

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re JOEL DAVIS,)
)
 Respondent.)
)
)
)
)
 _____)

Complaint No. 17-108
DOAH Case No. 17-6215EC

Final Order No. 18-035

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on June 8, 2018, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on March 28, 2018.

Background

This matter began with an order dated August 24, 2017, in which the Commission on Ethics' Executive Director ordered Commission staff to investigate for a probable cause determination of whether Respondent had willfully failed or refused to file his 2015 CE Form 1, Statement of Financial Interests. This yielded in a Report of Investigation dated September 5, 2017.

By order rendered October 25, 2017, the Commission found probable cause to believe the Respondent violated Section 112.3145(8)(c), Florida Statutes, by willfully failing or refusing to file an annual CE Form 1 for the year 2015, required to be filed by him due to his being a member of the St. Cloud Community Redevelopment Agency (CRA).

The matter was forwarded to DOAH for assignment of an ALJ to conduct a formal hearing and prepare a recommended order. A formal hearing was held before the ALJ on January 25,

2018. The Advocate filed a proposed recommended order with the ALJ. The Respondent did not file a proposed recommended order.

On March 28, 2018, the ALJ entered her RO finding that Respondent violated Article II, Section 8, Florida Constitution and Section 112.3145, Florida Statutes, by willfully failing to file a 2015 CE Form 1 as required by law, and recommending that the Commission enter a final order and public report determining Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3145, by willfully failing to file, and that the Commission recommend Respondent be removed from his position with the CRA for failure to file.

On April 11, 2018, Respondent timely submitted to the Commission his exceptions to the RO. On April 16, 2018, the Advocate timely submitted her response to Respondent's exceptions. Both the Respondent and the Advocate were notified of the date, time, and place of the Commission's final consideration of this matter; and both were given the opportunity to make argument during the Commission's consideration.

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 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.

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

Ruling on Respondent's Exceptions

In his exceptions, which do not comply with the requirements of Section 120.57(1)(k), Florida Statutes,¹ Respondent essentially argues that the ALJ's finding (that his failure to timely

¹ Section 120.57(1)(k), Florida Statutes, provides that "an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record."

file was willful) is not supported by competent substantial evidence, and essentially argues that testimony or evidence viewed by Respondent as more favorable to him should have been given greater weight by the ALJ. Respondent also may be arguing that his conduct in failing to timely file cannot, as a matter of law, be considered "willful." Respondent's exceptions are rejected. The ALJ's finding that Respondent's failure to file was willful is supported by competent substantial evidence, and the proceedings on which the finding is based complied with the essential requirements of law.

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 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(8)(c), Florida Statutes, by willfully failing to timely file a 2015 CE Form 1, Statement of Financial Interests, and recommends that the Governor remove Respondent from his public position.²

² Under Section 112.3145(8)(c), if the Commission finds a willful failure to file, its penalty recommendation is limited to removal, and it must make that recommendation.

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

June 8, 2018.

June 13, 2018
Date Rendered


Michelle Anchors
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. Joel Davis, Respondent
Mrs. Elizabeth A. Miller, Commission Advocate
The Honorable J. D. Parrish, Division of Administrative Hearings