

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE: JOEL DAVIS,

Case No. 17-6215EC

Respondent.
_____ /

RECOMMENDED ORDER

Pursuant to notice, this case was heard in Kissimmee, Florida, on January 25, 2018, before J. D. Parrish, an Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Advocate: Elizabeth A. Miller, Esquire
Office of the Attorney General
Plaza Level 01, The Capitol
Tallahassee, Florida 32399

For Respondent: Joel C. Davis, pro se
215 West Donegan Avenue
Kissimmee, Florida 34741

STATEMENT OF THE ISSUES

Whether Joel Davis (Respondent) violated Florida law by failing to timely file CE Form 1, Statement of Financial Interests, for the year 2015; and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On October 20, 2017, the Florida Commission on Ethics (the Commission) issued an Order Finding Probable Cause against

Respondent that determined he had willfully failed or refused to file an annual CE Form 1, Statement of Financial Interests, for the year 2015. As a result of the finding reached by the Commission, it ordered a public hearing be held to address whether Respondent violated Florida law. On November 9, 2017, the case was forwarded to DOAH for formal proceedings.

At the hearing, the Advocate presented testimony from: Respondent; Linda Jaworski, City Clerk for the City of St. Cloud; Debra Clark, Recording Secretary for the City of St. Cloud; Mary Jane Arrington, Osceola County Supervisor of Elections; Nichole Bont Palmer, Office Administrator for 20/20 Media; Kathi Jenkins-Horner, employee of 20/20 Media; Kimberly Holmes, Program Administrator with the Commission on Ethics; and Robert Malone, Senior Ethics Investigator, Commission on Ethics. Exhibits 1 through 6, 8, 10 through 12, and 14 through 21 were admitted on behalf of the Advocate. Respondent offered Respondent's Composite Exhibit 1 into evidence.

The Transcript of the proceedings was filed with DOAH on February 27, 2018. Thereafter the parties had 10 days within which to file their proposed recommended orders. The Advocate timely filed a proposed order that has been fully considered. Respondent did not file a proposal.

FINDINGS OF FACT

The Parties

1. The Commission is the state entity charged with the responsibility of administering, maintaining records, reviewing complaints, and disciplining violations of Florida law pertaining to Article II, Section 8, Florida Constitution.

2. On or about October 26, 2015, Respondent filed a Committee Application Form with the City of St. Cloud seeking to be appointed to the Community Redevelopment Agency (CRA). In executing the application, Respondent acknowledged that he understood the responsibilities associated with being a CRA member and that he had adequate time to serve. Subsequently, Respondent was appointed to the CRA and has served continuously through the date of hearing.

3. In conjunction with his appointment to the CRA, Respondent timely filed a CE Form 1, Statement of Financial Interests, for the year 2014. By so filing, Respondent demonstrated that he understood filing a Statement of Financial Interests was required by law in order for him to serve on the CRA.

4. Respondent was subject to the requirements of Florida law pertaining to the disclosure of financial interests as set forth in Article II, Section 8, Florida Constitution.

The Form

5. CE Form 1 requires the disclosure of primary and secondary sources of income, real property owned, intangibles owned, and business interests of the party required to file. The public then has access to information so that conflicts in interests are known and fully disclosed. The form deters corruption and increases public confidence in government.

6. In Respondent's case he was required to return the completed form to the County Supervisor of Elections for Osceola County, Florida.

7. For the calendar year 2015, Respondent was required to file the completed form no later than July 1, 2016.

The Issue

8. For all officials or board members required to file the CE Form 1, the Clerk for the City of St. Cloud keeps a record to make sure the forms are timely filed. Debra Clark, the Recording Secretary for the City Clerk, personally contacted Respondent and persons at his office (20/20 Media) to remind Respondent to file the requisite form.

9. On or about June 23, 2016, Ms. Clark e-mailed Respondent at his address of record to remind him to return the completed form to the Supervisor of Elections. Respondent acknowledged contacts were made to his office and to him personally to remind him that the form was due July 1, 2016.

10. On July 8, 2016, Ms. Clark again e-mailed Respondent to notify him that he had not timely filed the CE Form 1 and further advised that he could be subject to a penalty of \$25.00 per day should he not file. Again, Respondent understood he was required to file the form, did not timely file the form, and did not file after being contacted twice (via e-mail) by Ms. Clark.

11. On the morning of July 15, 2016, Ms. Clark spoke with Respondent by telephone and reminded him that the form was required by law and was past due to be filed. An e-mail followed the conversation and Ms. Clark memorialized the telephone conversation to advise Respondent that he could be subject to a penalty in the amount of \$1,500 if he continued to withhold filing.

12. Despite written notices to Respondent personally and communications to his office personnel, who attempted to get the form completed and filed, Respondent did not file the CE Form 1.

13. On August 10, 2016, Ms. Clark sent an e-mail to Nichole Bont Palmer, the Office Administrator for Respondent's company, 20/20 Media, and stated in part:

I have assisted you with this matter several times and have documented my efforts. As you know, these forms were due on July 1, and you were informed of the \$25.00 per day penalty for failure to file, assessed by the State of Florida.

14. Despite the unambiguous direction provided to Respondent and his staff at 20/20 Media, the CE Form 1 was not filed.

15. As a courtesy, the Commission on Ethics provided the form to Respondent again on September 1, 2016. As of October 31, 2016, Respondent had not filed the form.

16. Subsequently, the maximum fine was imposed on Respondent and he was given until May 15, 2017, to submit the payment of \$1,500.

17. At its meeting on June 9, 2017, the Commission on Ethics entered a Default Final Order that made the following findings:

1. Mr. Joel Davis, St. Cloud, Community Redevelopment Agency, was on the list of persons required to file a Statement of Financial Interests for the year 2015.

2. Pursuant to Section 112.3145(7)(f), Florida Statutes, Mr. Joel Davis was mailed a copy of the 2015 CE Form 1 no later than June 1, 2016, and was mailed a delinquency notice by certified mail no later than July 31, 2016. Additional attempts to contact Mr. Joel Davis were also made by Commission staff.

3. However, Mr. Joel Davis did not file a 2015 CE Form 1 by the designated due date. Mr. Joel Davis was sent a notice of payment due advising of the statutory rights to appeal or dispute the automatic fine in a hearing before the Commission if such appeal was received within 30 days of the notice of payment due. No timely appeal was received from Mr. Joel Davis.

4. More than 60 days have elapsed since the notice of payment due was transmitted without Mr. Joel Davis paying the fine.

5. On its own motion, the Commission voted to affirm a fine in the amount of \$1500 has accrued in this matter.

18. All of the findings reached by the Commission were accurate. During the course of the investigation of this case and prior thereto, Respondent was afforded every opportunity to submit the CE Form 1 for the year 2015.

19. After the investigation was completed, the Advocate recommended that probable cause be found in this matter.

CONCLUSIONS OF LAW

20. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat. (2017).

21. The Commission is authorized to conduct investigations and to make public reports on complaints concerning violations of law pertaining to ethics for public officers and employees. See § 112.322, Fla. Stat. (2017).

22. Section 112.3145(8)(c), Florida Statutes (2017), provides:

(c) If a person holding public office or public employment fails or refuses to file an annual statement of financial interests for any year in which the person received notice from the commission regarding the failure to file and has accrued the maximum automatic fine authorized under this section,

regardless of whether the fine imposed was paid or collected, the commission shall initiate an investigation and conduct a public hearing without receipt of a complaint to determine whether the person's failure to file is willful. Such investigation and hearing must be conducted in accordance with s. 112.324. Except as provided in s. 112.324(4), if the commission determines that the person willfully failed to file a statement of financial interests, the commission shall enter an order recommending that the officer or employee be removed from his or her public office or public employment.

23. In this case, the Commission, through the Advocate, bears the burden of proof to establish by clear and convincing evidence Respondent violated Florida law. See Latham v. Fla. Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997).

24. Article II, Section 8, Florida Constitution, requires public officers or employees holding certain offices to file full and public disclosure of their financial interests. Public service in Florida is a public trust requiring those who hold positions of trust to conform to the requirements of the law. In this case, Respondent, as a member of the CRA, was required to file the disclosure.

25. Respondent failed or refused to timely file a CE Form 1, Statement of Financial Interests, for the year 2015.

26. Respondent was given notice of his failure to timely file the required disclosure and continued to fail to file the document. Respondent's claim that his failure was not "willful"

is without merit. Respondent could have easily hand-delivered, mailed, or had an employee mail or hand-deliver the form to the Supervisor of Elections. He did not.

27. The maximum fine accrued regarding Respondent's failure to file and still he did not file the form.

28. Despite being given every opportunity to file the form (timely and untimely), despite being reminded by the City Clerk's employee, his own employees, and the Commission's staff, Respondent did not file the form. Such gross indifference and reckless disregard to the requirements of the law constitutes willful behavior. Respondent's assertion that he intended to file the form is not valid. Further, Respondent had no valid excuse to justify his failure to file the form.

29. In this case, the Commission, through the Advocate, has established by clear and convincing evidence that Respondent did not file the CE Form 1 as required by law and that his behavior was willful.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Commission enter a final Order and public report: determining Respondent violated Article II, Section 8, Florida Constitution; finding that Respondent willfully failed to file the Statement of Financial Interests in violation of section 112.3145, Florida Statutes (2017); and

recommending that Respondent be removed from his public position with the CRA.

DONE AND ENTERED this this 28th day of March, 2018, in Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of March, 2018.

COPIES FURNISHED:

Millie Wells Fulford, Agency Clerk
Florida Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709
(eServed)

Elizabeth A. Miller, Esquire
Office of the Attorney General
Plaza Level 01, The Capitol
Tallahassee, Florida 32399
(eServed)

Joel Davis
215 West Donegan Avenue
Kissimmee, Florida 34741

Virlindia Doss, Executive Director
Florida Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709
(eServed)

C. Christopher Anderson, III, General Counsel
Florida Commission on Ethics
Post Office Drawer 15709
Tallahassee, Florida 32317-5709
(eServed)

Advocates for the Commission
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

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.