

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 11-032

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. On November 18, 2011, the Executive Ethics Board (Board) received a complaint alleging that [REDACTED] Management Analyst 4, Office of Minority and Women's Business Enterprises (OMWBE) may have violated the Ethics in Public Service Act by using state resources for personal gain while conducting the outside business of stock trading.

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, this matter will be scheduled for an administrative hearing in front of the Board and [REDACTED] 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, [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] was a Management Specialist 4, for the Office of Minority and Women's Business Enterprises (OMWBE) for all times pertinent to this investigation.

2.2. There is evidence to show that [REDACTED] used his state issued computer to visit sites on the internet and that he sent/received e-mails that were directly related to his outside business as a stock trader.

2.3. On April 1, 2010, OMWBE Director Cynthia Cooper held a meeting with [REDACTED]. In that meeting, [REDACTED] admitted monitoring financial and stock websites periodically during the day. [REDACTED] estimated that he would spend about 15 to 20 minutes

at a time. [REDACTED] told Ms. Cooper that he estimated that his total time spent on these sites was a total of eight hours.

2.4. As a result of that meeting [REDACTED] was required to reimburse eight hours of time back to the agency (approximate cost of \$234.40).

2.5. On April 23, 2010, the State Auditor's Office (SAO) investigators obtained the hard drive from [REDACTED] work computer. A forensic analysis of the computer hard drive was completed. Evidence was found to support the allegation that [REDACTED] was using his state computer for personal financial gain. The OMWBE conducted an internal analysis of the data obtained by SAO investigators. The results are listed below:

INTERNET – August 2007- September 2008

- 53 visits to E*TRADE using 42 hours of time.
- 8 visits to NASDAQ using three hours of time.

DOCUMENTS – 646 files related to stock trading. Not work related.

E-MAILS - 11 non-work related emails.

- 4 – Regarding a real estate transaction.
- 7 – Included stock and trading information.

2.6. As a result of the evidence found in the OMWBE internal review, on February 15, 2012, OMWBE held a pre-disciplinary meeting with [REDACTED] [REDACTED] received a reduction in salary from, range 57, Step L to Range 57, Step K for a three month period of time starting on March 16, 2012 and ending on June 15, 2012. The total amount of the reduction equals \$378.00.

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. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

3.4. Based on Findings of Fact 2.1 through 2.6, [REDACTED] used state resources to conduct his outside business as a stock trader, in violation of RCW 42.52.160 and WAC 292-110-010.

3.5. 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: 1) the violations were continuing in nature and (2) the violations significantly reduced the public respect for, and the confidence in, state government employees. It is a mitigating factor that [REDACTED] received discipline from his agency resulting in a decrease in his pay and loss of time equaling \$732.81.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, Gerald Ballard will pay a civil penalty in the amount of, three thousand dollars (\$3,000.00). The Board agrees to suspend (\$1,500.00) 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 \$1,500.00 is payable in full, to the State Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. 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] 6/12/12
Date
Respondent

Stipulated to and presented by:


Melanie deLeon 6/28/12
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

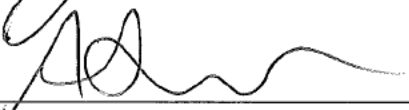
- ACCEPTED in its entirety;
- REJECTED in its entirety;
- MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

DATED this 13th day of July, 2012.


Matthew Williams, III, Chair


Lisa Marsh, Vice-Chair


Linnaea Jablonski, Member


Anna Dudek Ross, Member


Michael Bahn, Member

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

Respondent Date