

DATE FILED

JUL 27 2022

COMMISSION ON ETHICS

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re CARLOS BERUFF,)
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)
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Respondent.)

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Complaint No. 17-082
DOAH Case No. 21-2890EC
Final Order No. 22-025

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on July 22, 2022, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on May 27, 2022.

Background

This matter began with the filing of an ethics complaint, along with an amendment to that complaint, by Glenn Compton, ("Complainant") against Carlos Beruff ("Respondent"). By an order filed on August 24, 2017, the Executive Director of the Commission on Ethics determined that the complaint was legally sufficient to indicate possible violation of the Code of Ethics and ordered Commission staff to investigate the complaint. The Commission's investigation of the matter yielded a Report of Investigation dated October 17, 2019.

By order rendered March 11, 2020, the Commission found probable cause to believe Respondent violated Section 112.3145, Florida Statutes, by filing an inaccurate 2013 CE Form 1, "Statement of Financial Interests," by filing an inaccurate 2014 CE Form 1, "Statement of Financial Interests," and by filing an inaccurate 2015 CE Form 1, "Statement of Financial Interests." The Commission also found no probable cause to believe Respondent violated Sections 112.3143(3)(a) and (4), Florida Statutes.

On September 21, 2021, the matter was transmitted to DOAH for the assignment of an ALJ to conduct a formal hearing and prepare a recommended order.

On November 2, 2021, Respondent filed a separate petition at DOAH to initiate a challenge to a rule of the Commission. DOAH consolidated the rule challenge and the public hearing on the ethics complaint. On November 23, 2021, the Commission filed a Motion for Summary Judgment in DOAH concerning the rule challenge. On January 23, 2022, DOAH held a hearing on the motion. On January 7, 2022, Respondent withdrew the rule challenge and, later, DOAH closed the case concerning the rule challenge.

On January 14, 2022, Respondent filed a "Notice of Asserting Defense Pursuant to Section 120.57(1)(e), Florida Statutes," at DOAH, expressing an intention to challenge Part C of CE Form 1 as an invalid exercise of delegated legislative authority.¹

On March 9, 2022, the ALJ held a public hearing. The ALJ admitted Joint Exhibits 1-12 and Advocate's Exhibits 1, 2, and 4. Respondent did not offer any separate exhibits. Advocate and Respondent filed proposed recommended orders with the ALJ.

On May 27, 2022, the ALJ entered her RO recommending that the Commission on Ethics enter a final order and public report recommending a finding that Respondent violated Section 112.3145, Florida Statutes, and recommending the imposition of a civil penalty of \$500.

On June 13, 2022, Respondent timely submitted his exceptions to the RO. On June 23, 2022, Advocate submitted her response to Respondent's exceptions.

Both Respondent and Advocate were notified of the date, time, and place of the Commission's final consideration of this matter and they were given the opportunity to present argument to the Commission at its public meeting.

¹ Hereinafter, we refer to Respondent's pursuit of this defense as "the rule challenge," as the ALJ did in her RO.

Standards of Review

The agency may not reject or modify findings of fact made by an ALJ unless a review of the entire record demonstrates that the findings were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with the 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.

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 a conclusion of law or an interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying that 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.

An agency may accept a hearing officer's findings of fact and conclusions of law, yet still reject the recommended penalty and substitute an increased or decreased recommended penalty. Criminal Justice Standards and Training Comm'n v. Bradley, 596 So. 2d 661, 664 (Fla. 1992). Under Section 120.57(1)(l), Florida Statutes, an agency may reduce or increase the recommended penalty only upon a review of the complete record, and must state with particularity the agency's reasons for reducing or increasing the recommended penalty, and cite to the record in support of its action.

Having reviewed the RO, the complete record of the proceeding, Respondent's exceptions, and Advocate's response to Respondent's exceptions and having heard the arguments of Advocate and Respondent, the Commission on Ethics makes the following rulings, findings, conclusions, recommendation, and disposition:

Ruling on Respondent's Exceptions

Respondent submitted five exceptions to the RO.

Respondent's First Exception: The Rule Challenge

In his first exception, Respondent takes issue with the ALJ's various findings and conclusions relating to the rule challenge.

Respondent argues that the Commission exceeded its rulemaking authority when it promulgated CE Form 1, which includes the statement that "[a] street address should be used, if one exists" to satisfy the requirement that one disclose a description or location of real property. Respondent further argued that a finding that he violated Section 112.3145, Florida Statutes, cannot be sustained due to the alleged invalid exercise of rulemaking authority by the Commission.

Having reviewed the entire record, the ALJ's RO, the Respondent's exception, and the Advocate's response, we reject Respondent's first exception. We find that the findings of fact in the excepted paragraphs are supported by competent substantial evidence and we decline to reject or modify the conclusions of law.

Respondent's Second Exception: Paragraphs 11, 29, 38, 46, 61, 70-72, 77, 87, 89, and 91-94 of the RO

In his second exception, Respondent argues that CE Form 1 filers are not required to disclose a street address as a proper description of real property because, by the Commission's statement that one "should" use a street address, the Commission merely recommends that the disclosure be so. Respondent argues that the CE Form 1 does not mandate that the description of real property be a street address.

Having reviewed the entire record, the ALJ's RO, the Respondent's exception, and the Advocate's response, we reject Respondent's second exception. We find that the findings of fact in the excepted paragraphs are supported by competent substantial evidence and we decline to reject or modify the conclusions of law.

Respondent's Third Exception: Paragraphs 61, 69-72, 77, and 80 of the RO

In his third exception, Respondent argues that the record does not contain competent substantial evidence that the properties Respondent disclosed had street addresses when he made the disclosures. By referencing "competent substantial evidence," Respondent appears to be excepting to findings of fact in the excepted paragraphs.

We note that the paragraphs to which Respondent excepted contain no findings of fact about whether Respondent's properties had street addresses at the time he made the disclosures; this renders Respondent's insistence that such facts be supported by competent substantial

evidence unwarranted. Having reviewed the entire record, the ALJ's RO, the Respondent's exception, and the Advocate's response, we reject Respondent's third exception. We find that the findings of fact that actually appear in the excepted paragraphs are supported by competent substantial evidence. We also decline to modify the conclusions of law in the excepted paragraphs.

Respondent's Fourth Exception: Paragraphs 32, 41, 49, 51, 52, 61, 70-72, and 77 of the RO

In his fourth exception, Respondent argues that there is no competent substantial evidence to show that Respondent omitted properties from his original Form 1 filing. Respondent explains that the ALJ found that Respondent's CE Form 1X filings disclosed numerous additional properties. Respondent asserts that the properties itemized in the CE Form 1X filings were disclosed "in bulk" in the CE Form 1 filings and, therefore, were not omitted from disclosure originally.

Having reviewed the entire record, the ALJ's RO, the Respondent's exception, and the Advocate's response, we reject Respondent's fourth exception. We find that the findings of fact in the excepted paragraphs are supported by competent substantial evidence.

Respondent's Fifth Exception: The Penalty

In his fifth exception, Respondent argues that the penalty should be reduced or eliminated because the penalty relies on a conclusion of law "that Respondent had to list reportable real property by street address" and because the violation was de minimis.

Having reviewed the entire record, the ALJ's RO, the Respondent's exception, and the Advocate's response, we reject Respondent's fifth exception. We decline to reduce or eliminate the penalty.

Findings of Fact

In paragraph 76 of the RO, we note that the ALJ mistakenly found that the *Third* District Court of Appeal affirmed the Commission's final order in Villanueva v. State of Fla., Comm'n on Ethics, 286 So. 3d 389 (Fla. 1st DCA 2020). We correct this error to note instead that it was the *First* District Court of Appeal that affirmed the final order.

Except to the extent modified above, the Commission on Ethics accepts and incorporates into this Final Order and Public Report the findings of fact in the Recommended Order from the Division of Administrative Hearings.

Conclusions of Law

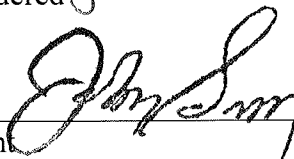
The Commission on Ethics accepts and incorporates into this Final Order and Public Report the conclusions of law in the Recommended Order from the Division of Administrative Hearings.

Disposition

Accordingly, the Commission on Ethics determines that Respondent violated Section 112.3145, Florida Statutes, and recommends that the Governor impose a civil penalty of \$1,500 and a public censure and reprimand upon Respondent.

ORDERED by the State of Florida Commission on Ethics meeting in public session on July 22, 2022.

July 27, 2022
Date Rendered



John Grant
Chair, Florida Commission on Ethics

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, AT EITHER 325 JOHN KNOX ROAD, BUILDING E, SUITE 200, TALLAHASSEE, FLORIDA 32303 OR P.O. DRAWER 15709, TALLAHASSEE, FLORIDA 32317-5709; 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. Mark Herron, Attorney for Respondent
Mr. Brennan Donnelly, Attorney for Respondent
Ms. Melody A. Hadley, Commission Advocate
Ms. Marlene Katherine Stern, Office of the Attorney General
Mr. Glenn Compton, Complainant
The Honorable Hetal Desai, Division of Administrative Hearings