

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 2016-062

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, ██████████, 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 August 16, 2016, the Executive Ethics Board (Board) received a complaint alleging that ██████████ a Maintenance Manager for Washington State Parks and Recreation Commission (WSPRC) may have violated the Ethics in Public Service Act by providing himself with a special privilege when he purchased state equipment for his outside business.

2. For all times pertinent to this investigation, ██████████ was employed as a Maintenance Manager for WSPRC. He retired from state service in December 2016.

3. Board staff reviewed the investigative report provided by WSPRC. In May 2016, WSPRC purchased a new Kubota Excavator from Jennings Equipment Inc. [REDACTED] negotiated the trade-in of the Agency's 2004 Takeuchi excavator, which was applied to the purchase price of the new equipment. Negotiations were with Andy Harris (Mr. Harris) of Jennings Equipment.

4. [REDACTED] initially requested to receive \$10,000 (ten thousand) dollars trade-in, Mr. Harris countered with \$8000 and they agreed to \$9000. [REDACTED] confirmed with his manager, Dave Jaquish (Mr. Jaquish) that this amount was appropriate.

5. Shortly after the trade-in negotiations concluded, [REDACTED] contacted Mr. Harris and inquired about purchasing the 2004 Takeuchi excavator for his personal business, JKL Enterprise Inc. At the time, the excavator was still in WSPRC possession. [REDACTED] and Mr. Harris agreed on a sale price of 10,000 for the Takeuchi, sales tax brought the total to \$10,790 (the Takeuchi had been purchased by WSPRC in used condition 10 -12 years earlier for approximately 16,000).

6. The new Kubota excavator was delivered to the WSPRC shop on June 23, 2016. Mr. [REDACTED] was working at the time and wrote a personal check to Jennings Equipment for the 2004 Takeuchi. After delivery of the new excavator to WSPRC, the Takeuchi was loaded and delivered by Jennings Equipment to [REDACTED] s residence.

7. [REDACTED] told investigators that based on the condition of the Takeuchi he believed \$9000 was a fair trade-in value, and his supervisor approved it. [REDACTED] said in no way did he attempt to devalue the trade-in price of the Takeuchi in an attempt to get a better purchase price for himself. A couple of weeks after the trade-in and new purchase was settled, he called Mr. Harris and inquired about purchasing the Takeuchi from them. They eventually agreed on an "as is" purchase price of \$10,000.

8. During the investigation, Mr. Harris of Jennings Equipment was interviewed. He could not recall exactly when [REDACTED] called to inquire about purchasing the Takeuchi, but thought it was about a week after they agreed on the trade-in. Jennings Equipment's policy on trade-ins is to invest some money in the equipment for service and repairs to ensure the equipment is in good working condition prior to them selling it. They then offer a limited warranty. The sale price is raised accordingly. Mr. Harris said the Takeuchi was not in the best condition and estimated that if service and repairs were done and a limited warranty were provided to the buyer, Jennings probably would have listed the Takeuchi for sale for \$13,000.

9. Mr. Jennings said since [REDACTED] was familiar with the condition of the excavator he was willing to purchase it "as is". Mr. Harris agreed to sell it for ten percent over cost with no warranty.

10. Mr. Harris told investigators that [REDACTED] preferred to pick up the Takeuchi from Jennings Equipment rather than have it delivered. However had it had been returned back to the dealership it would have increased the sale price because Jennings would then have to evaluate the condition of it and made any necessary repairs. Mr. Harris said it was easier for Jennings to deliver it to [REDACTED] at the time they delivered the new excavator to WSPRC.

11. Mr. Harris told Investigators that he did not know [REDACTED] prior to trade-in and sale of the new excavator to WSPRC. He told investigators that he did not feel like [REDACTED] was 'trying to get a deal'. He said he told [REDACTED] his bottom line price and he agreed to it.

12. [REDACTED] told Board staff that he was completely honest in his efforts to negotiate the highest price for the Takeuchi trade-in. He admitted he received a special privilege due to his "insider knowledge" regarding the trade-in value and the availability of the equipment prior to anyone else. This information allowed him to contact Mr. Harris and negotiate the 'as is sale' of the equipment.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using their position to secure special privileges for themselves, family members, or others

RCW 42.52.070 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.

2. Based on the stipulated facts above, [REDACTED] secured a special privilege for himself in the transaction with Jennings Equipment for the purchase of the excavator in violation of RCW 42.52.070.

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. It is an aggravating factor that [REDACTED] was in a supervisory position. It is a mitigating factor that Mr. Nordloh received a letter of reprimand from his employer.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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. [REDACTED] 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. [REDACTED] further agrees that the evidence available to the Board 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.

6. [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).

7. If the Board accepts this stipulation, the Board agrees to release and discharge [REDACTED] 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. [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.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between ██████████ 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 ██████████ 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 ██████████ 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, ██████████ 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, ██████████ 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. ██████████ agrees to pay a civil penalty in the amount of one thousand dollars (\$1,000) for the violations associated with RCW 42.52.

12. The civil penalty in the amount of one thousand dollars (\$1000) 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, ██████████, 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.



3/29/17
Date

Respondent

Presented by:

K. Reynolds
KATE REYNOLDS
Executive Director

4/26/17
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

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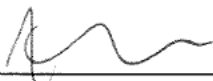
ACCEPTED in its entirety;

REJECTED in its entirety;

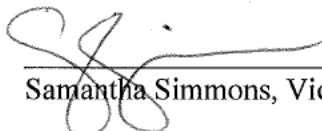
MODIFIED. This stipulation will become the order of the Board if the

Respondent approves* the following modification(s):

DATED this 12th day of May, 2017



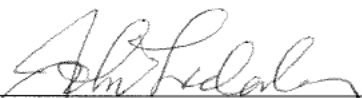
Anna Dudek Ross, Chair



Samantha Simmons, Vice-Chair



Lisa Marsh, Member



John Ladenburg, Sr., Member



Shirley Battan, Member

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

 , Respondent Date