

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

No. 2012-063

ORDER AND JUDGMENT

Respondent.

I. APPLICABLE PROCEDURAL ISSUES

- I.1. On May 10, 2013 the Executive Ethics Board (Board) found reasonable cause to believe that the Respondent, [REDACTED] violated the Ethics in Public Service Act while employed with the Employment Security Department (ESD). Notice of the Reasonable Cause Determination and the right to request a hearing was served upon [REDACTED] by regular mail and certified mail on May 13, and June 19, 2013.
- I.2. More than 30 days have passed since notice of the Reasonable Cause Determination and of the right to request a hearing was served upon [REDACTED]. He did not respond to the notice, either by filing an answer, requesting a hearing, or otherwise.
- I.3. On September 13, 2013, Board staff provided [REDACTED] with notice by regular and certified mail of the Board's Order of Default and Temporary Adjournment of Further Proceedings entered on September 13, 2013.
- I.4. Pursuant to WAC 292-100-060(4) [REDACTED] was allowed 10 days to request vacation of the Order of Default. [REDACTED] has not moved to vacate the order entered on September 13, 2013.

II. FINDINGS OF FACT

- II.1. [REDACTED] was employed by ESD since March 2001 and for all times pertinent to this investigation he was a Tax Specialist 3.
- II.2. On July 15, 2011, members of Seattle Seafood Buffet authorized the sale of the business to [REDACTED] and authorized Xin Yuan Yang to process the sale and sign all documents related to the sale.
- II.3. A contract for the sale and purchase of the entire business was created. The contract identifies the "Buyer" as Best Buffet Restaurant LLC, represented by [REDACTED] and Lei Luo. The seller is identified as Xin Yuan Yang, sole owner of Seattle Seafood Buffet. The contract is dated July 15, 2011. The copy of the contract that was submitted to ESD was not signed and it is not known if a signed copy exists.

- II.4. On July 23, 2011, [REDACTED] filed a master business license application for the Best Buffet Restaurant listing himself and Lei Luo as members. The Secretary of State issued a Certificate of Formation to Best Buffet Restaurant on August 1, 2011. The Department of Revenue lists the account as opened and closed on the same day, August 1, 2011. The sale of Seattle Seafood Buffet to Best Seafood Buffet was never completed.
- II.5. On August 4, 2011, a tax specialist, ESD, Status Unit set up an experience rating account in the TAXIS database for Best Buffet Restaurant and established it as a partial successor to Seattle Seafood Buffet. Entry indicates, "SET AS A PARTIAL TRANSFER WILL CHANGE TO FULL WHEN RECEIVE BILL OF SALES CONFIRMED W/ [REDACTED] However, the contract to sell Seattle Seafood Buffet to Best Seafood Buffet was never finalized. Best Seafood Buffet never became an active business.
- II.6. On October 9, 2011, Gongdoa Ye and [REDACTED] signed a stock purchase agreement where Mr. Ye sold his 20 percent interest in Seattle Seafood Buffet to [REDACTED] On the same day, Seattle Seafood Buffet filed an amended business license application, substituting Mr. Ye with [REDACTED] in the list of members.
- II.7. On November 28, 2011, [REDACTED] logged on to TAXIS using his unique ID logon (20HZ) and made changes to close the Employment Security account of Best Buffet Restaurant and removed the predecessor/successor relationship between Seattle Seafood Buffet and Best Buffet Restaurants.
- II.8. At the time [REDACTED] made the changes in TAXIS he was a member of both Seattle Seafood Restaurant and Best Seafood Restaurant.
- II.9. [REDACTED] resigned from his position at ESD on December 11, 2011.
- II.10. During a tax appeal investigation of Seattle Seafood Buffet, Michael Scott, Legal Appeal Manager (ESD), discovered that a former employee, [REDACTED] made changes to the employment security accounts of two businesses, Seattle Seafood Buffet and Best Buffet Restaurant.
- II.11. Mr. Scott indicated that he could not determine if there was any benefit to [REDACTED] financial or otherwise, for making the changes in the TAXIS System.
- II.12. Ms. Ranko, Tax Specialist/Investigator, ESD indicated that she did not believe [REDACTED] benefitted financially or otherwise as a result of the changes he made in TAXIS. She went on to say that removing the predecessor/successor relationship between Best Seafood Buffet and Seattle Seafood Buffet was a proper step, but because [REDACTED] had a personal and financial interest he should not have been the person to make the change. [REDACTED] actions clearly violated ESD policy.

III. APPLICABLE LAW

III.1. RCW 42.52.020 – Activities incompatible with public duties 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.

RCW 42.52.070 – Special privilege 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.

ESD Policy 1016 – Employee Conduct

Purpose: To define standards of conduct that comply with RCW 42.52, Ethics in public Service, and to provide detailed information on the department's expectations of employees as it relates to behavior, conflicts of interest, appearance, person visitors in the work place, political activity, and access to safeguarding of protected information.

Conflict of Interest, Section 1, Private Gain or Advantage states in part:

Employees will not use there position of public trust to make or obtain, or attempt to make or obtain, any private gain or advantage.

Conflict of Interest, Section 4, Agency Services states in part:

Employees shall not provide or involve themselves in any aspect of the Unemployment Insurance Benefit, Employer Tax, or Employment Service systems, or other agency services, for friends, relatives, and/or coworkers.

IV. CONCLUSIONS OF LAW

- IV.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.
- IV.2. A state officer or employee is prohibited under RCW 42.52.020 from having 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.
- IV.3. A state officer or employee is prohibited under RCW 42.52.070 from using his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.
- IV.3. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360.

ORDER AND JUDGMENT

[REDACTED] EEB No. 2012-063

V. AGGRAVATING AND MITIGATING FACTORS


V.1. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed.

VI. ORDER AND JUDGMENT


VI.1. Based on the foregoing Findings of Fact and Conclusions of Law, we, the Executive Ethics Board, hereby find that [REDACTED] has violated RCW 42.52.020 and RCW 42.52.070 and order him to pay a civil penalty in the amount of seven hundred and fifty dollars (\$750.00)

VI.2. Payment of the civil penalty of \$750 shall be made to the Executive Ethics Board within forty-five (45) days of this Order.

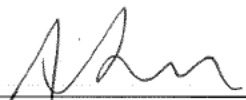
DATED this 8th day of November 2013.



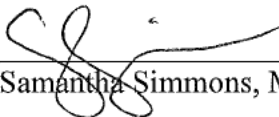
Lisa Marsh, Chair



Matthew Williams III, Member



Anna Dudek Ross, Vice-Chair



Samantha Simmons, Member