics Officer. He signed the report, noting his position as "Acting Chief Compliance & Ethics Officer." Petitioner said he signed the report that way because FAMU did not have "acting" administrative employees; they were either permanent or interim. However, Regulation 10.106(1)(b) states, "A&P employees who are appointed to established positions with an appointment status modifier or type, other than Regular (for example, Acting, Temporary or Visiting) are not entitled to a notice of non-



reappointment." Granted that section is referring to non-reappointment and addresses established positions, neither of which is relevant to the instant matter, but it does show that "Acting" is a nomenclature used by FAMU for A&P employees.

15. Petitioner is seeking the difference in pay and benefits he received as Ethics Officer versus what he had been making as vice president of Finance/CFO, for the time period March 14 through December 29, 2016. He asserts that since he never signed the contract to be Ethics Officer, he never officially served in that position. The Personnel Action Request ("PAR") in Petitioner's personnel file was signed by President Mangum, the appropriate vice president (Ronica Mathis), and the HR Officer; and it clearly reassigns Petitioner to the position of Ethics Officer, effective March 14, 2017. The PAR, which sets out the employee's current position, proposed new position, salary and other information, need not be signed by the employee. He or she would only be provided a copy of the PAR if they requested to review their personnel file.

16. When asked what services he performed during his tenure as Ethics Officer, Petitioner responded, "Whatever the President, as my supervisor, asked me to do, which was largely nothing." Petitioner did not provide further elucidation as to how doing "largely nothing" warranted additional payment from the University.

17. Petitioner maintains he was not properly advised of his proposed reassignment pursuant to relevant University regulations. He cites to Regulation 10.209, Change-In-Assignment of Faculty and Administrative and Professional Employees, which states in pertinent part:

The President or President's designee may for the best interest of the University, at any time, assign a Faculty or Administrative and Professional (A&P) employee to other institutional assignments only after consultation with the employee and the departments or other units affected. Regardless of the change-in-assignment, however, the University is committed to compensate the employee.

18. Despite being asked by the President's designees (Miller and Gamble) on March 11, 2016, whether he had any questions about the reassignment, Petitioner maintains he had no "consultation" as required by the regulation. Rather, he posits, all he received was "notice" of the reassignment. Petitioner points out that the dictionary definitions of consultation and notice are different and they do not share the same synonyms. From Petitioner's perspective, consultation would involve some degree of give and take between the President and the employee. Or, as he stated in his PRO filed in this case, the synonym for consultation is "asked to discuss or exchange views" of a matter. Petitioner says that Miller and Gamble asking him if he had any questions was not sufficient

"consultation" on the matter. Petitioner provided no other support for his position.

19. Further, Petitioner points out that Richard Givens, vice president of Audit and Compliance, was not notified about Petitioner's reassignment. Petitioner maintains that Givens' office was affected by the reassignment and thus should have been consulted as well. Givens stated at final hearing that his office "could have been affected" by the reassignment, but ultimately it had not been affected.

20. Timothy Moore, vice president of Research, maintains that consultation means nothing more than a letter, email, phone call or other means of transmitting the fact to an employee. Clearly, Petitioner was provided notice of the reassignment and had opportunity to consult with the President's representatives, but he refused to do so. Givens received notice of the reassignment when he read about it in the local newspaper. He does not remember being advised by anyone at FAMU concerning the change before it occurred, but received written notice on the day Petitioner started his new position.

#### CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to a contract between the Division and FAMU. The proceeding was conducted in accordance with sections

120.569 and 120.57(1), Florida Statutes. Unless specifically set forth otherwise herein, all references to statutes will be to the 2016 version.

22. Petitioner has the burden of proving that the employment action taken by the University was improper. See Balino v. Dep't of HRS., 348 So. 2d 349, 350 (Fla. 1st DCA 1977) (“[T]he burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.”); see also § 120.57(1)(j), Fla. Stat.

23. The standard of proof is by a preponderance of the evidence. See Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); § 120.57(1)(j), Fla. Stat.

24. At issue in this proceeding is the interpretation and implementation of an internal University regulation, specifically 10.209. Petitioner maintains that “consultation” as it appears in the regulation is something separate and apart from notice. His interpretation is based solely on dictionary definitions of those words; there is no definition of the terms found within the University Regulations.

25. The University clearly explained why “consultation” in the context of regulation 10.209 need only be some kind of notice to the employee. It is axiomatic that an agency’s interpretation of its own rules and regulations is given

deference. Legal Envtl. Assistance Found., Inc. v. Bd. of Cnty. Comm'rs of Brevard Cnty., 642 So. 2d 1081 (Fla. 1994).

26. Petitioner proved by a preponderance of evidence that the only consultation or notice he received about his change-in-assignment was a letter from President Mangum. However, Petitioner did not prove that the letter was insufficient "consultation" about the change. His own actions, refusing to talk to the President's designees when they delivered the letter, further rebut his claim of no consultation. Whether the emissaries of the President would have provided further elucidation about the new assignment, "consulted" further with Petitioner about the position, or provided additional information will never be known. Petitioner by his own decision rejected any further input from the two individuals who provided him notice of the change.

27. The University Regulations are also silent as to the penalty for failing to comply with Regulation 10.209. No evidence was presented to suggest that failure of the University to follow the regulation (if in fact it had failed to do so) would give rights to an aggrieved party for damages or other relief.

28. Petitioner is also guilty of unclean hands in this matter. His continued acceptance of a salary from FAMU while

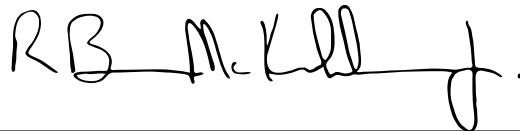
admittedly doing no work whatsoever taints his credibility and brings into question his forthrightness in making this claim.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered by Respondent, Florida A & M University Board of Trustees, upholding the employment action as to Petitioner, Dale Cassidy, and denying Petitioner's claim for damages or other relief.

DONE AND ENTERED this 13th day of April, 2017, in Tallahassee, Leon County, Florida.



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R. BRUCE MCKIBBEN  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 13th day of April, 2017.

ENDNOTES

<sup>1/</sup> It is apparently not unusual for senior employees at FAMU to be reassigned and given lower salaries.

<sup>2/</sup> There was an error in Miller's memorandum concerning the position of Compliance Officer, but the error was corrected quickly and is not relevant to the facts of this case.

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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.