

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE:        Jeffrey M. Siskind  
                 Respondent.

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DOAH CASE NO. 22-0053EC

Complaint No. 18-185

**NOTICE OF FILING RESPONDENT'S PROPOSED ORDER**

COMES NOW, the Respondent, Jeffrey Marc Siskind, and files this Notice of Filing Respondent's Proposed Order in this matter, which proposed order was e-filed on the DOAH web portal with a copy in Microsoft Word sent via email to the Department of Administrative Hearings Clerk at Loretta.Sloan@doah.state.fl.us this 6<sup>th</sup> day of June, 2022.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of this Notice of Filing Respondent's Proposed Order was served upon Melody A. Hadley, Esquire via email to melody.hadley@myfloridalegal.com and Elizabeth A. Miller, Esquire via email to elizabeth.miller@myfloridalegal.com this 6<sup>th</sup> day of June, 2022.

**SISKIND LEGAL, PLLC**

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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

IN RE:       Jeffrey M. Siskind

DOAH CASE NO. 22-0053EC

Respondent.

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**THIS MATTER** came before the Honorable Judge June McKinney, an administrative law judge, to be heard on the 16<sup>th</sup> day of March 2022, in Tallahassee, Florida, on the Florida Commission on Ethics Complaint to determine whether Jeffrey M. Siskind, Esq., (“Respondent”) as a candidate for Attorney General of the State of Florida violated Article II, Section 8 of the Florida Constitution and/or §112.344, Florida Statutes, by filing an inaccurate 2017 CE Form 6, Full and Public Disclosure of Financial Interests. The Tribunal, having heard the testimony of witnesses, having considered the documentary evidence, the candor and demeanor of the witnesses, and having been otherwise fully advised in the premises, hereby sets forth its findings of fact and conclusions of law.

**JURISDICTION**

The Tribunal finds that this matter pertains to the Full and Public Disclosure of Financial Interests filed by persons who are candidates for public office, and whether the Full and Public Disclosure of Financial Interests filed by Respondent on June 22, 2018, as supplemented by Respondent on October 29, 2019, comported with the instructions of the 2017 Form CE 6 and should therefore be deemed to be accurate. The Tribunal’s jurisdiction is governed by Florida Statute which provides that the Division of Administrative Hearings shall have jurisdiction, and which shall be strictly construed.

## FINDINGS OF FACT

Pursuant to Article II, Section 8(a) of the Florida Constitution, 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 as of a date certain, picked by the individual. In order to comply with this disclosure requirement, individuals may file Commission on Ethics Form 6 ("CE Form 6"), which may be obtained online from the Florida Commission on Ethics website. Included with the CE Form 6 are instructions which provide guidance to completing the form to individuals required to disclose their financial interests. The included instructions provide guidance as to how an individual should value certain assets, including closely-held businesses. Specifically, an individual completing CE Form 6, when valuing a closely-held business, is instructed to "use any method of valuation which in your judgment most closely approximates fair market value, such as book value, reproduction value, liquidation value, capitalized earnings value, capitalized cash flow value, or value established by "buy-out" agreements". **See Joint Exhibit 2.**

Based upon his candidacy for Attorney General in the 2018 general election, Respondent was required to complete and file a CE Form 6, disclosing all of his financial interests along with the value of his financial interests but then immediately filed. On June 22, 2018, Respondent filed a CE Form 6, after being advised that he inadvertently used a prior year's form one day earlier. The information contained on the correctly filed form was identical to that contained on the prior filed form. The Respondent swore under oath that the information included on his CE Form 6 was true, accurate and complete as of June

20, 2018, the date chosen by Respondent as the effective date of his financial disclosure.

On his CE Form 6, Respondent disclosed an interest in the Western Credit Resolution Trust (“Trust”) as an asset, which was valued at \$5,574,544.20. The value of the Trust was based upon its 75% direct and derivative ownership of CannaMed Pharmaceuticals, LLC (“CannaMed”), a Maryland corporation formed in 2015 to pursue a medical cannabis license in Maryland. The Respondent indicated that CannaMed had an adjusted value of \$10 million as of the June 20, 2018 disclosure date. This downward adjusted valuation was discounted 75% from CannaMed’s gross valuation to account for the Respondent’s assessment of the risk that CannaMed would not obtain full operation. Then, 75% of this discounted value was utilized in Respondent’s valuation of the Western Credit Resolution Trust at \$5,574,554.20, after taking an additional \$1,540,357.50 reduction to account for a possible bankruptcy trustee fee.

### **STANDARD AND BURDEN OF PROOF**

Only if the Advocate for the Florida Commission on Ethics could prove by clear and convincing evidence that the Respondent valued CannaMed in a manner that did not comport with the instructions contained on the Form CE 6 can the Tribunal determine that Respondent did not properly value the asset. The burden thus lies with the Advocate.

### **TESTIMONY**

In addition to the Respondent testifying by means of a narrative, there were two additional witnesses who testified. The Advocate called Robert C. Furr (“Furr”) as a fact witness and testified that he believed that CannaMED was worthless. Mr. Furr was not qualified as an expert and his opinion testimony should not be accepted.

The Respondent called Joshua Barron Angell (“Angell”) who was qualified as an expert witness, and who testified that his review of the matter was limited to whether the Respondent (who he had first met two weeks prior to the hearing) had adhered to the Form CE 6 instructions. Angell concluded that the Respondent had indeed done so.

Furr testified that he is a practicing attorney who also serves as a panel bankruptcy trustee, in which capacity he represents a Debtor’s creditors. He further testified that he served as Trustee in a Chapter 7 bankruptcy filed by Chance & Anthem, LLC (“C&A”). The relationship of that bankruptcy case to this matter is only important because C&A at one time owned 70% of CannaMed and Respondent listed CannaMed as an “asset” of C&A.

However, Furr abandoned CannaMed to the Debtor who Respondent testified subsequently assigned it to the Western Credit Resolution Trust (“Trust”) which was formed a short time before Respondent’s chosen valuation date. Furr testified that he abandoned the asset not because he deemed it to have no value but because it involved a cannabis business which he could not legally administer in bankruptcy and was therefore of no bankable value to him or C&A’s bankruptcy estate. However, Furr also opined that CannaMed had no value and stated that he knew nothing about the cannabis business.

Furr subsequently testified that, although he employed a forensic accountant to examine the C&A’s finances, neither he nor his accountant attempted to value CannaMed because he could not have administered it as an asset of the Debtor. Instead, Furr tried to bolster the Advocate’s challenge to Respondent’s valuation of CannaMed by stating that Respondent testified that CannaMed was “more or less a shell company” during the C&A

bankruptcy case and went so far as to offer his non-expert opinion that Respondent's valuation was 'pie in the sky.'

Respondent testified, however, that describing a company as "more or less a shell" is not the same as saying that it has no value. The Oxford online dictionary appears to agree with Respondent's assessment, as it defines a "shell company" as "an inactive company used as a vehicle for various financial maneuvers or kept dormant for future use in some other capacity," and that appears to be the purpose for which CannaMed was formed. Importantly, the license application when granted would belong to CannaMed.

The Advocate emphasized that Respondent first valued CannaMed at a nominal value and later amended C&A's bankruptcy schedules to reflect a higher value, but Furr testified that these amendments are common and accepted practice in bankruptcy. The Respondent testified that the higher value was based upon the same capitalization of CannaMed's projected income stream that was discounted by a risk factor which the Respondent believed was a fair representation of the chance that CannaMed would meet expectations. The expert's uncontroverted testimony agreed that this method of valuation for closely held 'startup' companies was appropriate and permitted by the instructions in CE Form 6, and the Respondent explained his discounted valuation in a July 9, 2019 email which he sent to the Commission on Ethics' investigator, Kathleen Mann.

Furr testified that, although he was a panel trustee charged with marshalling the assets of C&A, he did not really know if CannaMed had ever had a pending application before the United States Drug Enforcement Agency ("DEA"). However, Respondent testified that the DEA application did in fact exist and provided the Tribunal with several

exhibits that attested to CannaMed's DEA cannabis manufacturer's application being pending at all times pertinent.

Furr also testified to Respondent's inconsistent testimony concerning the value of CannaMed during the C&A bankruptcy case. But whatever Respondent stated at various times about what he may have believed CannaMed to be worth has no relation to whether Respondent followed the instructions on CE Form 6 which indicated how Respondent was to arrive at a value for CannaMed. Moreover, no one testified as to what may have impacted Respondent's assessment of CannaMed's value at different times such as at the time that Respondent thought CannaMed had been effectively 'stolen' by an individual who appropriated the company's name hoping to pursue its DEA application.

When Respondent testified, he pointed out that the statutory provisions contained in Section 112.3144, Florida Statutes, did not apply to candidates for public office when he filed his CE Form 6 disclosure, and that the 2017 and 2018 statute stated in pertinent part:

112.3144 Full and public disclosure of financial interests.— (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.

However, the current 2021 version, as well as the 2019 and 2020 versions differ from the 2017 and 2018 versions, and were amended as underlined below:

112.3144 Full and public disclosure of financial interests.— (1)(a) 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, or any other person required by law to file a disclosure under

this section, shall file that disclosure with the Florida Commission on Ethics.

Although Section 112.3144, Florida Statutes, apparently did not apply to candidates for public office when Respondent filed his CE Form 6 in 2018, Florida's Constitution, in Article II, Section 8, the purpose of which is to assure the right of Floridians to trust in their public offices, states in pertinent part:

ART. II, SECTION 8.(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.

However, any possible statutory penalties for violating Article II, Section 8 of the Constitution are addressed in Section 112.3144, Florida Statutes, by reference to Section 112.324, Florida Statutes, but these sections did not apply to candidates until Section 112.3144 was amended, effective in 2019, well after Respondent's filing.

Respondent also testified to the breadth and scope of the CannaMed project, the basis the application of the discount he applied to the capitalization of CannaMed's income stream to account for risk and correspondingly reduce the valuation of CannaMed, the substantial investment in a lease-purchase of a large building in Maryland to accommodate the company's business plan, and the number of employees on C&A's payroll working on behalf of CannaMed. Importantly, at no time did anyone challenge the viability of the Trust which Respondent formed prior to filing its 2017 CE Form 6.

Respondent's expert testified that the method used by Respondent to value CannaMed and therefore the Trust comported with good accounting principles and also



comported with the instructions in CE Form 6. The Expert agreed with the Advocate's 'lottery' valuation concept as applied to closely held and early-stage venture capital projects and explained that this type of analysis actually favored Respondent because Respondent's discount of value commensurate with his assessment of attendant risk (1) was arrived at in accordance with acceptable accounting principles and (2) was not proven by the Advocate to be inaccurate. Respondent's discounted valuation differed from the hypothetical valuation of a \$1 lottery ticket because the lottery which is based upon a vast number of tickets sold will result in an infinitesimal ticket value.

The Expert noted that CannaMed would be appropriately defined as a closely held company and that the instructions contained on page 4 of the CE Form 6 permit use of "any method" of asset valuation including approximation and fair market valuation to value closely held companies. He also stated that "approximation" is a term of art and is tantamount to a very limited inquiry to establish an asset's value, as distinguished from a determination of value which is a much more comprehensive inquiry.

The Expert further testified that Respondent used an earnings capitalization factor of just over four (4) times CannaMed's pretax profit at full operational capacity reduced by a 'probability factor' which is acceptable in an optional valuation method that an appraiser might use; one which is more aptly described as a commonly used probability weighted expected return model applied to a capitalization of earnings.

The Expert also stated that the valuation methods Respondent used comported with instructions given on the 2017 Form CE6 and also were not uncommon methods used in venture capital to value early-stage companies in a concept or pre-revenue stage,

that CannaMed could be identified as an early-stage company while awaiting licensing, that a company pending licensure can obtain a fair market value even though it lacks commercial viability, and that an uncertain value does not necessarily mean that a valuation is speculative. Importantly, the instructions did not require Respondent to obtain a professional valuation, and a valuation can be based upon expected future earnings especially when the approximation includes adjustment for the likelihood of failure.

The Expert testified that the Respondent's method of valuation based upon actual earnings in a prior cannabis venture was mechanically correct, and further stated that he believed that Respondent's valuation was substantially similar to that of another cannabis business that the Expert had evaluated. Also, he reported that his research on various other early-stage cannabis companies found that they obtained similar mean valuations.

While the Advocate's case amounted to a challenge to Respondent's valuation and was generally based on Furr's admitted lack of acquaintance with cannabis businesses, it did not propose an alternative valuation which could constitute a full and fair value for CannaMed and, hence, the Trust.

The Respondent testified that he tried to present a fair valuation for CannaMED, and thus also the Trust, and Respondent's valuation never changed throughout the investigation, during which time Respondent supplemented his valuation with build-out and cash flow schedules that were prepared for use in CannaMed's Maryland and later DEA applications, and which supported Respondent's valuation.

## CONCLUSIONS OF LAW

While the Advocate attacked Respondent's valuation, it did not provide any suggestion as to what the value of CannaMed ought to be outside and apart from its value to a bankruptcy panel Trustee that could not administer the asset to realize any bankable value to distribute to C&A's creditors. Furr's testimony that CannaMed was worthless cannot be relied upon because Furr also testified that he really knew nothing about the cannabis business and his employed financial consultant did not conduct a valuation of CannaMed.

The instructions in the CE Form 6 apparently were adopted by the Commission on Ethics to effectuate the full disclosure of campaign finances required by the Florida Constitution at the time that Respondent filed its CE Form 6. However, while Section 112.3144, Florida Statutes, did apply to candidates in 2019, it did not apply to candidates for elected public office in 2018 when Respondent filed his CE Form 6.

It unlikely that the Commission on Ethics has the resources with which to properly evaluate the appropriateness of candidates' valuations of early-stage or closely held companies and it therefore must rely upon applicants' assessments as likely to be best informed, except in such cases where there appears to be no reasonable basis therefore.

The Commission therefore cannot challenge or 'correct' an applicant's valuation, but must instead limit its inquiry to assessing whether the valuation was performed in accordance with requirements set forth in the instructions to CE Form 6. The evidence and expert testimony demonstrated that Respondent both endeavored to and did in fact provide a valuation for CannaMed and hence the Trust in accord with the instructions.

## **ORDER**

The Tribunal having heard the testimony of witnesses, having considered the documentary evidence, the candor and demeanor of the witnesses, and having been otherwise fully advised in the premises, hereby

### **ORDERS AND ADJUDGES that:**

1. Final Judgment is hereby entered in favor of the Respondent.
2. The weight of the evidence points to Respondent making a good faith effort to accurately value CannaMed and, thus also, the Trust.
3. The Tribunal cannot find based upon clear and convincing evidence that the Advocate has met its burden of proving that the Respondent did not adhere to the instructions contained in the CE Form 6.
4. Respondent's expert's testimony in support of Respondent's valuation was convincing and uncontroverted.
5. Testimony and exhibits which refer to valuations other than that used by Respondent to value CannaMed or the Trust in a manner consistent with the instructions contained on Respondent's CE Form 6 are not relevant because the appropriate test is whether a candidate followed those instructions in preparing its valuation.

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Copies furnished:  
Respondent  
Advocate