

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 02-038

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Withheld and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through BRIAN R. MALARKY, 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 March 8, 2002, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Withheld an employee of the State of Washington, Pollution Liability Insurance Agency (PLIA), accepted gifts from a person(s) with whom the agency contracts. The Executive Ethics Board reviewed this referral and issued a complaint on September 13, 2002.

1.2. On January 12, 2004, upon receiving the Board staff's investigative report and recommendation, the Board determined that there was reasonable cause to believe that Withheld had committed one or more violations of chapter 42.52 RCW and that the potential penalty was in excess of \$500. The reasonable cause determination was based on alleged violations of RCW 42.52.150(4).

1.3. 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.

1.4. [Redacted] 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).

1.5. [Redacted] recognizes that the evidence available to the Board staff is such that the Board may conclude Ms. [Redacted] 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.

1.6. [Redacted] 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 respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.7. If the Board accepts this stipulation, the Board will release and discharge [Redacted] 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. Ms. [Withheld] 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.

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

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

1.10. If the Board rejects this stipulation, or if [Withheld] does not accept the Board's proposed modification(s), if any, Ms. [Withheld] waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Ms. [Withheld] 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. When the complaint in this matter was filed, and at all times material hereto, PLIA employed [Withheld] as the Deputy Director for the agency. Ms. [Withheld] was employed by PLIA for approximately 4 ½ years. As a part of her duties, Ms. [Withheld] participated in reviewing contract proposals and awards of contracts to vendors bidding to perform services for the PLIA.

2.2. Beginning in October 1999 and continuing through October 2000, [Withheld] was involved in discussions regarding securing a vendor to audit environmental cleanups performed by other contractors. In November 1999, PLIA evaluated proposals from two vendors that specialized in environmental cleanup work. After evaluation, PLIA determined that KHM was the

preferred provider of the services. On March 28, 2000, PLIA started reviewing the scope of work that KHM proposed to provide to PLIA.

2.3. KHM provided Seattle Mariners tickets to the PLIA Director and [Withheld] for a Seattle Mariners game on June 28, 2000. The Director and Ms. [Withheld] attended the game using the free tickets provided by KHM. The Director and Ms. [Withheld] purchased their own refreshments.

2.4. In October 2000, the PLIA Director approved the contract between PLIA and KHM. [Withheld] is listed as the agency contact on the KHM Contract.

2.5. [Withheld] indicated in her January 16, 2002 interview with the SAO that KHM asked the Director and Ms. [Withheld] if they would like to attend a Seattle Mariners game with KHM management. PLIA had a working relationship with KHM at that time.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [Withheld] 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 governs the limitations on gifts under RCW 42.52.140. This statute provides:

No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

3.4. Strict limitations on the receipt of gifts by officers and employees of a “regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters” are also set forth in RCW 42.52.150(4). The limit on gifts to state employees under this statute provides that they may receive only specifically designated items. Tickets to sporting events are not a gift that such an employee may receive or accept.

3.5. Based on Findings of Fact 2.1 through 2.5, [Withheld] violated RCW 42.52.140 and RCW 41.52.150(4) when she accepted Seattle Mariners tickets from a company that provided services to PLIA.

3.6. 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. It is an aggravating factor that the violation tended to reduce public respect for or confidence in state government or state government officers or employees (WAC 292-120-030(2)(e)), and involved a special privilege to Ms. [Withheld] (WAC 292-120-030(2)(f)). Ms. [Withheld] also had significant official, management or supervisory responsibility (WAC 292-120-030(3)(d)), and has incurred no other sanctions as a result of the violation WAC 292-120-030(3)(f).

Section 4: AGREED ORDER

4.1. [Withheld] will pay a civil penalty in the amount of five hundred dollars (\$500.00). The civil penalty of \$500.00 is payable to the state Executive Ethics Board within ~~forty~~ ^{ninety} *90* days of approval of this Stipulation and Order by the Board. *on monthly payments of \$100 per month*

CERTIFICATION

I, [Withheld] hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter; and I fully understand and voluntarily agree to this Stipulation.

[Withheld]

Respondent

Stipulated to and presented by:

Brian R. Malarky 2/17/04

Date

Brian R. Malarky
Executive Director

II. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

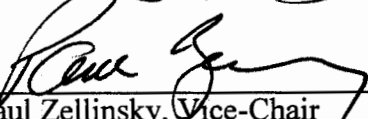
- _____ ACCEPTED in its entirety;
- _____ REJECTED in its entirety;
- X MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

penalty should be ~~\$1000.00~~ \$500-


DATED this 9th day of April, 2004.



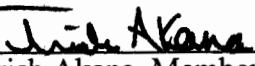
Marilee Scarbrough, Chair



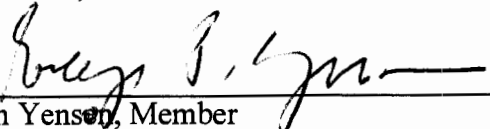
Paul Zellinsky, Vice-Chair



James M. Vaché, Member



Trish Akana, Member



Evelyn Yenson, Member

*I, Withheld accept/do not accept (circle one) the proposed modification(s).
Withheld

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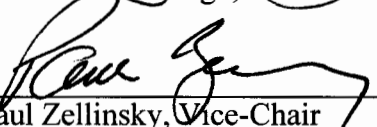
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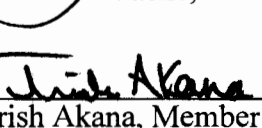
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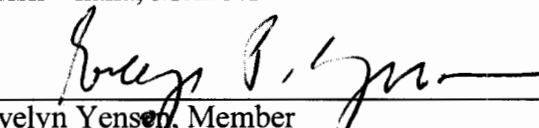
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Marilee Scarbrough, Chair


Paul Zellinsky, Vice-Chair


James M. Vaché, Member


Trish Akana, Member


Evelyn Yensen, Member

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Withheld Respondent Date