STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

In re: Jeffrey M. Siskind,

Respondent.
_____/

DOAH Case No.: 22-0053EC
Complaint No.: 18-185

ADVOCATES' PROPOSED RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Administrative Law Judge, June C. McKinney, held a formal hearing in the above-styled case on March 16, 2022 at 9:30 a.m., via Zoom conference.

APPEARANCES

Advocates:

Melody A. Hadley, Esquire
Florida Bar No. 0636045
Elizabeth A. Miller, Esquire
Florida Bar No. 578411
Advocates for the Florida Commission
On Ethics
Assistant Attorneys General
Office of the Attorney General
Plaza Level One, The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3300
E-mail: melody.hadley@myfloridalegal.com
E-mail: elizabeth.miller@myfloridalegal.com

Respondent:

Jeffrey M. Siskind, Esquire
Florida Bar No. 138746
Respondent
3465 Santa Barbara Drive
Wellington, Florida 33414
Telephone: (561) 791-9565
E-mail: jeffsiskind@msn.com

STATEMENT OF THE ISSUE

The issue for determination is:

Whether Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by filing an inaccurate CE Form 6, "Full and Public Disclosure of Financial Interests," for the year 2017 and, if so, what is the appropriate penalty?

PRELIMINARY STATEMENT

On October 30, 2019, the Florida Commission on Ethics issued an Order Finding Probable Cause to believe that Respondent, Jeffrey M. Siskind, as a candidate for the position of Attorney General of Florida, violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes,[1] by filing an inaccurate CE Form 6, "Full and Public Disclosure of Financial Interests," for the year 2017. The case was forwarded to the Division of Administrative Hearings on January 6, 2022.

On January 19, 2022, Respondent filed a Notice of Respondent's Intent to Recover Attorney's Fees, Notice of Service of Proposal for Settlement, and a Demand for Statement of Particulars. On January 24, 2022, Advocate filed a Response to Demand for Particulars.

On March 16, 2022, Respondent filed a "Motion to Hear Respondent's Expert Testimony at 2:00 P.M. on March 16, 2022." On March 16, 2022, the motion was granted.

The final hearing occurred on March 16, 2022. After the final hearing, on May 2, 2022, Respondent filed a "Motion to Dismiss Case." On May 3, 2022, Advocate filed a response. On May 5, 2022, the motion was denied.

At the final hearing, Advocate called two (2) witnesses: Respondent and Robert C. Furr. Respondent called one (1) witness: Joshua B. Angell and provided a personal narrative.

[1] The Constitutional and statutory provision indicate one offense only and not two separate violations.

There were two (2) joint exhibits offered into evidence which shall be referenced as "Joint Exhibit #." Advocate offered four (4) exhibits into evidence which shall be referenced as "Advocate's Exhibit #." Respondent offered seven (7) exhibits into evidence which shall be referenced as "Respondent's Exhibit #."

All references to the record shall be in parentheticals. A transcript of the hearing was filed. References to the transcript shall be made as "TR" followed by the appropriate page number with the witness's last name in brackets.

Advocates timely filed the Proposed Recommended Order on June 6, 2022.

FINDINGS OF FACT

1. Respondent is an attorney and businessman. (TR pgs. 11-12 [Respondent])

2. Respondent was a candidate for the Florida Attorney General in 2018. (Joint Prehearing Stipulation, TR pg. 12 [Respondent])

3. Respondent, by virtue of his position as a candidate for Florida Attorney General in 2018, was subject to Article II, Section 8, Florida Constitution, and to the requirements of Part III, Chapter 112, Florida Statutes, Code of Ethics. (Joint Prehearing Stipulation)

4. Respondent was required to file a 2017 CE Form 6, "Full and Public Disclosure of Financial Interests," to qualify to run for office. (TR pg. 12 [Respondent])

5. One major purpose of a financial disclosure is to allow citizens to monitor their public officials and employees for any conflicts of interest that may arise. It deters corruption and increases the public's confidence in the government. See §112.311, Fla. Stat.

6. The 2017 CE Form 6, "Full and Public Disclosure of Financial Interests," has instructions to assist with the completion of the form. (Joint Exhibit 2)

7. Respondent read the instructions for the 2017 CE Form 6 prior to its completion. (Joint Prehearing Stipulation, Joint Exhibit 2)

8. On June 22, 2018, Respondent filed a 2017 CE Form 6, "Full and Public Disclosure of Financial Interests," which by his signature under oath, he declared to be true, accurate, and complete.[2] (Joint Prehearing Stipulation, Joint Exhibit 1)

9. Respondent's 2017 CE Form 6 is inaccurate in that he disclosed an inaccurate value of an asset and that inaccurate value was used by Respondent to calculate his net worth and, thus, his disclosed net worth is inaccurate. (Joint Exhibit 1)

10. The instructions for the 2017 CE Form 6 regarding Part A – Net Worth provide in part:

> Report your net worth as of December 31, 2017, or a more current date, and list that date. This should be the same date used to value your assets and liabilities. In order to determine your net worth, you will need to total the value of all your assets and subtract the amount of all your liabilities. Simply subtracting the liabilities reported in Part C from the assets reported in Part B will not result in an accurate new worth figure in most cases. (Emphasis in original.)
>
> (Joint Exhibit 2 (Bates stamped pg. 6))

11. Under Part A – Net Worth, Respondent listed his net worth as $2,120,035.77 as of June 20, 2018 on his 2017 CE Form 6. June 20, 2018 is considered Respondent's "reporting date" which means that is the date he chose to value his assets and liabilities on his 2017 CE Form 6. (TR pgs. 15-16 [Respondent], Joint Exhibit 1 (Bates stamped pg. 1))

12. The instructions for 2017 CE Form 6 regarding Part B – Assets provide in part:

> Describe, and state the value of, each asset you had on the reporting date you selected for your net worth in Part A, if the asset was worth more than $1,000 and if you have not already included that asset in the aggregate value of your household good and personal effects.

[2] Respondent originally filed a form on June 21, 2018 but it was incorrect as it for 2016 instead of 2017. (TR pg. 12 [Respondent])

> Assets include, but are not limited to, things like interests in real property; cash; stocks; bonds; certificates of deposit; interests in businesses; beneficial interests in trusts; money owed you; bank accounts; Deferred Retirement Option Program (DROP) accounts; and the Florida Prepaid College Plan....
>
> **How to Value Assets**:
> - Value each asset by its fair market value on the date used in Part A for your net worth.
>
> - Trusts: You are deemed to own an interest in a trust which corresponds to your percentage interest in the trust corpus.
>
> * * *
>
> - Closely-held businesses: Use any method of valuation which in your judgment most closely approximates fair market value, such as book value,[i] reproduction value,[ii] liquidation value,[iii] capitalized earnings value,[iv] capitalized cash flow value,[v] or value established by "buy-out" agreements.[vi] It is suggested that the method of valuation chosen be indicated on the form.
>
> (Joint Exhibit 2 (Bates stamped pg. 7))

13. Fair market value - In its simplest sense, fair market value (FMV) is the price an asset would sell for on the open market. Fair market value has come to represent the price of an asset under the following usual set of conditions: prospective buyers and sellers are reasonably knowledgeable about the asset, behaving in their own best interest, free of undue pressure to trade, and given a reasonable period for completing the transaction.[3]

14. Respondent disclosed "Western Credit Resolution Trust" as an asset with a value of $5,574,554.20 as of June 20, 2018. (TR pgs. 15-16 [Respondent], Joint Exhibit 1 (Bates stamped pg. 1)

15. Respondent did not list the method used to value the Trust as "suggested" by the form's instructions. (Joint Exhibit 1 (Bates stamped pg. 1), Joint Exhibit 2 (Bates stamp pg. 7))

[3] https://www.investopedia.com/terms/f/fairmarketvalue.asp

16. Respondent used the value of the Trust in his computation of his net worth of $2,120,035.77. (TR pg. 16 [Respondent])

17. Per the formation document, "The Trust Corpus shall be the property, both real and personal, and rights to property which the Settlor has or shall fund into the Trust, net of any and all debts appertaining thereto [()"Property"), which Trust Property shall initially consist of Property which the Settlor conveys to the Trust. The Settlor hereby irrevocably assigns to the Trust all of the Settlor's title and interest in CannaMed Pharmaceuticals, LLC ("CannaMED"), a Maryland limited liability company, equal to five percent (5%) of the member interests in CannaMED, and all of Settlor's one hundred percent (100%) title and interest in Chance & Anthem, LLC, a Florida limited liability company ("C&A["]), which in turn owns seventy percent (70%) of the member interests in CannaMED." (TR pgs. 16-17 [Respondent], Advocate's Exhibit 18 (Bates stamped pgs. 277-278))

18. Chance & Anthem, LLC, is a company owned by Respondent which was used as a funding company for two profits. (TR pg. 19 [Respondent])

19. CannaMed Pharmaceuticals, LLC, is a Maryland corporation formed to pursue a medical cannabis license in Maryland. The pursuit was through a point-based application process. (TR pgs. 19-20, 110 [Respondent])

20. CannaMed is the only asset or corpus in the Trust. (TR pg. 119 [Respondent], Advocate's Exhibit 19)

21. CannaMed was denied a license by the state of Maryland regarding a cannabis business. (TR pgs. 99, 109-110 [Respondent])

22. Respondent claimed the denial was based on a technical error in the preparation of CannaMed's application. (TR pg. 110 [Respondent])

23. After being denied a license by Maryland, CannaMed filed for a United States Drug Enforcement Administration (DEA) license regarding a cannabis business. (TR pg. 99 [Respondent])

24. There were 16 applicants for the DEA license. (TR pg. 100 [Respondent])

25. As of June 20, 2018, CannaMed did not have a Maryland, *or any other*, state license to enter into a business regarding medical cannabis. (TR pgs. 20-21, 116 [Respondent])

26. A Maryland marijuana (i.e., cannabis) business cannot be conducted legally without a license in Maryland. (TR pg. 35 [Respondent])

27. As of June 20, 2018, CannaMed did not have a DEA license to enter into a business regarding medical cannabis. (TR pgs. 116-117 [Respondent])

28. A marijuana (i.e., cannabis) business cannot be conducted legally on a federal level without a license issued by the DEA. (TR pg. 100 [Respondent])

29. Respondent's explanation of his valuation of the Trust is as follows:

Explanation	Result
CannaMED gross valuation	$40,000,000.00
CannaMED net valuation @ .25	$10,000,000.00
Trust Res:	
70% Chance & Anthem, LLC share	$ 7,000,000.00
Less Creditors (@ $1,540,367.50 plus 25% Trustee Fee)	$ 5,074,554.20
5% JMS share[4]	$ 500,000.00
Total Net Asset Value	$ 5,574,554.20

(TR pg. 18 [Respondent], Advocate's Exhibit 19)

[4] Respondent's share.

30. Chance & Anthem owns 70% percentage of CannaMed which Respondent claimed had a value of $5,074,554.20. (TR pgs. 22-23 [Respondent])

31. Respondent (JMS) owned 5% of CannaMed which he claimed gave him a personal $500,000 interest in a company with no assets. (TR pgs. 23-24 [Respondent])

32. Respondent could not provide all the names of the alleged owners of the other 25% ownership of CannaMed. (TR pgs. 49-50 [Respondent])

33. Neither $5,074,554.20 nor $500,000 were actually transferred into the Trust via a cash transfer. (TR pgs. 43, 47 [Respondent])

34. CannaMed did not pay 2018 taxes. (TR pg. 55 [Respondent])

35. The numbers used by Respondent to justify the $40,000,000 value for CannaMed are simply speculated projections, not actual assets or liabilities realized by CannaMed. (TR pgs. 119-120 [Respondent], Respondent's Exhibit 1)

36. Respondent's "backup" for the $40,000,000 valuation of CannaMed was based on values obtained from an active, operating business in California in 2009, eight years earlier. (TR pg. 103 [Respondent])

37. Those numbers were never realized by CannaMed as it never existed as an operating cannabis business. (TR pg. 34 [Respondent], Advocate's Exhibit 13 (Bates stamped pgs. 163-183))

38. CannaMed lost its name and is now called NuCanna Pharmaceuticals, LLC. Respondent initially claimed losing the name was not important; however, retracted that claim and acknowledged that he thought that the name was important to the DEA application. (TR pgs. 99, 118-119 [Respondent], Respondent's Exhibit 6)

39. Robert Furr is a member of the Florida Bar with a specialty in bankruptcy. In addition, he is a panel trustee for the United States Trustees Program for the Southern District of Florida. As such, he is appointed on a regular basis in Chapters 7s, 11s and 12s in South Florida as a bankruptcy trustee. (TR pg. 58 [Furr])

40. Furr has served as a bankruptcy trustee since the early 1990s. (TR pg. 63 [Furr])

41. A debtor is the person/entity who files bankruptcy. A trustee is a representative of the state and legally takes the place of a debtor. A trustee has the power to sue and be sued. (TR pgs. 58-59 [Furr])

42. In corporate cases, Furr is responsible for assets. He is to administer the case to collect and sell assets, to investigate the affairs of the debtor, and to recover assets, if appropriate, for the benefit of creditors. (TR pg. 58 [Furr])

43. Chance & Anthem filed for bankruptcy in the State of Maryland on January 29, 2018. The case was transferred to the Southern District of Florida in May 2018. (TR pgs. 59-60 [Furr])

44. Furr was appointed as the trustee to administer the assets of Chance & Anthem. In this role, Furr became intimately familiar with the assets of Chance & Anthem wherein he reviewed the value of the company's assets. (TR pgs. 59-60 [Furr])

45. "When a company or an individual files a Chapter 7, 11, 13 – 12 bankruptcy, they are required to file a schedule of its creditors, a petition, and answer a series of questions called a Statement of Financial Affairs. These are financial schedules designed to give an understanding of the debtor's assets, debts, whether they are secured or unsecured, priority debt, IRS debt or whatever. Also, the Statement of Financial Affairs asks a series of questions about the debtor's operations designed to pick up assets or transfers and the like and answer other series of questions."

(TR pgs. 85-86 [Furr])

46. Under the penalty of perjury, Respondent filed an official bankruptcy document titled, "Official Form 202," where he listed CannaMed as an asset and valued it at $1,000 on February 12, 2018. (TR pg. 29 [Respondent], TR pgs. 60, 86 [Furr], Advocate's Exhibit 12 (Bates stamped pg. 124))

47. Approximately four months later, on April 24, 2018, Respondent filed an amended schedule increasing the value of CannaMed from $1,000 to $14,000,000. (TR pgs. 31-32 [Respondent], TR pg. 87 [Furr], Advocate's Exhibit 13 (Bates stamped pg. 156))

48. The amended figure came with an explanation of how Respondent valued it which Furr reviewed along with Furr's accountants and financial advisor. (TR pg. 87 [Furr])

49. At a "341 Meeting of Creditors" occurring on July 9, 2018 and during September 5, 2018 and December 19, 2019 depositions, Respondent was questioned about CannaMed in order to determine if it had any value. (TR pgs. 62-63 [Furr])

50. During the July 9, 2018 "341 Meeting of Creditors," Respondent stated "CannaMed never had income. It was more or less a shell company; it had no business operations." (TR pg. 68 [Furr], TR pgs. 121-124 [Respondent])

51. Furr's and the accountant(s) reviewed Respondent's sworn testimony and information provided and found no value to CannaMed. Furr determined Respondent's evaluation was "pure speculation." "....there were no hard assets. There was no business. There was no cash. There was no license. There was nothing in existence. This is what it could have been. It was a market projection at the beginning of something – what it could be worth if certain things happened – but that never happened." (TR pg. 88 [Furr])

52. Furr's job as trustee is to base his opinions on the evaluation of the testimony of the

debtor and investigation of whether there are, in fact, real assets or not. At different intervals, Respondent testified that CannaMed was worthless or had no value. Furr could never find any assets of CannaMed that had any value at all. (TR pgs. 61-63 [Furr])

53. In Furr's professional opinion, CannaMed was "worthless, of no value." (TR pgs. 60-61 [Furr])

54. Furr concluded that CannaMed was worthless based on Respondent's consistent, sworn testimony in the Creditors' meeting and depositions that CannaMed "never had one dollar or one penny or one-tenth of a penny, there was no money in CannaMed...." Furr came to a logical conclusion that Respondent believed CannaMed was worthless too. (TR pgs. 69, 90-91 [Furr])

55. During the relevant time of the bankruptcy, Respondent could not prove that CannaMed had any value. (TR pgs. 90-91 [Furr])

56. CannaMed never had any revenues, expenditures for its own employee, or facilities because "it was merely an applicant until such time as it would have obtained a license at which time it will conduct business in and for itself." (TR pgs. 100-101 [Respondent])

57. Respondent testified at final hearing that Chance & Anthem paid all expenses for CannaMed, including obtaining a lease-purchase on a property in Maryland. Chance & Anthem abandoned the property because it could not pay the mortgage payments. (TR pgs. 101, 120 [Respondent])

58. While Respondent initially indicated that the lease that CannaMed had in Maryland was real estate owned by CannaMed, Furr determined that it was not CannaMed's asset. (TR pgs. 71, 83-84 [Furr])

59. If CannaMed was a valid cannabis business, the policies of the United States Trustees Office are that it cannot be administered. This "asset" was returned to the debtor. (TR

pgs. 76-77 [Furr])

60. However, Furr was not prevented from evaluating CannaMed's value due to it being a cannabis business. Furr did not find it to be "an operating business....no assets existed. Nothing existed. There was no way to even valuate it." (TR pg. 84 [Furr])

61. Furr stringently disagreed with Respondent's gross valuation of CannaMed at $40,000,000 – calling it "pie in the sky." (TR pgs. 63-64 [Furr], Advocate's Exhibit 19)

62. The bankruptcy is still ongoing and Furr has not found CannaMed to have any value. (TR pg. 63 [Furr])

63. The current status of the bankruptcy is that it is in adversarial proceedings to recover fraudulent transfers which is "paying bills of a third party with someone else's money." Specifically, Furr is pursuing a series of fraudulent transfer lawsuits based upon the theory that monies were transferred to various defendants that we are suing that belonged to the debtor through straw companies that we have consolidated to the debtor. (TR pgs. 65- 68 [Furr])

64. Respondent has an issue with how Furr was assigned to be the trustee; however, no evidence was introduced to suggest Furr has a bias. (TR pgs. 78-79 [Furr])

65. Joshua B. Angell, deemed an expert witness, is a senior managing director of the Valuation Services Group of Ellrich, Neal, Smith & Stohlman, an accounting firm in Palm Beach Gardens. Angell oversees the valuations done by the firm. (TR pgs. 126, 133 [Angell])

66. Angell opined that CannaMed is a closely-held business[5] based on information provided by Respondent to Angell for federal income tax purposes. (TR pg. 132 [Angell])

67. "Closely held corporations are those corporations the shares of which are owned by

[5] Has more than 50% of the value of its outstanding stock owned (directly or indirectly) by 5 or fewer individuals at any time during the last half of the tax year. https://www.irs.gov/faqs/small-business-self-employed-other-business/entities/entities-5#:~:text=Answer,t%20a%20personal%20service%20corporation.

a relatively limited number of stockholders. Often the entire stock issue is held by one family. The result of this situation is that little, if any, trading in the shares takes place. There is, therefore, no established market for the stock and such sales as occur at irregular intervals seldom reflect all of the elements of a representative transaction as defined by the term 'fair market value.'"[6]

68. Respondent used the Venture Capital Method and Probability-Weighted Expected Return Method (PWERM) which is also known as the scenario method. Based on his explanation to Angell, Respondent also used a capitalized earnings method to value the $40 million because he took a multiple or capitalization factor to forecast the profit of the business, assuming it was successful. Then to value the Trust, Respondent used a net asset value method. (TR pgs. 135-145, 169-170 [Angell])

69. The methods in the instructions, such as the capitalized earnings value and the capitalized cash flow value, are based upon future earnings. (TR pgs. 153-154 [Angell])

70. Angell opined that Respondent used an appropriate valuation method, but he could not verify the figures used by Respondent in the valuation. (TR pg. 162 [Angell])

71. Angell based his testimony on the following information provided by Respondent: 2017 CE Form 6, an October 24, 2019 supplement, CannaMed pre-operating expenses and operating pro forma, and conversations. (TR pgs. 145-146 [Angell], Joint Exhibit 1, Respondent's Exhibit 1)

72. Angell did not appraise CannaMed so he did could not testify to the probability of CannaMed's success of being awarded a cannabis license. (TR pgs. 135, 150-151 [Angell])

73. Angell did not verify any of the figures provided to him by Respondent. Angell did not check numbers against corporate documents. Angell acknowledged Respondent could

[6] https://www.pvfllc.com/files/IRS_Revenue_Ruling_59-60.pdf

have used any figures to valuate CannaMed. Angell assumes Respondent provided him with the "original operating pro forma." (TR pgs. 146-147, 152 [Angell])

74. Angell testified that Respondent referring to CannaMed as a shell company may not affect the valuation method but "I think it goes to whether his resulting value is high, low, or accurate but I really couldn't tell you if it was high, low, or accurate unless I did all of the valuation part of it." (TR pgs. 152-153 [Angell])

75. Angell had no knowledge if CannaMed had property, money, or a bank account as of June 20, 2018. (TR pg. 147 [Angell])

76. Angell opined that a company can have a license, for example, that is pending approval, but it has a fair market value because there is a probability that it may be awarded. (TR pgs. 149-150 [Angell])

77. If the license had not been awarded to CannaMed, then its value is zero. Angell acknowledged that CannaMed could have had a zero value as of June 20, 2018. (TR pgs. 152, 154 [Angell])

78. Angell provided an example of a "fitness app" that could be sold to a big company such as Facebook or Google. He opined that a company can have value because of the possibility that an app can be approved and when it is approved it can make a ton on money. However, there is a possibility that it could fail. This is common in venture capital investment. (TR pgs. 171-173 [Angell])

79. Respondent applied a 75% likelihood that it would <u>not</u> be awarded. Respondent's 25% chance of success was <u>not</u> realized. (TR pg. 118 [Respondent], TR pg. 152 [Angell])

80. As of March 16, 2022, CannaMed never held a license with the state of Maryland *or with any other state*. (TR pg. 22 [Respondent])

81. As of March 16, 2022, CannaMed never held a license with the DEA. (TR pg. 104 [Respondent])

82. In sum, Respondent's sworn testimony regarding the valuation of CannaMed has been: $1,000 in February 2018; $14,000,000 in April 2018; $10,000,000 in June 2018; and finally, $0 in July 2018.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §120.57(1), Fla. Stat.

2. Section 112.322, Florida Statutes, and Rule 34-5.0015, Florida Administrative Code, authorize the Commission on Ethics to conduct investigations and to make public reports on complaints concerning violations of Part III, Chapter 112, Florida Statutes (the Code of Ethics for Public Officers and Employees).

3. Contrary to his assertation, Respondent, virtue of his position as a candidate for Florida Attorney General in 2018, was subject to Article II, Section 8, Florida Constitution, and was subject to the requirements of Part III, Chapter 112, Florida Statutes, Code of Ethics. See also §112.3144(2), Fla. Stat.[7]

4. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue of the proceedings. Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). In this proceeding, it is the Commission, through its Advocate, that is asserting the affirmative: that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes. Commission on Ethics proceedings

[7] 2017

which seek recommended penalties against a public officer or employee require proof of the alleged violation(s) by clear and convincing evidence. See Latham v. Florida Comm'n on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997). Therefore, the burden of establishing by clear and convincing evidence the elements of Respondent's alleged violation is on the Commission.

5. As noted by the Supreme Court of Florida:

> [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re: Davey, 645 So. 2d 398, 404 (Fla. 1994), quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). The Supreme Court of Florida also explained, however, that, although the "clear and convincing" standard requires more than a "preponderance of the evidence," it does not require proof "beyond and to the exclusion of a reasonable doubt." Id.

6. Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes is charged, provides in part:

> (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.
>
> * * *
>
> (f) There shall be an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission.
>
> * * *
>
> (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.

* * *

(5) Forms for compliance with the full and public disclosure requirements of s. 8, Art. II of the State Constitution shall be created by the Commission on Ethics.

7. Respondent was a candidate for Attorney General which required him to file a CE Form 6, "Full and Public Disclosure of Financial Interests," for the year 2017.

8. The Commission on Ethics created CE Form 6 with instructions to assist with the completion of the form.

9. On a Form 6, the values disclosed regarding net worth and assets are considered a "snapshot" in time because the form requires the filer to provide that value as of a date certain.

10. In 1976, the people of the State said that "[a]ll 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." This was accomplished by the adoption of the so-called Sunshine Amendment by the voters. Article II, Section 8 of the Florida Constitution expanded the class of individuals required to file financial disclosure and created a violation for failure to comply.

11. The constitutional amendment established a Commission[8] with "independent"

[8] Section 8(i)(3) identifies the commission referred to in (f) as the "Florida Commission on Ethics."

authority to investigate and report on "all complaints" involving public officer and public trust issues. The legislature was then tasked with implementing the constitutional amendment and supplying the needed specifics where required. From this grant of authority, the legislature enacted Part III of Chapter 112, Florida Statutes, implementing Article II, Section 8, by setting forth detailed procedures by which the Commission is to investigate and report violations to the proper disciplinary official or body with the power to invoke the chapter's disciplinary provisions. See §§112.317, 112.324, Fla. Stat.

12. The constitution granted the legislature authority to enact laws to implement the provisions of and violation created by Article II, Section 8, by directing the Commission to prepare forms for compliance. This was accomplished, in part, by Section 112.3144, Florida Statutes.

13. Public policy sets forth instructions as a constraint on filers having the unfettered ability to file a false, misleading, and totally inaccurate net worth. Respondent is singlehandedly attempting to reshape the law to defy the legislative intent - all to the detriment of the public. Respondent's actions do not amount to harmless error. Allowing Respondent to fabricate his financial status allows him to escape disclosing his true and accurate net worth which is less than the over $2 million he disclosed.

14. The legislature did not intend for filers to present deceptive numbers to the public. To find that Respondent's financial statement was completed in a manner consistent with the law, would effectively inspire a surge of filers to imagine themselves as millionaires (why not billionaires) to deceive the public. Such decision would open the floodgates, by allowing future filers to do something never previously allowed, or even contemplated. That is, imagining your own net worth based on a vision or dream.

15. Allowing Respondent to inflate the value of the asset, at his convenience, defeats

the purpose of the form which is for the public to have complete and accurate information concerning a candidate for public office. Allowing Respondent to pick arbitrary values for a non-operating entity defeats the entire purpose of the form and misinforms the public.

16. The fair market value of the Trust comes down to how its sole asset, CannaMed was valued. Respondent's disclosure of the Trust's value as $5,574,554.20 is based on his valuation of CannaMed. Respondent's original valuation of CannaMed at $40,000,000 with his speculation that it had a 25% probability of success, left CannaMed's value at $10,000,000.

17. However, in reality, CannaMed had no value. It had no assets. It only had a state application that was denied and a federal application that was pending. Thus, Respondent based his $10,000,000 CannaMed valuation in June 2018 on an ***application*** that through March 2022 had not been approved.

18. Speculation of CannaMed's value is unnecessary because the actual value of the CannaMed is zero based on Furr's testimony and Respondent's bankruptcy testimony.

19. Since the CannaMed asset, which has no value, makes up the corpus of the Trust, the number disclosed by Respondent on his CE Form 6 is inaccurate because in reality the Trust has a zero value.

20. A motivation to inflate an asset is to increase one's net worth. Respondent's "mark-up" of the value of CannaMed to $40,000,000 along with his 25% probability of successfully receiving a license, gave him a $10,000,000 value which he used to inflate his net worth.

21. Angell, who was engaged by Respondent to testify, did not vouch for the figures used by Respondent, he only vouched for the how the numbers provided by Respondent could be used to value a closely-held business.

22. Specifically, Angell did not appraise CannaMed, that value being the crux of the

Advocates' argument that the Trust's valuation is inaccurate. Angell acknowledged that he has no knowledge of the figures originally provided by Respondent to value CannaMed.

23. Angell's explanation to the Court of how a non-operational company could have value is inapplicable to Respondent's case.

24. An "app,"[9] creates an object of value that is unique and has proprietary intellectual property. There are not a limited number of apps allowed or selected by the government based on qualifications like CannaMed. There is no risk that an app would not be licensed, which is a reality that CannaMed faced. An app has value in itself because it is a final product while CannaMed was dependent on governmental action.

25. Respondent based the value of CannaMed on there being a chance of it winning a marijuana license against other applicants. His 25% probability logic is flawed because it is not a game of chance. It is a qualification-based point system and, when evaluated, the most qualified applicant is awarded the license.

26. While the method Respondent used to value the trust is opined to be correct, the evidence shows the figures he used in the method were not.

27. The bottom line is the valuation of the Trust is a complete fiction. It is somewhat akin to buying a $2 lottery ticket with an expected win-payout of $100 million, then unrealistically calculating yourself to have a 5% chance of winning, thereby, declaring the ticket to be worth $5 million. To reiterate, the chance of being awarded a license, is not based on a random, lottery system.

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[9] Applications are software programs developed for end-users to accomplish specific computing tasks. Apps, on the other hand, mostly refer to programs developed for mobile devices. https://www.trendmicro.com/vinfo/us/security/definition/application-apps#:~:text=Applications%20are%20software%20programs%20developed,system%20they%20were%20designed%20for.

28. Respondent has no credibility regarding the valuation of CannaMed and, therefore, the Trust is nil. He changes the Trust's value depending on the situation.

29. Respondent gave sworn testimony during the course of the bankruptcy proceedings that CannaMed was a shell company with no value when creditors were in line to be paid. Then, he gives sworn testimony that CannaMed is worth millions when running for a prestigious state-wide office (i.e., Office of the Attorney General).

30. While the use of the term shell company alone is not proof of nefarious business dealings, the additional sworn testimony by Respondent during the course of the bankruptcy proceedings is certainly enough to establish the zero value of CannaMed.

31. Furr's testimony is based on actuality while Angell's testimony is based on speculation that Respondent's figures were accurate.

32. Angell acknowledged that the description of CannaMed as a shell company could have an effect on the accuracy of Respondent's valuation of it.

33. Respondent acknowledged that he included the Trust value he disclosed when calculating his net worth which means that the net worth he disclosed on his 2017 CE Form 6 is inaccurate too.

34. As of his reporting date of June 20, 2018, Respondent's valuation of the Trust was inaccurate. Respondent failed to properly disclose this asset, and, thus, his net worth as required by Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, on his 2017 CE Form 6.

35. Intent and motive are not elements required to prove a violation of Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes.

36. Furthermore, a violation of Article II, Section 8, Florida Constitution, and Section

112.3144, Florida Statutes, does not require proof that anyone was misled by the financial disclosure form. Section 112.3144(9), Florida Statutes, provides that it is enough that "the public was deprived of access to information to which it was entitled." Respondent deprived the public of information for which it was entitled.

PENALTY

The core penalties available for this matter involving Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, include: public censure, reprimand, and a civil penalty not to exceed $10,000. See § 112.317(1)(c), Fla. Stat.

A primary purpose of civil penalties is to deter misconduct by securing obedience to the law. Tull v. United States, 481 U.S. 412 (1987); see also Hudson v. United States, 522 U.S. 93 (1997) ("all civil penalties have some deterrent effect."). Thus, an imposition of a penalty is important to deter future ethical misconduct, and critical to ensure the public's trust and confidence in the system. A legitimate purpose in imposing an appropriate penalty is to lower the incentive to engage in this type of misconduct and, thus, aid the state in enforcement of the ethics statute. The imposition of a civil penalty of any lower than $5,000 would not serve as a deterrent for future similar behavior.

Commission on Ethics cases involving a violation of Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, are listed below.

The Commission issued a Final Order and Public Report in In Re: Daphne Campbell, where upon it recommended a $7,500 civil penalty along with public censure and reprimand, on three separate counts ($22,500 total), when it found that the respondent filed inaccurate CE Form 6s regarding net worth, an asset, and liabilities. The Commission issued a Final Order and Public Report in In Re: Stockton Reeves, where upon it recommended a $5,000 civil penalty along with

public censure and reprimand when it found that the respondent filed an inaccurate CE Form 6 regarding assets, liabilities, and an interest in a specified business. The Commission issued a Final Order and Public Report in In Re: Mark Weithorn, where upon it recommended a $3,000 civil penalty along with public censure and reprimand when it found that the respondent filed an inaccurate CE Form 6 regarding two liabilities and an asset. The Commission issued a Final Order and Public Report in In Re: Dennis McDonald, where upon it recommended a $2,000 civil penalty along with public censure and reprimand, on two separate counts ($4,000 total), when it found that the respondent filed inaccurate CE Form 6s regarding assets and primary sources of income.

It is therefore recommended that for this violation, Respondent receive a public censure and reprimand and a civil penalty of $5,000.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is:

RECOMMENDED that a Final Order and Public Report be entered finding that Respondent, Jeffrey M. Siskind, violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, and recommending the imposition of public censure and reprimand and a civil penalty of $5,000.

Done and Ordered this _____ day of _____, 2022.

_____

June C. McKinney
Administrative Law Judge

The forgoing Advocate's Proposed Recommended Order is respectfully submitted, together with a copy in Microsoft Word Format which was e-filed to the Department of

Administrative Hearings Clerk at Loretta.Sloan@doah.state.fl.us, this 6th day of June, 2022.

Melody A. Hadley

Melody A. Hadley, Esquire
Florida Bar No. 0636045
Elizabeth A. Miller, Esquire
Florida Bar No. 578411
Advocates for the Florida Commission
On Ethics
Assistant Attorneys General
Office of the Attorney General
Plaza Level One, The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3300
E-mail: melody.hadley@myfloridalegal.com
E-mail: elizabeth.miller@myfloridalegal.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing Advocates' Proposed Recommended Order has been furnished to Jeffrey M. Siskind, 3645 Santa Barbara Drive, Wellington, FL 33414, jeffsiskind@msn.com, via e-mail only, this 6th day of June, 2022.

Melody A. Hadley

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[i] Book value is equal to the cost of carrying an asset on a company's balance sheet, and firms calculate it by netting the asset against its accumulated depreciation. As a result, book value can also be thought of as the net asset value (NAV) of a company, calculated as its total assets minus intangible assets (patents, goodwill) and liabilities. For the initial outlay of an investment, book value may be net or gross of expenses such as trading costs, sales taxes, service charges, and so on. https://www.investopedia.com/terms/b/bookvalue.asp

[ii] Reproduction value looks at how much it will cost a competitor to purchase the assets required to run a competing company. https://www.oldschoolvalue.com/stock-valuation/how-to-asset-reproduction-value-analysis/

[iii] Liquidation value is the net value of a company's physical assets if it were to go out of business and the assets sold. The liquidation value is the value of company real estate, fixtures, equipment, and inventory. Intangible assets are excluded from a company's liquidation value. https://www.investopedia.com/terms/l/liquidation-value.asp

[iv] Capitalization of earnings is a method of determining the value of an organization by calculating the worth of its anticipated profits based on current earnings and expected future performance. This method is accomplished by finding the net present value (NPV) of expected future profits or cash flows, and dividing them by the capitalization rate (cap rate). This is an income-valuation approach that determines the value of a business by looking at the current cash flow, the annual rate of return, and the expected value of the business. https://www.investopedia.com/terms/c/capitalization_of_earnings.asp

[v] The capitalized Cash Flow Method is the valuation method used to value the private company which expects to grow at a certain rate. It is also known as the Earning Capitalization method. It will evaluate the company value base on the company's expected earnings. Capitalized cash flow will show the potential return from purchasing the company while presenting the risk at the same time. Investors really need both information to balance between risk and reward from their investments. However, this method is only suited for small private companies due to its limitation. https://accountinguide.com/capitalized-cash-flow-method/

[vi] A buy/sell agreement is a contract between the members of an LLC that provides for the sale (or offer to sell) of a member's interest in the business to the other members or to the LLC when a specified event or events occur. Common events triggering a buy/sell agreement include death, disability, retirement, and divorce. The sales price is determined under a valuation method specified in the agreement. Common valuation methods include a fixed price, an independent appraisal, a formula approach such as a multiple of earnings, or book value. https://www.thetaxadviser.com/issues/2020/feb/buy-sell-agreement-value-business-interest.html