

**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the Matter of:

Thomas Trebacz
Respondent.

No. 2018-049

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, THOMAS TREBACZ, 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 October 19, 2018, the Executive Ethics Board (Board) received a referral from the Office of the Internal Auditor (OIA) at Western Washington University (WWU) alleging that Thomas Trebacz (Mr. Trebacz), a Facility Engineer at WWU, may have violated the Ethics in Public Service Act by using state resources to promote his outside business interest, Triton Analytica LLC.

2. Prior to being hired by WWU in January 2018, Mr. Trebacz was employed at Tracell, LLC. During that time, Mr. Trebacz developed the Thomas Analytics Multi-Trend Export Utility software.

3. In May 2018, Mr. Trebacz was asked by Scott Dorough, WWW Campus Energy Manager, to review a proposal from another vendor regarding (energy) meter data acquisition. After his review, Mr. Trebacz felt that that WWU would be "better served with a far less expensive solution." To that end, "he laid out his vision for a less expensive alternative solution based around

a wi-fi capable data-harvesting device.” This device, which Mr. Trebacz developed on his own time, became known as the “seeker”.

4. On July 23, 2018, Mr. Trebacz established Triton Analytica, LLC (Triton).

5. On August 2, 2018, Mr. Trebacz installed a “seeker” device in advance of a “proof-of-concept” presentation he was planning for WWU staff. On August 8, 2018, Mr. Trebacz gave the presentation to several people at WWU, including Glen Huschka, Technical Maintenance Supervisor, Chris Bruekse, Assistant Director of Maintenance and Operations, and Greg Hough, Facilities Assistant Director.

6. During the course of Board Staff’s investigation, it obtained information from Glenn Huschka, Mr. Trebacz’s supervisor. Mr. Huschka described the “seeker” device as a USB device that picks up temperature and humidity data sent to it wirelessly, and indicated the device delivers the data as a point in WWU’s control system to be used for system control of a building. He also indicated that he gave Mr. Trebacz permission to install “seeker” devices and he assigned a control technician to assist Mr. Trebacz in the installation. As the job progressed, it became apparent that the devices were not just devices from off the shelf. It was about this time that WWU’s internal investigation started and the installation stopped.

7. Board Staff also obtained information during its investigation from Chris Brueske, who was Mr. Huschka’s direct supervisor. Mr. Brueske stated that he first heard of the “seeker” at the August 8, 2018 presentation given by Mr. Trebacz. He also indicated that it was clear from Mr. Trebacz’s explanation that Triton was his company and that WWU BAC systems were used to develop what Mr. Trebacz considered a proprietary product.

8. Board Staff also obtained information during its investigation from Greg Hough, Facilities Assistance Director. Mr. Hough stated that during the August 8, 2018 presentation, Mr. Trebacz promoted his “seeker” technology as a cost effective solution for energy consumption monitoring. There was no product or package specifically offered for purchase, more of a hope that an equitable arrangement could be worked out where he kept the intellectual property rights and received some monetary compensation.

9. On August 9, 2018, Mr. Trebacz was advised by Greg Hough to remove all intellectual property owned by Triton from WWU. Mr. Trebacz responded to this request via email as follows:

Hi Greg,

I'll be happy to comply with your instructions to also remove all intellectual property owned by Triton Analytica from Western campus however there are currently individuals and departments that rely upon Triton Analytica software such as the Multi-trend export utility and this removal would affect them adversely.

Sent from my iPhone

10. During the August 8, 2018 demonstration, Mr. Brueske immediately became concerned that there had been an ethics violation, informed his supervisor John Furman of the issue, and an internal investigation was initiated by OIA. Mr. Trebacz met with OIA investigators on or about August 27, 2018 to discuss Triton. A summary of that conversation was provided to Mr. Trebacz via email by OIA. WWU cautioned Mr. Trebacz that he should not attempt to charge WWU for the continued use of the Thomas Analytics Multi-Trend Export Utility Software, or attempt to sell his “seeker” devices to WWU.

11. Mr. Trebacz told OIA investigators during the August 27, 2018 meeting that he created Triton to provide software, hardware, and consultant services. Mr. Trebacz indicated that he freely offered to deploy the software on two WWU desktop computers in order to assist his department with their desire to make electrical and HVAC data streams more readily available and to improve efficiencies across the campus. Mr. Trebacz also told OIA investigators that over the course of approximately two months he spent work time tailoring the Thomas Analytics Multi-Trend Export Utility software to work on the BAC (Building Automation and Controls) systems to meet specific departmental needs. Mr. Trebacz also indicated that one reason for creating Triton Analytica was his understanding he would not be able to sell “seeker” technology to WWU without a business license. After meeting with OIA investigators, Mr. Trebacz sent an email stating that he wished “to use the Western Triton Analytica multitrend export tool success story at Western as a means of promoting my products and services at large.”

12. Through the Board staff's review of Mr. Trebacz's WWU computer hard drive information was obtained regarding documents created relating to Triton. The following is a summary of those documents:

Name/Type	Creation Date	Last modified
Turning stored data into information.docx	4/23/18 @ 2:17 pm	4/25/18 @ 10:19 am
Turning Data into Information4.pptx	4/27/18 @8:05 am	5/22/18 @ 2:13 pm
Turning Data into Information5.pptx	4/27/18 @ 8:32 am	5/23/18 @ 8:32 am
TritonAnalyticaDemo.pptx	8/8/18 @ 8:53 am	8/8/18 @ 12:-03 pm

Linked path	Creation Date/Time	Last Modified Date/Time
E:\Turning Data into Information.pptx	4/27/18 @ 8:11 am	4/30/18 @ 3:28 pm
E:\Turning Data into Information2.pptx	4/30/18 @ 3:28 pm	4/30/18 @ 3:29 pm
E:\Presentation	4/30/18 @ 3:42 pm	4/30/18 @ 4:01 pm
E:\TritonAnalyticaDemo.pptx	8/8/18 @ 9:18 am	8/8/18 @ 12:04 pm

Information was also obtained regarding Mr. Trebacz's use of the Chrome 360 Safe Brower to access his Triton Google email account on the following days:

- July 30, 2018
- July 31, 2018
- August 1, 2018
- August 2, 2018
- August 3, 2018
- August 9, 2018
- August 10, 2018
- August 13, 2018

13. Mr. Trebacz met with John Furman, the Director of Facilities Management, on September 10, 2018 to discuss the investigation. Information was obtained from Mr. Furman during Board Staff's investigation. In advance of their September 10, 2018 meeting, Mr. Trebacz sent Mr. Furman two PowerPoint presentations via email regarding Triton and his "seeker" technology. One of the two presentations states that Mr. Trebacz "spent over 300 hours just in the past month designing and testing the hardware and firmware in my lab at home after hours."

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. WAC 292-110-010 Use of state resources, after April 2016, states, in part:

.....

(3) **Permitted personal use of state resources.** This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

3. Based on the stipulated facts above, Mr. Trebacz used state resources for the personal benefit and gain for himself in violation of RCW 42.52.160. Mr. Trebacz's activities, as described above, do not meet the exception for the use of state resources as permitted in WAC 292-110-010.

4. 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 these types of violations significantly reduce the public respect and confidence in state government employees. It is a mitigating factor that the violation was unintentional.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Thomas Trebacz 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. Thomas Trebacz 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. Thomas Trebacz 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. Thomas Trebacz 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 Thomas Trebacz 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. Thomas Trebacz 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 Thomas Trebacz and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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 Thomas Trebacz 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, Thomas Trebacz 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, Thomas Trebacz 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. Thomas Trebacz agrees to pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500) associated with his violations of RCW 42.52. The Board agrees to suspend seven hundred fifty dollars (\$750) on the condition that Thomas Trebacz 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 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, Thomas Trebacz, 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.



THOMAS TREBACZ
Respondent

02/28/2020
Date

Presented by:



KATE REYNOLDS
Executive Director

3/2/2020
Date

III. 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 10th day of July 2020

Approved via Video Meeting
Shirley Battan, Chair

Absent
Geri Davis, Vice-Chair

Approved via Video Meeting
Lisa Marsh, Member

Approved via Video Meeting
Anna Dudek Ross, Member

Approved via Video Meeting
Jan Jutte, Member

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

Thomas Trebacz, Respondent Date