

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Michelle Heide

Respondent.

No. 2012-74

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, MICHELLE HEIDE, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through the Board's Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

Section 1: PROCEDURAL FACTS

1.1. On November 29, 2012, the Executive Ethics Board (Board) received an agency referral from the Department of Social and Health Services (DSHS) alleging that Michelle Heide, Attendant Counselor Manger (ACM), Division of Developmental Disabilities (DDD), Yakima State Operated Living Alternatives (SOLA), may have violated the Ethics in Public Service Act when she sold Scentsy Candle products to clients under her control and used her position as the ACM to sign and approve payment for these candles, personally benefitting from these sales. The Board found Reasonable Cause on May 10, 2013.

1.2. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.3. Michelle Heide understands that if Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.4. Michelle Heide recognizes that the evidence available to the Board staff is such that the Board may conclude she violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.5. Michelle Heide waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge Michelle Heide from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the

facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the agreed order. Michelle Heide in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation and agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Michelle Heide and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.8. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.9. If the Board rejects this stipulation, or if Michelle Heide does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing in front of the Board and Michelle Heide waives any objection to participation by any Board member at any subsequent hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Michelle Heide understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. Ms. Heide has worked for the state beginning in May 1999 and was appointed to her current permanent position as ACM at the Yakima Valley School and SOLA in November 2008. She was in that position for all times pertinent to this investigation.

2.2. The residents of the Yakima SOLA are developmentally disabled adults who depend on the assistance of the Attendant Counselors (AC2) for everyday living in their homes and communities. This includes managing the financial and business needs of the residents.

2.3. The ACMs and the direct care staff, AC2s, are responsible for all of the writing and signing of the resident's personal checks. The direction in place for the times pertinent to this investigation was that the AC2 would fill out checks for the developmentally disabled adults and have them either place an X or sign the check, if they had the ability to do so. The checks would then go to the main office to have one of three ACMs sign and approve the purchase.

2.4. On March 27, 2012 Ms. Heide's supervisor, Tammy Winegar, received a call from an investigator from Residential Care Services (RCS) advising her that they had received an anonymous Hot Line call regarding the misuse of client funds, specifically, the purchase of products from Scentsy Candles for clients. Ms. Winegar asked Ms. Heide and all of the ACMs if any employee financially benefitted from the sale of these products. Ms. Heide told her that no one benefitted financially.

2.5. An internal review of the individual financial plans and spending records for the SOLA residents who lived in the 101, 103 and Locust houses was conducted. The review revealed that checks had been written on behalf of the residents for Scentsy Candle products.

2.6. Ms. Heide told internal investigators that she was asked by Attendant Counselor Renae Larson if she knew anyone who sold Scentsy products because the former Scentsy consultant no longer wanted to provide products. She advised Ms. Larson that her nephew's wife, Savanna Fix, was a consultant and gave Ms. Larson her phone number.

2.7. Ms. Heide indicated to investigators that Ms. Larson was unable to reach Ms. Fix and Ms. Larson gave the Scentsy order forms to her to give to Ms. Fix.

2.8. During this same time, two residents who had recently moved into their homes approached Ms. Heide asking if they could purchase a Scentsy candle pot that matched their rooms. Ms. Heide indicated that she filled out the checks and then signed them for those purchases.

2.9. These two checks were made out to Savanna Fix and signed by Ms. Heide with "Scentsy" written in the memo of the check. Both checks were issued on November 8, 2011. The amount of the checks were \$41.55 each.

2.10. Ms. Heide stated in her response that these were the only two checks that she filled out and signed, stating that one of the other ACMs signed the other four checks.

2.11. Ms. Heide gave Ms. Fix the Scentsy orders and checks sometime between November 8, and November 14, 2011, when Ms. Fix submitted the order. The order receipt identifies Ms. Heide as the hostess for the order. As the hostess for this order Ms. Heide received one half credit item and a \$24 credit toward the purchase of Scentsy products.

2.12. In the course of the agency disciplinary process, Ms. Heide informed her supervisor Tammy Winegar, that her daughter, Kelcy Heide, should have been listed as the hostess and that it was her daughter that benefitted from the sale and that she could not explain why she was listed as the hostess.

2.13. As a result and conclusions of the internal investigation Ms. Heide was demoted from ACM, Range 46, \$3,894/month to AC3, range 37, \$3,117/month.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Michelle Perkins and over the subject matter of this complaint.

3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3. The Ethics in Public Service Act, chapter 42.52 RCW, governs the conduct of state officers and employees. A state employee is restricted from having an interest or engaging in an activity or transaction where there is a conflict with the performance of official duties. RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

3.4. Based on Findings of Fact 2.1 through 2.13, Michelle Heide conducted activities incompatible with her public duty in violation of RCW42.52.020.

3.5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from having a financial interests in a transaction. RCW 42.52.030 states in part:

No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

3.6. Based on Findings of Fact 2.1 through 2.13, Michelle Heide had a financial interest in selling Scentsy products to the developmentally disable adults dependent on her assistance in violation of RCW42.52.030.

3.7. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing Special Privileges. RCW 42.52.070 states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

3.8. Based on Findings of Fact 2.1 through 2.13, Michelle Heide secured special privileges for her Savanna Fix in violation of RCW42.52.070.

3.9. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

Section 4: AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. It is an aggravating factor that, Ms. Heide was in a position of trust and these types of violations significantly reduce the public's respect and confidence in state government employees and impaired a function of the Agency. It is a mitigating factor that Ms. Heide was disciplined by her agency by being demoted from a Attendant Counselor Manger (ACM) to an Attendant Counselor 3.

Section 5: AGREED ORDER

5.1 Michelle Heide agrees to pay a civil penalty in the amount of two thousand dollars (\$2,000.00).

5.2 The civil penalty of \$2,000.00 is payable in full, to the Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

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II. CERTIFICATION

I, Michelle Heide, hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.

Michelle Heide 7/10/14
MICHELLE HEIDE Date
Respondent

Stipulated to and presented by:

Kathryn Wyatt 7-10-14
Executive Director, Date
Kathryn Wyatt

