FLORIDA
COMMISSION ON ETHICS
SEP 21 2021
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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re: Dale V. C. Holness,

Respondent. **Complaint No. 21-093**

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ADVOCATE'S AMENDED RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C. The amended recommendation corrects the dates on page seven. The recommendations remain unchanged.

RESPONDENT/COMPLAINANT

Respondent, Dale V. C. Holness, serves as a Member of the Broward County Board of Commissioners. Complainant is Richard Giorgio of Tallahassee, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on September 3, 2021.

ALLEGATION ONE

Respondent is alleged to have violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by failing to disclose income from two corporations he owns and secondary sources of income related to those corporations on his 2016 CE Form 6, "Full and Public Disclosure of Financial Interests."

APPLICABLE LAW

Article II, Section 8, Florida Constitution provides:

> (a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.
>
> * * *
>
> (i) Schedule-On the effective date of this amendment and until changed by law:
>
> (1) Full and public disclosure of financial interests shall mean filing with the secretary of state by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of $1,000 and its value together with one of the following:
>
> a. A copy of the person's most recent federal income tax return; or
>
> b. A sworn statement which identifies each separate source and amount of income which exceeds $1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), and such rules shall include disclosure of secondary sources of income.
>
> * * *

Section 112.3144(1), Florida Statutes, provides as follows

> (1) An officer who is required by s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests for any calendar or fiscal year shall file that disclosure with the Florida Commission on Ethics.

ANALYSIS

Respondent served on the Lauderhill City Council from 2004 to 2010, whereby he was required to file an annual CE Form 1, "Statement of Financial Interests." (ROI 5) He was elected to the Broward County Commission in 2010, whereby he has been required to file an annual CE Form 6, "Full and Public Disclosure of Financial Assets." (ROI 5)

Respondent's employment primarily has been in real estate, insurance, and restaurant management. (ROI 5) He is the principal of two corporations, American Holding Group, Inc., and All Broward Realty, Inc., from which he claims to have received no income during the years 2016 through 2019. (ROI 6)

Under Part B – "Description of Assets" on his CE Form 6, Respondent listed seven properties from which he received rental income during the years 2016 through 2019. (ROI 7, Composite Exhibit A) Respondent maintains that any income was offset by expenses and depreciation; thus, he did not have any income to report. (ROI 7)

For purposes of filling out CE Form 6, the definition of "Income" means

> **the same as "gross income" for federal income tax purposes,** even if the income is not actually taxable, such as interest on tax-free bonds. **Examples of income include: compensation for** services, gross income from business, gains from property dealings, interest, **rents,** dividends, pensions, IRA distributions, distributive share of partnership gross income, and alimony, but not child support. Where income is derived from a business activity you should report the income to you, as calculated for income tax purposes, rather than the income to the business. (Emphasis added.)

In addition, Respondent was required to disclose major customers, clients, or other sources of income to businesses in which he owned an interest during the pertinent years. This is referred to as "secondary sources of income." The form's instructions state:

> You will ***not*** have anything to report ***unless***:

> (1) You owned (either directly or indirectly in the form of an equitable or beneficial interest) during the disclosure period, more than 5% of the total assets or capital stock of a business entity (a corporation, partnership, limited partnership, LLC, proprietorship, joint venture, trust, firm, etc., doing business in Florida); and
>
> (2) You received more than $1,000 in gross income from that business entity during the period.
>
> If your ownership and gross income exceeded the two thresholds listed above, then for that business entity you must list every source of income to the business entity which exceeded 10% of the business entity's gross income (computed on the basis of the business entity's most recently completed fiscal year), the source's address, the source's principal business activity, and the name of the business entity in which you owned an interest. You do not have to list the amount of income the business derived from that major source of income. [Emphasis in original.]

The term "source" is defined to mean "the name, address, and description of the principal business activity of a person or business entity." §112.312(23), Fla. Stat. Respondent filed an addendum to his 2016, 2017, 2018, and 2019 forms indicating "Name of Source of Income Exceeding $1,000" as secondary sources; however, he only listed the renters as "current tenant," along with the address of the rental property. (Exhibit B3, B6, B9, B12) Accordingly, as a member of the Broward County Commission, Respondent was required to disclose the name of the client which provided in excess of $1,000 in gross income during the period from that person/entity.

Respondent advised that he read the filing instructions but does not recall how long it took him to complete the form each year. (ROI 8) After the complaint was filed,[1] he sought clarification of the filing requirements from the Commission on Ethics' staff. (ROI 10) Thereafter, he filed amended CE Form 6s for calendar years 2016, 2017, 2018, and 2019, on August 27, 2021. (ROI 10, Composite Exhibit B) Respondent now understands what is required, and on August 20, 2021,

[1] The instant complaint was filed on May 24, 2021. (Complaint, p. 1)

he filed his 2020 CE Form 6 in which he disclosed rental income from his investment properties. (ROI 9, 11)

Respondent's original filing, as well as his amended filing, was incomplete and/or inaccurate for the reasons stated herein.

Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes.

ALLEGATION TWO

Respondent is alleged to have violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by failing to disclose income from two corporations he owns and secondary sources of income related to those corporations on his 2017 CE Form 6, "Full and Public Disclosure of Financial Interests."

APPLICABLE LAW

Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, as set forth under Allegation One, above.

ANALYSIS

The facts are set forth above under Allegation One. Respondent's original and amended filings were incomplete and/or inaccurate.

Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes.

ALLEGATION THREE

Respondent is alleged to have violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by failing to disclose income from two corporations he owns and secondary sources of income related to those corporations on his 2018 CE Form 6, "Full and Public Disclosure of Financial Interests."

APPLICABLE LAW

Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, as set forth under Allegation One, above.

ANALYSIS

The facts are set forth above under Allegation One. Respondent's original and amended filings were incomplete and/or inaccurate.

Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes.

ALLEGATION FOUR

Respondent is alleged to have violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by failing to disclose income from two corporations he owns and secondary sources of income related to those corporations on his 2019 CE Form 6, "Full and Public Disclosure of Financial Interests."

APPLICABLE LAW

Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, as set forth under Allegation One, above.

ANALYSIS

The facts are set forth above under Allegation One. Respondent's original and amended filings were incomplete and/or inaccurate.

Therefore, based upon the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes.

RECOMMENDATION

It is my recommendation that,

1. There is probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by failing to disclose income from two corporations he owns and secondary sources of income related to those corporations on his 2016 CE Form 6, "Full and Public Disclosure of Financial Interests."

2. There is probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by failing to disclose income from two corporations he owns and secondary sources of income related to those corporations on his 2017 CE Form 6, "Full and Public Disclosure of Financial Interests."

3. There is probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by failing to disclose income from two corporations he owns and secondary sources of income related to those corporations on his 2018 CE Form 6, "Full and Public Disclosure of Financial Interests."

4. There is probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by failing to disclose income from two corporations he owns and secondary sources of income related to those corporations on his 2019 CE Form 6, "Full and Public Disclosure of Financial Interests."

Respectfully submitted this 21st day of September, 2021.

Elizabeth A. Miller
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