

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

COMMISSION ON ETHICS

In re CARMINE MARCENO,)	Complaint Nos. 20-083, 20-093, 20-172, 20-226
)	DOAH Case No. 21-3024EC
Respondent.)	Final Order No. 22-014
)	
_____)	

FINAL ORDER AND PUBLIC REPORT

This matter came before the State of Florida Commission on Ethics ("Commission"), meeting in public session on April 22, 2022, on the Recommended Order ("RO") of an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH") rendered on March 9, 2022.

Background

Between June 2, 2020, and October 6, 2020, three Complainants filed four complaints against the Respondent.¹ By orders each dated July 14, 2020, the Executive Director of the Commission on Ethics determined that Complaint Nos. 20-083 and 20-093 were legally sufficient to indicate a possible violation of Section 112.313(6), Florida Statutes, by the Respondent, by using his official position and public resources to authorize himself and six other employees of the Lee County Sheriff's Office to travel to and attend the retirement celebration of a member of the Florida Highway Patrol and thereafter sought reimbursement of expenses associated with their attendance thereof, absent a public purpose (such as any course certification, training, or speaking engagement) and in contravention of State Statutes requiring the reimbursement of expenses only

¹ The complaints in this matter were filed by Rodney Shoap (Complaint Nos. 20-093 and 20-226), Michael J. Dreikorn (Complaint No. 20-083), and Robert B. Forrest, III (Complaint No. 20-172), who allege that Carmine D. Marceno, while serving as the Sheriff and/or Interim Sheriff of Lee County, violated the Code of Ethics for Public Officers and Employees.

when necessarily incurred in the conduct of official business of the State. By order dated October 12, 2020, the Executive Director of the Commission on Ethics determined that Complaint No. 20-172 was legally sufficient to indicate a possible violation of Sections 112.3148(3), 112.3148(4), and 112.3148(8), Florida Statutes, by the Respondent, by accepting a gift in the form of complimentary round trip private air transportation to and from the event for which he did not pay (as evidenced by the absence of a reimbursement request for the cost of airplane transportation expenses) and which he did not report and/or disclose within 90 days of the receipt of the gift. By order dated December 15, 2020, the Executive Director of the Commission on Ethics determined that Complaint No. 20-226 was legally sufficient to indicate a possible violation of Section 112.313(6), Florida Statutes, by the Respondent, by using his publicly provided purchasing card and/or public resources for his own private benefit or the benefit of others.

The complaints were consolidated for investigation and a written Report of Investigation ("ROI"), dated May 17, 2021, was entered. In her recommendation, dated June 21, 2021, the Commission's Advocate recommended that the Commission find probable cause to believe the Respondent violated Section 112.3148(4), Florida Statutes, by accepting a gift that exceeds a value of \$100 from a vendor of his agency; and recommended that the Commission find that there is probable cause to believe that the Respondent violated Section 112.3148(8), Florida Statutes, by failing to disclose the receipt of a gift that exceeds a value of \$100. The Commission's Advocate further recommended that the Commission find there is no probable cause to believe the Respondent violated Section 112.313(6), Florida Statutes, by using his public position and/or public resources for an activity that did not serve a public purpose; recommended that there is no probable cause to believe that the Respondent violated Section 112.3148(3), Florida Statutes, by soliciting a gift from a vendor of his agency; and recommended that there is no probable cause to

believe the Respondent violated Section 112.313(6), Florida Statutes, by using his public position and/or public resources regarding the use of his agency-issued purchasing card, as alleged in the complaint.

By its order dated July 28, 2021, the Commission found probable cause to believe that the Respondent violated Section 112.3148(4), Florida Statutes, by accepting a gift that exceeds a value of \$100 from a vendor of his agency; and found that there is probable cause to believe that the Respondent violated Section 112.3148(8), Florida Statutes, by failing to disclose the receipt of a gift that exceeds a value of \$100. Further, the Commission found no probable cause to believe the Respondent violated Section 112.313(6), Florida Statutes, by using his public position and/or public resources for an activity that did not serve a public purpose; found that there is no probable cause to believe that the Respondent violated Section 112.3148(3), Florida Statutes, by soliciting a gift from a vendor of his agency; and found that there is no probable cause to believe the Respondent violated Section 112.313(6), Florida Statutes, by using his public position and/or public resources regarding the use of his agency-issued purchasing card, as alleged in the complaint.

On October 4, 2021, the Commission forwarded the consolidated matters to DOAH for assignment of an ALJ to conduct a public hearing, limited to the matters for which probable cause was found. A Final Hearing was held on December 16, 2021, before the ALJ. On March 9, 2021, the ALJ issued an RO recommending that the Commission enter a final order finding that Respondent did not commit a violation of either Section 112.3148(4) or Section 112.3148(8).

Following issuance of the RO, neither the Advocate or Respondent filed exceptions to it. Both Respondent and 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

Pursuant to Section 120.57(1)(l), Florida Statutes, an 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.

However, 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.

An agency may accept a hearing officer's findings of fact and conclusions of law yet still reject the recommended penalty and substitute an increased or decreased recommended penalty. Criminal Justice Standards and Training Comm'n v. Bradley, 596 So. 2d 661, 664 (Fla. 1992). Under Section 120.57(1)(l), Florida Statutes, an agency may reduce or increase the recommended penalty only upon a review of the complete record, stating with particularity the agency's reasons for reducing or increasing the recommended penalty, and citing to the record in support of its action.

Having reviewed the RO, the complete record of the proceeding and having heard the arguments of the Advocate and the Respondent, the Commission on Ethics makes the following rulings, findings, conclusions, and disposition:

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 Administrative Law Judge of the Division of Administrative Hearings rendered on March 9, 2022. The findings are based upon competent substantial evidence and the proceedings upon which the findings are based complied with essential requirements of law.

Conclusions of Law

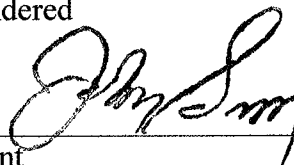
The Commission on Ethics accepts and incorporates into this Final Order And Public Report the conclusions of law in the Recommended Order from the Administrative Law Judge of the Division of Administrative Hearings rendered on March 9, 2022.

Disposition

Accordingly, the Commission on Ethics determines that the Respondent did not commit a violation of either Section 112.3148(4) or Section 112.3148(8), Florida Statutes, and this matter is hereby dismissed.

ORDERED by the State of Florida Commission on Ethics meeting in public session on April 22, 2022.

April 27, 2022
Date Rendered



John Grant
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. R.W. Evans, Attorney for Respondent
Ms. Melody A. Hadley, Commission Advocate
The Honorable Elizabeth W. McArthur, Division of Administrative Hearings
Michael J. Dreikorn, Complainant
Rodney Shoap, Complainant
Robert B. Forrest, Complainant