

BEFORE THE  
STATE OF FLORIDA  
COMMISSION ON ETHICS

|                 |   |                           |
|-----------------|---|---------------------------|
| NANCY J. SANDS, | ) | Complaint No. 95-17       |
|                 | ) | DOAH CASE No. 97-2865FE   |
| Respondent.     | ) | COE FINAL ORDER NO. 98-14 |
|                 | ) |                           |
| _____           | ) |                           |

**FINAL ORDER AND PUBLIC REPORT**

This matter comes before the Commission on the Recommended Order the Division of Administrative Hearings Administrative Law Judge entered on February 20, 1998 (a copy of which is attached hereto and incorporated herein by reference), in which she recommends that the Commission enter a final order finding that Respondent Nancy J. Sands did not violate Section 112.313(6), Florida Statutes, and that the complaint against her be dismissed. The parties were notified of their right to file exceptions pursuant to Rule 34-5.023(3), Florida Administrative Code. No exceptions were filed by either party. Accordingly, the matter is now before the Commission for final action.

**STANDARD OF REVIEW**

Under Section 120.57(1)(j), Florida Statutes (1997), an agency may adopt the recommended order as the final order of the agency. The agency may reject or modify the conclusions of law and interpretation of administrative rules over which it has substantive jurisdiction. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency *may not* reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings did not comply with 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 Administrative Law Judge. 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 Administrative Law Judge, the Commission is bound by that finding.

#### **FINDINGS OF FACT**

1. The Findings of Fact set forth in the Recommended Order, are approved, adopted, and incorporated herein by reference.

#### **CONCLUSIONS OF LAW**

1. The Conclusions of Law set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

2. The Commission on Ethics finds that Respondent, Nancy J. Sands, did not violate Section 112.313(6), Florida Statutes, as alleged in this matter.

Therefore, this complaint is dismissed.

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 16, 1998, in Tallahassee, Florida.

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Date

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Kathy Chinoy  
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, P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709 (physical address at 2822 Remington Green Circle, Suite 101); 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. James L. Padgett, Attorney for Respondent  
Ms. Nancy J. Sands, Respondent  
Mr. Eric S. Scott, Commission Advocate  
Ms. May K. Nigh, Complainant  
Division of Administrative Hearings