

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Patricia Barrera
Respondent.

No. 2014-068

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, PATRICIA BARRERA, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, 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. This stipulation is based on the following:

A. STIPULATED FACTS

1. On September 16, 2014, the Executive Ethics Board (Board) initiated a complaint referred by the State Auditor's Office (SAO). The complaint alleged that Patricia Barrera (Ms. Barrera), Local Business Advisor for Coyote Ridge Corrections Center (CRCC) with the Department of Corrections (DOC), may have violated the Ethics in Public Service Act when she used state resources to promote and sell Omnitrition products.

2. For all times pertinent to this investigation Ms. Barrera was the Local Business Advisor for the CRCC.

3. On January 17, 2014, the SAO received an anonymous complaint alleging that Ms. Barrera was using state resources to promote her outside business, Omnitrition.

4. The SAO interviewed co-workers and obtained Ms. Barrera's computer hard drive and email for analysis.

5. After a complete and thorough search of Ms. Barrera's hard drive and emails the SAO found no evidence that she was using her state computer or email to promote her outside business.

6. Witness #1 told the SAO investigator she noticed that Ms. Barrera was losing weight and approached her. This witness asked Ms. Barrera what she was doing to lose weight and Ms. Barrera told her about the Omnitrition product, and that she was selling it.

7. Witness #1 stated that she purchased Omnitrition product from Ms. Barrera and received it from her at work. This witness further stated that she has not seen Ms. Barrera selling the product to anyone else at work.

8. Witness #1 told SAO investigators that about three years ago Ms. Barrera was also selling Lia Sophia jewelry at work and that she had jewelry on display in her office.

9. Witness #2 told SAO investigators that Ms. Barrera was their supervisor. The witness indicated that Ms. Barrera talked about the product all of the time and handed out her business card. This witness also stated that Ms. Barrera approached them to buy the Omnitrition product but that they could not afford it.

10. Witness #2 told SAO investigators that they would see people coming into Ms. Barrera's office to pick up Omnitrition product and that Ms. Barrera would tell them to tell their friends. This witness further stated that even though they did not buy the Omnitrition product they did not feel pressure from Ms. Barrera to purchase.

11. Witness #2 told SAO investigators that they recall that Ms. Barrera sold Lia Sophia jewelry at work a few years ago. They recalled seeing a catalog or pamphlet lying around in the office.

12. Witness #3 told SAO investigators they had not been approached by Ms. Barrera to purchase Omnitrition products and have not witnessed her selling the product to anyone else. Witness #3 told investigators they had purchased Lia Sophia jewelry from a party hosted by Ms. Barrera at her home, but not at work.

13. Witness #4 told SAO investigators that they reported to Ms. Barrera. The witness indicated that Ms. Barrera has approached them at work to purchase the Omnitrition product, that they purchased the product and Ms. Barrera delivered it to them at work. When Witness #4 was asked if they felt pressure from Ms. Barrera to purchase the product they stated, "No, not really."

14. Witness #5 told SAO investigators that they were aware of Ms. Barrera selling Omnitrition products and they had purchased the product from Ms. Barrera but it was not purchased at work.

15. Jim Cerna, Regional Business Manager for the DOC and Ms. Barrera's direct supervisor, told SAO investigators that this issue had been brought up internally prior to the SAO complaint. He discussed the issue with Ms. Barrera. During that discussion, Ms. Barrera asked him if she could still hand out business cards at work. He told her "no."

16. Ms. Barrera told SAO investigators that she stopped selling the Omnitrition product at work immediately after having the discussion with Mr. Cerna. Ms. Barrera went on to say that she began selling the Omnitrition product at work around December 2013.

17. Ms. Barrera told SAO investigators that she sold Lia Sophia jewelry from her office around four or five years ago. She stated that she would wear the jewelry to work and had a catalog in

her office but that the purchases were made at parties she would host at her home. She would deliver the purchased products to her co-workers at work.

18. Ms. Barrera indicated in her written response to Board staff that she does not deny using state resources to promote and sell a product from which she personally benefited. She indicated that she takes full responsibility for her actions and will never make another poor ethical decision.

19. As a result of the SAO findings Ms. Barrera was issued a letter of reprimand by the DOC.

B. CONCLUSIONS OF LAW

1. 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.

2. Based on the stipulated facts above, Ms. Barrera used state resources for a personal benefit in violation of RCW 42.52.160.

3. 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.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor that, Ms. Barrera was in an management position at DOC, these types of violations significantly reduce the public respect and confidence in state government employees and that they were continuous in nature.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Patricia Barrera and over the subject matter of this complaint.
2. Under RCW 34.05.060, the Board can 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.
3. 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.
4. Patricia Barrera agrees that if any or all of the alleged violations were proven 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).
5. Patricia Barrera further agrees that the evidence available to the Board 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.
6. Patricia Barrera 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).
7. If the Board accepts this stipulation, the Board agrees to release and discharge Patricia Barrera from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of

the facts 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 stipulation. Patricia Barrera 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.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between Patricia Barrera and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against Patricia Barrera at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if Patricia Barrera does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, Patricia Barrera waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Patricia Barrera understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Patricia Barrera agrees to pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500) associated with the improper use of public resources, RCW 42.52.160. The Board agrees to suspend seven hundred and fifty dollars (\$750) on the condition that Patricia Barrera 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.

12. The non-suspended portion of the civil penalty in the amount of seven hundred and fifty dollars (\$750) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, Patricia Barrera, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify 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, I understand that I will receive a signed copy.

Please let me know how pay.

P. Barrera

PATRICIA BARRERA
Respondent

9/11/15

Date

Presented by:

K. Reynolds

KATE REYNOLDS
Executive Director

11/8/15

Date

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;

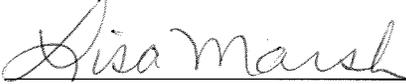
_____ REJECTED in its entirety;

_____ MODIFIED. This stipulation will become the order of the Board if the Respondent approves* the following modification(s):

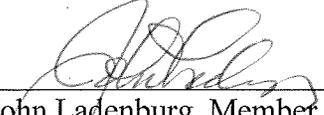
DATED this 15th day of January, 2016


Anna Dudek Ross, Chair


Samantha Simmons, Vice-Chair


Lisa Marsh, Member


Sumeer Singla, Member


John Ladenburg, Member

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

Patricia Barrera, Respondent Date