

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 10-068

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, [REDACTED] and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE DeLEON, 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. In August 31, 2010, the Executive Ethics Board received a referral from the State Auditor's Office alleging that [REDACTED] Department of Natural Resources, violated the Ethics in Public Service Act by conducting activities incompatible with public duties, receiving/providing a special privilege to vendors, and using state resources for his personal benefit. The Board found that there was reasonable cause to believe that [REDACTED] violated the Ethics in Public Service Act on March 16, 2012.

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. [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).

1.4. [REDACTED] recognizes that the evidence available to the Board staff is such that the Board may conclude he 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. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his 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 [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. [REDACTED] 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 [REDACTED] 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 [REDACTED] does not accept the Board's proposed modification(s), if any, [REDACTED] 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, [REDACTED] 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. [REDACTED] has worked for the DNR since February 1995. For all times pertinent to this investigation [REDACTED] was an Equipment Technician 5. [REDACTED] was a shop supervisor assigned to the Fleet Management Section of the Equipment Services Section of the Engineering and General Service Section. [REDACTED] supervised approximately 13 DNR shop employees including the two Supply Specialists, Randy Sweet and Mel Lope. As the supervisor of the Supply Specialists, [REDACTED] was responsible to monitor their performance.

2.2. In June of 2001, the SAO conducted a whistleblower investigation of the DNR Tumwater Compound. The investigation revealed that questionable purchases were made, that there was a lack of segregation of duties and that there was no routine monitoring of shop

activities by the shop supervisor, [REDACTED] Since this investigation, the SAO has continued to monitor these activities.

2.3. The allegations made in the June 2001 SAO investigation were that goods, primarily hydraulic hose and fittings, were being purchased from Industrial Specialties and were never received by DNR.

2.4. In September 2008, DNR conducted an internal investigation into irregular maintenance shop purchasing activity of the DNR Tumwater Compound. These were the same concerns mentioned in the 2001 SAO investigation.

2.5. The DNR investigation revealed evidence to show that in a 22-month period, Affordable Autoglass charged the state \$8,400 more than it would have paid if the state had purchased the same items through its contract with Safelite Autoglass.

2.6. In 2008, the Tumwater Compound spent \$15,357.49 on windshield repair/replacement by Affordable Autoglass. The Office of State Procurement (OSP) limits the purchase of the same and or similar items to \$3,300 in a fiscal year. Purchases over \$3,300 must go through a competitive bidding process with documentation showing that process. A purchase of the same or similar items of \$10,000 or more must be sent through the Department of General Administration for competition, with few exceptions listed in Section 7 of the Purchasing Manual.

2.7. DNR did not have a contract with Affordable Autoglass, but had a convenience contract with Safelite Autoglass to repair/replace windshields since February 1, 2007, which was revised and retained with them on June 18, 2008. Affordable Autoglass did not have a contract with the state to repair/replace windshields. Yet, in 2008, Affordable Autoglass replaced 77 windshields, while Safelite only replaced one.

2.8. [REDACTED] was aware that Mr. Sweet was a good friend of Mike Darrah, the owner of Affordable Autoglass.

2.9. As part of the EEB investigation, a witness was contacted that had not been interviewed in the original DNR investigation. This witness stated s/he was with [REDACTED] sometime around September of 2008, when he brought his car into the DNR shop after hours and used the facility and shop equipment to turn the disc brake rotors on his personal vehicle. Key entry logs indicated that [REDACTED] entered the compound on Saturday, August 23, 2008 at about 9:40 pm. [REDACTED] indicated that while he brought the rotors into the shop and turned them, he did not remove them from a vehicle at the shop. S/he observed [REDACTED] remove two bundles of dimple pads from his privately owned vehicle and give them to his father.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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. RCW 42.52.070 prohibits a state officer or employee from using his or her position to secure special privileges of exemptions for himself, or his spouse, child, parent, or other persons.

3.4. RCW 42.52.160 prohibits a state officer or employee from using state resources for personal benefit.

3.5. Based on Findings of Fact 2.1 – 2.9, [REDACTED] conducted activities incompatible with public service, provided and received special privileges, and used state resources, in violation of RCW 42.52.070, RCW 42.52.160, and WAC 292-110-010.

3.6. Under RCW 42.52.360, the Board is authorized to impose sanctions for violations to the Ethics Act. 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: 1) the violations were continuing in nature, 2) the violations significantly reduced the public respect for, and the confidence in, state government employees, and 3) [REDACTED] was in a supervisory position entrusted by his agency to ensure that his subordinates abide by the purchasing rules and procedures set by the Office of Financial Management (OFM) and his department. It is a mitigating factor that [REDACTED] received discipline from his Agency in the form of a four-month suspension based on similar violations.

Section 5: AGREED ORDER

5.1. For the violation of RCW 42.52.070 and RCW 42.52.160, [REDACTED] will pay a civil penalty of five thousand dollars (\$5,000.00). The Board agrees to suspend (\$1,000.00) on the condition that [REDACTED] complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

5.2. The civil penalty of \$4,000.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board, or as otherwise agreed to by the parties.

CERTIFICATION

I, [REDACTED] 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.

[Redacted]

2-13-14
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 2/18/14

Melanie deLeon Date
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;
- MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

DATED this 14th day of March, 2014.

Lisa Marsh
Lisa Marsh, Chair

Anna Dudek Ross
Anna Dudek Ross, Vice-Chair

Matthew Williams III
Matthew Williams, III, Member

Samantha Simmons
Samantha Simmons, Member

Sumeer Singla
Sumeer Singla, Member

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

[REDACTED] Respondent Date