BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re KASHAMBA MILLER-ANDERSON,) Respondent.))))	Complaint No. 17-080 DOAH Case No. 18-001EC Final Order No. 18-053

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on July 27, 2018, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on June 7, 2018.

Background

This matter began with an order dated July 14, 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 her 2015 CE Form 1, Statement of Financial Interests. This yielded a Report of Investigation dated July 18, 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 her due to her being a member of the Riviera Beach City Council.

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 March 22, 2018. The Advocate and the Respondent filed proposed recommended orders with the ALJ.

On June 7, 2018, the ALJ entered her RO recommending that the Commission enter a final order and public report determining Respondent did not violate Section 112.3145(8)(c).

On June 22, 2018, the Advocate timely submitted to the Commission her exceptions to the RO. The Respondent did not file exceptions; however, the Respondent timely filed a response to the Advocate's exceptions on July 2, 2018.

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 Advocate's exceptions, and the Respondent'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 Advocate's Exceptions[1]

1. In her first exception, the Advocate takes issue with a portion of paragraph 34, all of paragraphs 35 through 37, and a portion of paragraphs 38 and 40 of the RO (all of which are within the portion of the RO labeled CONCLUSIONS OF LAW), and the ALJ's Recommendation.

[1] The Respondent's response to the Advocate's exceptions essentially asserts that no portion of the RO should be disturbed by the Commission, either as to findings of fact made by the ALJ or conclusions of law (construction of the statute) made by the ALJ, and, thus, that the Advocate's exceptions should be rejected. More particularly, the Respondent argues that the view of the ALJ as to the meaning of "willful" under Section 112.3145(8)(c), Florida Statutes, rather than the view of the Advocate (and that of another DOAH ALJ in a different case under the same statute), should not be disturbed; and the Respondent argues that the ALJ's view that a filing, no matter how late or untimely, will preclude a violation of the statute should not be disturbed. For the reasons stated below in our acceptance of the Advocate's exceptions, we do not agree with the position of the Respondent as embraced in her response to the exceptions.

More particularly, the Advocate requests that the Commission amend paragraph 34, reject a portion of paragraph 38, and amend paragraph 40. The Advocate also requests that the Commission amend the ALJ's Recommendation.

The thrust of this exception is that the ALJ, while making a fact-finding decision in favor of the Respondent that she did not fail or refuse to file her 2015 CE Form 1, erred in her interpretation of Section 112.3145(8)(c) by concluding that a violation of the statute requires that Respondent must have failed or refused to file her 2015 CE Form 1 *at all*, and disregarding that Respondent's filing was not timely, which triggered the Commission's investigation into whether the failure to file was willful. The Advocate argues that Respondent's late filing should not negate her violation of the statute, and that it is incomprehensible that a public official could defeat the law by filing at any time subsequent to the date that the maximum fine accrues. She further argues it is improbable that the Legislature intended that a violator of the law could circumvent the law by simply filing financial disclosure a year after the due date, or even later, and that the Legislature intended for the Commission to pursue violators once the maximum fine accrued, regardless of later actions by the violator.

We accept the Advocate's first exception. In so doing, we are aware that the ALJ's determination that the evidence in this matter was insufficient to establish that Respondent's late filing of her financial disclosure form was willful is of an evidentiary fact nature or an "ultimate fact" nature, which we cannot disturb. Goin v. Commission on Ethics, 658 So.2d 1131, 1138 (Fla. 1st DCA 1995).

However, as the agency Constitutionally and statutorily charged with administering Section 112.3145(8)(c), our rejection and substitution as to paragraphs of the RO, as suggested by the Advocate, is not without good reason. While the proofs in this particular case did not, in the

ALJ's view, rise to the level of establishing a violation of Section 112.3145(8)(c), we refuse to adopt as our own the ALJ's view that the statute addresses only a willful failure to *ever* file, as opposed to addressing a late filing. We do not include the ALJ's construction of the statute in our final order in this matter because the purpose of financial disclosure is to allow citizens to *timely* monitor their public officials and employees for any conflicts of interests that may arise, thereby deterring corruption and increasing the public confidence in government. The ALJ's construction of the statute thwarts this legitimate public purpose.[2] In rejecting the ALJ's construction of the statute and substituting the view suggested by the Advocate, we find that the substituted view is as or more reasonable than the ALJ's view.

2. In her second exception, the Advocate requests that the Commission delete a portion of paragraph 39 and amend in part the paragraph, which is in the portion of the RO labeled CONCLUSIONS OF LAW. The Advocate argues that the definition used by the ALJ for "willful" is inappropriate for the statute and contrary to the Commission's standard established for "willful" in a recent Final Order and Public Report entered by the Commission in In re: Joel Davis, Final Order and Public Report No. 18-035. In Davis, the Commission adopted another ALJ's view of "willful" for purposes of Section 112.3145(8)(c), articulated as "gross indifference and reckless disregard to the requirements of law."

In her second exception, the Advocate argues that Section 112.3145 is a "general intent" statute, and that evidence of Respondent's subjective intent to ultimately deny the public

[2] Statutes should never be construed to effect an absurd result. In the context of financial disclosure, a regimen of laws codified in the whole of Section 112.3145, Florida Statutes, whose thrust is to require accurate and *timely* disclosure of financial interests by persons such as the Respondent who are obligated to file CE Form 1, it would indeed be less than rational to allow a "filing" made at any time to trump a prosecution, or preclude a finding of a violation, under Section 112.3145(8)(c).

information to which it is entitled by failing to file a CE Form 1 is presumed. We do not believe it is necessary to ascertain whether Section 112.3145 is a "general intent" or "specific intent" statute in order to define the term "willful" as used in the statute. The Advocate argues that since the Legislature has not defined the word "willful" in the statute, its meaning must be derived from its context, and from its common or usual meaning. Under these circumstances, the Advocate argues that the term has been defined to include the "reckless disregard" standard.

We accept this portion of the Advocate's second exception. While recognizing, as the Advocate expressly does in this exception, that the findings of fact of the ALJ in this particular matter cannot be disturbed, we do not agree with the ALJ's construction of the term "willful." Instead, we believe that the correct interpretation of the term "willful" is as set forth by the ALJ in Davis, that the definition of a "willful" violation of Section 112.3145(8)(c) is a knowing violation or gross indifference and reckless disregard to the requirements of law.

We accept, therefore, the following modified portion of the Advocate's suggested language in her second exception:

> 39. Willfulness is a question of fact. ~~It is generally defined as "one that is voluntarily and intentionally performed with specific intent and bad purpose to violate or disregard the requirements of the law." Fugate v. Fla. Elec. Comm'n, 924 So.2d 74, 75 (Fla 1st DCA 2006).~~ **"Willful" is best defined as "gross indifference and reckless disregard to the requirements of the law...." (In re: Joel Davis, Final Order and Public Report No. 18-035).**

In rejecting the ALJ's construction of the statute and substituting the language suggested by the Advocate as modified above, we find that the substituted view is as or more reasonable than the ALJ's view.

3. To summarize, we are aware of the requirements and limitations of Chapter 120, Florida Statutes, concerning review by an agency of a recommended order of an ALJ. Goin, supra. However, we are also aware of the deference accorded to an agency regarding its construction of

a statute which it administers. Velez v. Commission on Ethics, 739 So,2d 686 (Fla 5th DCA 1999). To these ends, it is not our intent or our action, by our granting of the Advocate's exceptions, to disturb any finding of fact of the ALJ; but it is our intent and our effect to view the legal elements of Section 112.3145(8)(c) differently than the view indicated by the ALJ in the RO.

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

Except to the extent rejected or modified above, 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 finds that the Respondent did not violate Section 112.3145(8)(c), Florida Statutes, by willfully failing to timely file a 2015 CE Form 1, Statement of Financial Interests.

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

July 27, 2018.

August 1, 2018
Date Rendered

Guy W. Norris
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. Ronald G. Meyer, Attorney for Respondent
Ms. Melody A. Hadley, Commission Advocate
The Honorable Lisa Shearer Nelson, Division of Administrative Hearings