STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2016 CA 1556

BOARD OF ETHICS IN THE MATTER OF THE CARTESIAN COMPANY, INC. AND GREG GACHASSIN

DATE OF JUDGMENT: OCT 12 2017

ON APPEAL FROM THE ETHICS ADJUDICATORY BOARD
STATE OF LOUISIANA, DIVISION OF ADMINISTRATIVE LAW
NUMBER 2012-10863 – ETHICS-A

ADMINISTRATIVE LAW JUDGES
ADAORA CHUKUDEBELU, AARON B. AVERY, AND ROMAINE L. WHITE

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BEFORE: HIGGINBOTHAM, THERIOT, AND CHUTZ, JJ.

Disposition: AFFIRMED IN PART, AMENDED IN PART, REVERSED IN PART; VACATED IN PART, AND REMANDED WITH INSTRUCTIONS; MOTION TO ASSESS COSTS DENIED.

MRT - concurs
by CRC

CHUTZ, J.

Appellants, Greg Gachassin and the Cartesian Company, Inc. (Cartesian), appeal a decision of the Ethics Adjudicatory Board (EAB) finding they violated several provisions of the Louisiana Code of Governmental Ethics (Ethics Code) and imposing fines and penalties.

FACTUAL AND PROCEDURAL BACKGROUND

Cartesian is a domestic corporation incorporated in Louisiana on November 6, 2009.[1] Mr. Gachassin owns 100% of Cartesian's stock and is its president and employee. The ethics charges against Cartesian and Mr. Gachassin arose from certain transactions involving Cartesian that occurred during Mr. Gachassin's service as a trustee on the board of the Lafayette Public Trust Financing Authority (LPTFA), as well as additional actions occurring within two years of his resignation from the LPTFA board. Members of the LPTFA Board of Trustees are appointed by the Lafayette City Counsel. Mr. Gachassin served on the LPTFA board from 2003 until his resignation on November 17, 2009, and served as the board chairman from 2007 until his resignation.

The LPTFA is a public trust created pursuant to La. R.S. 9:2341 "for the use and benefit of the City of Lafayette ... to provide funds for the furtherance and accomplishment of any public function and purpose of the City," including housing.[2] In furtherance of its purpose, the LPTFA became involved in two housing development projects known as Cypress Trails and Villa Gardens.

The Cypress Trails Project:

The Cypress Trails Project was an affordable housing development located

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[1] Although Cartesian's articles of incorporation were not filed with the Louisiana Secretary of State until November 10, 2009, the articles incorporating Cartesian were effective as of November 6, 2009, pursuant to La. R.S. 12:1-123(B) since they were signed on that date and were filed with and accepted by the Secretary of State within five days thereof.

[2] Louisiana Revised Statutes 9:2341(D) specifically provides all public trusts are subject to the Ethics Code.

in Lafayette, Louisiana. On October 30, 2009, the Cypress Trails Corporation (Cypress Trails Inc.) was incorporated to serve as an instrumentality of the LPTFA in promoting and advancing "decent, safe and sanitary housing for persons of low income and particularly the elderly or handicapped in the City of Lafayette and Lafayette Parish." According to Richard Becker, general counsel for the LPTFA, Cypress Trails Inc. was created as an instrumentality of the LPTFA to implement the Cypress Trails Project. The Board of Commissioners of Cypress Trails Inc. is composed of the same individuals who serve on the LPTFA's Board of Trustees. Mr. Gachassin served as Cypress Trails Inc.'s first Executive Director.

On November 1, 2009, a partnership known as the Cypress Trails Limited Partnership (Cypress Trails LP) was created between Cypress Trails Inc., as general partner, the Housing Authority of the City of Lafayette (LHA), as special limited partner, and Mr. Becker, as limited partner.[3] As general partner, Cypress Trails Inc. was responsible for managing the affairs of Cypress Trails LP and maintaining the books and records of the partnership. In executing the articles of partnership, Cypress Trails Inc. was represented by Mr. Gachassin, who signed the articles in his capacity as Chairman on the LPTFA. The stated purpose of the Cypress Trails LP was to acquire property in Lafayette Parish to build, own, and operate the Cypress Trails housing project in order to provide affordable housing.

[3] At the EAB hearing, Mr. Becker explained he had no real interest in the partnership, but was merely serving as a "nominee" or "place saver" for the purpose of reserving a limited partnership interest in the corporation for a future tax credit investor. He further indicated he had been replaced as limited partner in the Cypress Trails LP.

The Villa Gardens Project:

Villa Gardens was an affordable housing project located in Lafayette, Louisiana, which was a project of the LHA. In 2006, the LHA requested a loan from the LPTFA in order to purchase the property ultimately used as the site of the Villa Gardens development. Mr. Gachassin's proposal that the $425,000.00 loan be made at an interest rate of three percent per annum was unanimously approved by the LPTFA.

On November 1, 2009, a partnership known as the Villa Gardens Limited Partnership (Villa Gardens LP) was created between Villa Gardens Housing Corporation (Villa Gardens Inc.), an instrumentality of the LHA, as general partner, and Walter Guillory, as limited partner. As general partner, Villa Gardens Inc. was responsible for managing the affairs of Villa Gardens LP. The stated purpose of the Villa Gardens LP was to acquire property in Lafayette Parish to develop, build, own, and operate the Villa Gardens Project in order to provide affordable housing.

Project Consultant Agreements:

By a written contract dated November 1, 2009, Cartesian entered into a "Project Consultant Agreement" with Cypress Trails LP to oversee the development and construction of the Cypress Trails housing project for a fee of $500,000.00. Mr. Gachassin signed the consultant agreement as "President" of Cartesian, despite the fact that Cartesian's existence as a legal entity was not effective until November 6, 2009. The consultant agreement also was signed by John Arceneaux, a LPTFA trustee, who signed in the capacity of an authorized representative of Cypress Trails Inc., the general partner in Cypress Trails LP. Over the course of the next several years, Cartesian fulfilled the terms of the consultant agreement and received full payment of $500,000.00.

By a written contract dated November 1, 2009, Cartesian also entered into a

"Project Consultant Agreement" with Villa Gardens LP to oversee the development and construction of the Villa Gardens housing project for a fee of $500,000.00. Mr. Gachassin signed the consultant agreement as "President" of Cartesian, despite the fact that Cartesian's existence as a legal entity was not effective until November 6, 2009. As with the Cypress Trails consultant agreement, Cartesian fulfilled the terms of the agreement and received full payment of $500,000.00.

November 4, 2009 Board Meeting:

At a November 4, 2009 meeting of the LPTFA Board of Trustees, Mr. Gachassin, in his capacity as chairman of the board, presented an update and overview of the strategy for the Cypress Trails Project and participated in various discussions regarding the project, including its funding, tax credit allocation, design aspects, and the goal of beginning construction by February 2010. Mr. Gachassin also instructed Mr. Becker to prepare a resolution to authorize and empower the officers of the LPTFA and its counsel "to do all things and take all actions necessary or advisable to cause the LPTFA tax credit affordable housing project Cypress Trails to proceed to closing." This resolution granted authority to the specified officers and general counsel to hire a project consultant for the Cypress Trails Project without obtaining further approval by the LPTA Board of Trustees. The Board of Trustees voted unanimously to proceed with the Cypress Trails Project and to adopt the resolution prepared by Mr. Becker. The meeting minutes do not reflect that Mr. Gachassin recused himself from that vote.

Additionally, at the same meeting, the trustees discussed the LPTFA's 2006 loan to the LHA in light of the tightening of the credit market and the role of the loan in the LHA's completion of the Villa Gardens Project. A motion was made and unanimously approved by the Board of Trustees "to recast the existing loan ... to the [LHA] to a long term, no interest, cash flow loan to be repaid to the LPTFA

by the [LHA] out of the cash flow from the Villa Gardens [P]roject." The meeting minutes do not reflect a recusal by Mr. Gachassin from that vote.

Post-Resignation LPTFA:

Mr. Gachassin resigned from the LPTFA board on November 17, 2009. Within two weeks of his resignation, he appeared before the LPTFA board on December 2, 2009, as a representative of Cartesian to provide an update on and discuss various issues related to the Cypress Trails Project. He made similar appearances before the board to provide updates on the Cypress Trails Project on May 11, 2010, and September 2, 2010.

Ethics Proceedings:

On June 15, 2012, the Louisiana Board of Ethics (BOE) issued charges against Mr. Gachassin alleging he violated La. R.S. 42:1112, 1113(B), and 1121 by participating in transactions prohibited by the Code of Ethics. On the same date, the BOE charged Cartesian with violating La. R.S. 42:1113(B) and 1121. The alleged violations resulted from Mr. Gachassin and Cartesian's involvement with the Cypress Trails and Villa Gardens Projects. They were charged with contracting with an agency of the LPTFA while Mr. Gachassin was the chairman of the LPTFA Board of Trustees. Mr. Gachassin was also charged with voting on matters arising before the LPTFA in which he and Cartesian had a substantial economic interest. Mr. Gachassin was further charged with assisting Cartesian for compensation by appearing before the LPTFA on Cartesian's behalf within two years of his resignation.

An evidentiary hearing was held before the EAB on April 18 and 19, 2016. On August 3, 2016, the EAB rendered a decision concluding Mr. Gachassin violated La. R.S. 42:1112(A), (B), and (D), 42:1113(B), and 42:1121(A)(1), a total of five violations, and Cartesian violated 42:1113(B). In rendering its decision, the EAB concluded the project consultant agreements with Cypress Trails LP and

Villa Gardens LP were *executed on November 1, 2009*, while Mr. Gachassin was chairman of the LPTFA. This factual finding formed the basis of the EAB's additional conclusion that Mr. Gachassin and Cartesian each had a substantial economic interest in the Cypress Trails and Villa Gardens Projects at the time of the LPTFA meeting on November 4, 2009. Accordingly, the EAB found Mr. Gachassin violated La. R.S. 42:1112(A), (B), and (D) by failing to recuse himself and voting to move forward with the Cypress Trails Project and to recast the loan associated with the Villa Gardens Project, as well as participating in discussions regarding those matters at the LPTFA meeting. The EAB further concluded Mr. Gachassin violated the prohibition of La. R.S. 42:1113(B) that he not be "in any way interested" in the project consultant contract between Cartesian and Cypress Trails LP, which he signed on Cartesian's behalf on November 1, 2009, while he was still serving as the LPTFA chairman. The EAB also found Mr. Gachassin violated La. R.S. 42:1121(A)(1) by assisting Cartesian for compensation with various transactions involving the LPTFA within two years of his resignation as chairman of the LPTFA. Finally, the EAB concluded Cartesian violated the prohibition of La. R.S. 42:1113(B) that it not be "in any way interested" in transactions under the supervision of the LPTFA by honoring the project consultant agreement between Cartesian and Cypress Trails LP and providing services in fulfillment of the agreement.[4]

For each of the five Ethics Code violations the EAB found Mr. Gachassin committed, it imposed a $10,000.00 fine, for a total of $50,000.00. The EAB imposed a single fine of $10,000.00 upon Cartesian. Additionally, based on its conclusion pursuant to La. R.S. 42:1155 that Mr. Gachassin and Cartesian violated

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[4] We agree with the EAB that Cartesian essentially ratified the consultant agreements signed by Mr. Gachassin by failing to repudiate them, as well as through its actions in requesting and accepting payments under those agreements and performing services in fulfillment thereof. See ***Florida v. Stokes***, 05-2004 (La. App. 1st Cir. 9/20/06), 944 So.2d 598, 603.

the Ethics Code to their "economic advantage," the EAB imposed a penalty on appellants of $1.5 million, *in solido*. Mr. Gachassin and Cartesian now appeal the decision of the EAB.[5]

ASSIGNMENTS OF ERROR

1. The EAB erred as a matter of law in concluding that Cartesian and Gachassin had a "substantial economic interest" in certain transactions involving the LPTFA when Mr. Gachassin voted on those transactions.

2. The EAB erred as a matter of law in concluding that the Cypress Trails Contract was entered into while Mr. Gachassin was a trustee for the LPTFA.

3. The EAB erred as a matter of law in concluding that the Cypress Trails project was under the "supervision or jurisdiction" of the LPTFA.

4. The EAB erred as a matter of law in concluding that Mr. Gachassin assisted *Cartesian* and not Cypress Trails, in transactions involving the LPTFA within two years of Mr. Gachassin resigning from the LPTFA.

5. The EAB erred as a matter of law in concluding there were any transactions involving the LPTFA and Villa Gardens within two years of Mr. Gachassin resigning from the LPTFA.

6. The EAB erred as a matter of law in concluding that Cartesian and Mr. Gachassin violated the Ethics Code to their "economic advantage," and by not applying the "rule of lenity" in favor of Cartesian and Mr. Gachassin.

7. The EAB erred in assessing a $30,000.00 fine on Mr. Gachassin for allegedly violating three subparts of one provision of the Ethics Code.

8. The EAB erred as a matter of law in assessing a penalty of $1.5 million on Cartesian and Mr. Gachassin, *in solido*.

9. The EAB's imposition of a $1.5 million penalty violates the Excessive Fines Clause of the United States Constitution.

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[5] The BOE asserts this court should disregard the statement of facts section of appellants' appellate brief due to their non-compliance with Uniform Rules–Courts of Appeal, Rule 2–12.4 (A)(7). This rule requires an appellant's brief to include "a statement of facts relevant to the assignments of error and issues for review, **with references to the specific page numbers of the record.**" (Emphasis added.) Other than references to the EAB's decision, appellants provided no record references supporting the facts they asserted in their statement of facts. Appellants' non-compliance with this rule increased the burden on this court in reviewing this matter and is particularly egregious considering the voluminous appellate record. Nevertheless, we will consider the entirety of appellants' brief since appellants did provide record references elsewhere in their brief.

STANDARD OF REVIEW

Judicial review of decisions of the EAB is governed by the Louisiana Administrative Procedure Act (APA) and is confined to the record developed in the administrative proceedings. See La. R.S. 42:1143; La. R.S. 49:950 *et seq.*; La. R.S. 49:964(F); ***Louisiana Board of Ethic in the Matter of Great Southern Dredging, Inc.***, 15-0870 (La. App. 1st Cir. 5/27/16), 195 So.3d 631, 634, writ denied, 16-1208 (La. 10/17/16), 207 So.3d 1063. The EAB's decision may be reversed or modified only if substantial rights of the appellant are prejudiced because the findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the agency's statutory authority; (3) made upon unlawful procedure; (4) affected by other error of law; (5) arbitrary, capricious, or an abuse of discretion; or (6) not supported and sustainable by a preponderance of evidence as determined by the reviewing court. La. R.S. 49:964(G). An arbitrary decision shows disregard of evidence or the proper weight thereof while a capricious decision has no substantial evidence to support it or the conclusion is contrary to substantiated competent evidence. ***Ford v. State, Department of Health & Hospitals***, 14-1262 (La. App. 1st Cir. 3/6/15), 166 So.3d 332, 336-37, writ denied, 15-0774 (La. 6/1/15), 171 So.3d 264.

The reviewing court owes no deference to the EAB's legal findings, since questions of law are reviewed *de novo*. ***Louisiana Board of Ethic in the Matter of Great Southern Dredging, Inc.***, 195 So.3d at 634. However, the EAB's credibility determinations are considered to be factual questions under La. R.S. 49:964 (G)(6). Thus, "where the [EAB] has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues." La. R.S. 49:964 (G)(6); see also ***Johnson v. Strain***, 15-0714 (La. App. 1st Cir. 11/6/15), 183 So.3d 562, 565.

ASSIGNMENTS OF ERROR NUMBERS ONE AND TWO

Appellants contend the EAB legally erred in finding the consultant agreements between Cartesian and Cypress Trails LP and Villa Gardens LP were executed on November 1, 2009, while Mr. Gachassin was serving as a trustee and the chairman of the LPTFA. They argue the consultant agreements were executed after Mr. Gachassin's resignation, sometime in December 2009 or January 2010. Based on the alleged error by the EAB in determining the date of the consultant agreement, appellants contend the EAB also erred in concluding: (1) the consultant agreements were entered into while Mr. Gachassin was a LPTFA trustee; and (2) Mr. Gachassin and Cartesian each had a substantial economic interest in the Cypress Trails and Villa Gardens Projects when Mr. Gachassin discussed and voted on matters relating to those projects at the November 4, 2009 LPTFA meeting.

At the EAB hearing, Mr. Gachassin testified the project consultant agreements were executed after his resignation from the LPTFA. He asserted the Villa Gardens agreement was signed sometime in December 2009 and the Cypress Trails agreement was signed sometime in late December 2009 or early January 2010. Mr. Arceneaux, who succeeded Mr. Gachassin as chairman of the LPTFA, testified he negotiated the Cypress Trails consultant agreement with Cartesian and signed that agreement on behalf of Cypress Trails LP as the representative of its general partner, Cypress Trails Inc. He could not recall the date on which the agreement was signed, but testified it was "definitely" sometime after Mr. Gachassin resigned from the LPTFA. Mr. Arceneaux further indicated he was unaware at the time of the November 4, 2009 meeting that Cartesian would turn out to be the project consultant for the Cypress Trails Project.

Mr. Becker similarly testified he did not know at the time of the November 4, 2009 meeting that Cartesian would eventually become the Cypress Trails project

consultant. He was not present when the project consultant agreements were executed, but testified he had no reason to doubt Mr. Arceneaux's recollections on the matter.

On appeal, appellants argue the BOE failed to refute the testimony of these witnesses that the consultant agreements were executed after Mr. Gachassin's resignation. They contend the conflict between the November 1, 2009 date written on the consultant agreements and the testimony of Mr. Gachassin, Mr. Arceneaux, and Mr. Becker regarding different dates creates uncertainty as to when the consultant agreements were executed.

We find no merit in appellants' contentions. We initially observe that, contrary to appellants' categorization, the issue as to the date the consultant agreements were executed is a factual, rather than a legal, issue. As such, the EAB's conclusion on this issue cannot be reversed or modified unless arbitrary, capricious, or unsupported by the record. La. R.S. 49:964(G)(5) & (6). Moreover, in reviewing the EAB's conclusion, we must give due regard to its credibility determinations. La. R.S. 49:964(G)(6).

In arguing there was no evidence refuting the testimony that the consultant agreements were executed after Mr. Gachassin's resignation, appellants ignore the dates written on the consultant agreements. The Cypress Trails consultant agreement contains the following unambiguous language on its first and last pages, respectively:

> THIS AGREEMENT *made as of the 1st day of November,* 2009 by and between Cypress Trails Limited Partnership, a Louisiana limited partnership (the "Company"), and The Cartesian Company ... a Louisiana corporation (the "Project Consultant").
>
> ***
>
> IN WITNESS WHEREOF, the parties have caused this Agreement to be *duly executed as of the date first* written *above.*

(Emphasis added.)

The Villa Gardens consultant agreement contains identical language, with the exception that "Cypress Trails Limited Partnership" is replaced with "Villa Gardens Limited Partnership." The BOE argues this language constitutes the "best evidence" of the date on which the consultant agreements were executed.

At the EAB hearing, Mr. Gachassin testified he did not know who wrote the November 1, 2009 dates on the consultant agreements. Nor was any other evidence presented on this point. Neither at the EAB hearing nor on appeal do appellants offer any reason why the consultant agreements stated they were executed on November 1, 2009, if they were actually executed sometime after Mr. Gachassin's November 17, 2009 resignation.

Additionally, the BOE presented other evidence supporting a November 1, 2009 execution date. For instance, it presented evidence that Mr. Gachassin ordered ten sets of digital prints from Ridgeway's, a printing services company on November 2, 2009. An invoice from Ridgeway's bearing that date reveals Mr. Gachassin had the digital prints billed to The Lauren Group, LLC (Lauren Group), a company he wholly owned, and shipped to "Villa Gardens", "ATTN: GREG GACHASSIN," at the Lauren Group's address. Moreover, on June 29, 2010, Cartesian submitted an invoice to Villa Gardens LP requesting reimbursement for various amounts paid to Ridgeway's for "plans and printing" in accordance with several attached invoices. The invoice for the digital prints Mr. Gachassin ordered on November 2, 2009 was among the invoices attached. At the EAB hearing, Mr. Gachassin denied any knowledge of the invoice, failing to explain why he would have ordered items related to and subsequently billed to the Villa Gardens LP on November 2, 2009, if he had no connection or interest in that project on that date.

Additionally, within days of Mr. Gachassin's resignation, Cartesian submitted invoices dated November 19, 2009, to Cypress Trails LP and Villa

Gardens LP requesting initial payments of $50,000.00 for professional consultation and project management services related to the Cypress Trails and Villa Gardens projects. Mr. Gachassin claimed the invoices were draft invoices included in the drafts of the as-yet-unexecuted consultant agreements that Cartesian had circulated to the respective partnerships for review.

Further, on December 2, 2009, approximately two weeks following his resignation, Mr. Gachassin appeared before the LPTFA board as a representative of Cartesian to provide an update and discuss various issues related to the Cypress Trails Project, even though appellants claim the Cypress Trails consultant agreement was not executed until late December 2009 or January 2010. Finally, subsequent amendments to both the Cypress Trails and Villa Gardens consultant agreements reference November 1, 2009 as the date of the original consultant agreements.

In order to resolve the conflict between the November 1, 2009 date written on the consultant agreement and the contrary testimony presented by appellants, it was necessary for the EAB to weigh conflicting evidence and make credibility determinations. Because the EAB had the opportunity to observe the witnesses' demeanor first-hand, this court must give due regard to these credibility determinations in reviewing the EAB's factual findings. La. R.S. 49:964 (G)(6); see also **Johnson,** 183 So.3d at 565.

In finding the consultant agreements were executed on November 1, 2009, the EAB specifically rejected Mr. Gachassin's testimony, categorizing it as "unpersuasive." The rejection of Mr. Gachassin's testimony is particularly significant with regard to the Villa Gardens consultant agreement since he was the only witness who testified that agreement was executed after his resignation. Thus, when the EAB rejected Mr. Gachassin's testimony, there was no other evidence supporting appellants' claim that the Villa Gardens consultant agreement

was executed on a date other than the November 1, 2009 date written thereon.

In addition to the rejection of Mr. Gachassin's testimony, it is obvious the EAB also rejected Mr. Arceneaux's testimony that the Cypress Trails consultant agreement was executed sometime in December 2009 since it concluded both consultant agreements were executed on November 1, 2009. As to Mr. Becker, his testimony that he had no reason to doubt Mr. Arceneaux's recollection was of little, if any, probative value. Responsibility for weighing and assessing Mr. Arceneaux's recollections was a matter within the purview of the EAB. Moreover, Mr. Becker was not present when the consultant agreements were executed and claimed no knowledge regarding those events.

In addition to its credibility determinations, the EAB's conclusion that the consultant agreements were executed on November 1, 2009 was supported by the circumstances previously discussed regarding the November 2, 2009 Ridgeway's invoice, the November 19, 2009 invoices from Cartesian to Cypress Trails LP and Villa Gardens LP, Mr. Gachassin's December 2, 2009 appearance before the LPTFA board, and the amendments to the consultant agreements referencing November 1, 2009 as the date of the original agreements. Therefore, based on our review of the record, and giving due regard to the EAB's credibility determinations, we find the EAB's conclusion that the consultant agreements were each executed on November 1, 2009, while Mr. Gachassin was a LPTFA trustee, was neither arbitrary, capacious, or unsupported by the record.

Consequently, we also reject appellants' contention that Mr. Gachassin did not have a "substantial economic interest"[6] in the votes he cast at the November 4, 2009 meeting because the consultant agreements had not been executed at that time. Once the EAB rejected appellants' claim that the consultant agreements

[6] Louisiana Revised Statues R.S. 42:1102(21), in pertinent part, defines "[s]ubstantial economic interest" as "an economic interest which is of greater benefit to the public servant or other person than to a general class or group of persons ...."

were not executed on November 1, 2009, appellants' contentions were deprived of any merit.[7] On November 1, 2009, Mr. Gachassin signed two consultant agreements valued at $500,000.00 each to oversee the development and construction of the Cypress Trails and Villa Gardens projects. At the November 4, 2009 meeting, he failed to recuse himself and voted to move forward with the Cypress Trails Project and to recast the existing loan to the LHA that was related to the Villa Gardens Project.[8] As a result of the Cypress Trails and Villa Gardens consultant agreements, Mr. Gachassin had a personal substantial economic interest in the transactions at the time he cast his votes. Accordingly, the EAB did not err in concluding he violated La. R.S. 42:1112(A) and (D).[9]

However, the record does not support the EAB's conclusion that Mr. Gachassin also violated La. R.S. 42:1112(B), which provides, in pertinent part:

> No public servant ... shall participate in a transaction involving the governmental entity in which, to his actual knowledge, **any of the following persons has a substantial economic interest**:
>
> ***
>
> (2) Any person in which he has a substantial economic interest of

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[7] Appellants also raise an additional basis for arguing the EAB erred in finding they had a "substantial economic interest" in the recasting of the LHA loan. Specifically, they point to testimony they presented indicating the Villa Gardens Project could have proceeded without the LPTFA recasting the loan, because the LHA could have utilized other available funding mechanisms to move the project forward. However, irrespective of whether the recasting of the loan was essential to the completion of the Villa Gardens Project, the crucial fact is that the recasting of the loan was advantageous to the LHA and the Villa Gardens Project and Mr. Gachassin participated in discussions related to and voted on a matter before the LPTFA in which he had a "substantial economic interest."

[8] Except in limited circumstances not applicable herein, La. R.S. 42:1120.4(A) mandates an appointed board member shall recuse himself from voting if he "would be required to vote on a matter which vote would be a violation of La. R.S. 42:1112." Paragraph (B) of this provision provides that the recused board member "shall be prohibited from participating in discussion and debate concerning the matter."

[9] These provisions provide, in pertinent part, as follows:

> A. No public servant ... shall participate in a transaction in which he has a personal substantial economic interest of which he may be reasonably expected to know involving the governmental entity.
> ***
> D. No appointed member of any board or commission ... shall participate or be interested in any transaction involving the agency when a violation of this Part would result.

which he may reasonably be expected to know.

(3) Any person of which he is an officer, director, trustee, partner, or employee.

(4) Any person with whom he is negotiating or has an arrangement concerning prospective employment.

(5) Any person who is a party to an existing contract with such public servant, or with any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, or who owes any thing of economic value to such public servant, or to any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, and who by reason thereof is in a position to affect directly the economic interests of such public servant.

[Emphasis added.]

The EAB found Mr. Gachassin violated La. R.S. 42:1112(B) because as an officer, employee, and sole owner of Cartesian he knew Cartesian had a substantial economic interest in the matters he discussed and the votes he cast at the November 4, 2009 meeting due to the consultant agreements previously executed on November 1, 2009. The problem with this conclusion is the fact that Cartesian did not exist as a legal entity on November 4, 2009. As previously noted, Cartesian's corporate existence did not begin until November 6, 2009. At the time Mr. Gachassin participated in the discussions at issue and cast his votes, it was impossible for Cartesian to have had a substantial economic interest in those transactions. Therefore, the portion of the EAB's decision finding Mr. Gachassin violated La. R.S. 42:1112(B) must be reversed.

ASSIGNMENT OF ERROR NUMBER THREE

Under La. R.S. 42:1113(B), Mr. Gachassin, as an appointed member of the LPTFA, and Cartesian, because it was wholly owned by Mr. Gachassin, were prohibited from entering into or being "**in any way interested** in any contract ... or other transaction which is **under the supervision or jurisdiction** of the [LPTFA]." (Emphasis added.) Appellants argue the EAB erred as a matter of law

in finding they violated this provision with respect to the Cypress Trails Project[10] because: (1) the Cypress Trails project was not under the "supervision or jurisdiction" of the LPTFA; and (2) the phrase "in any way interested" is unconstitutionally vague and overbroad.

The common meaning of "supervision" is "[t]he series of acts involved in managing, directing, or overseeing persons or projects." **Black's Law Dictionary** (10th ed. 2014). "Jurisdiction" is generally defined as the "government's general power to exercise authority over all persons and things within its territory." **Black's Law Dictionary** (10th ed. 2014). In the context of La. R.S. 42:1113(B), we believe an agency's "supervision or jurisdiction" is those things over which it has power to exercise authority.

The EAB concluded the Cypress Trails Project was under the "supervision or jurisdiction" of the LPTFA, for the following reasons:

> On November 1, 2009, Cypress Trails LP was created for the purpose of acquiring a tract of land in Lafayette, Louisiana, and developing, building, owning, and operating Cypress Trails. Cypress Trails Corporation was created as an agency of the LPTFA, and is the general partner with the responsibility for managing and supervising the affairs of Cypress Trails LP. ...
>
> [Mr.] Gachassin's argument that Cypress Trails was not under the supervision or jurisdiction of the LPTFA is unpersuasive and disingenuous. ... The Board of Commissioners of Cypress Trails Corporation is made up of the Board of Trustees of the LPTFA. Because of the relationships between Cypress Trails Corporation and the LPTFA, and between Cypress Trails Corporation and Cypress Trails LP, Cypress Trails was under the supervision or jurisdiction of the LPTFA.

In arguing the LPTFA lacked "supervision or jurisdiction" over the Cypress Trails Project appellants rely on the testimony of Mr. Arceneaux and Mr. Becker regarding the resolution adopted at the November 4, 2009 LPTFA meeting. Both men responded affirmatively when asked if it was their understanding that the

[10] The EAB correctly concluded appellants did not violate La. R.S. 42:1113(B) with respect to the Villa Gardens Project because that project was not under the "supervision or jurisdiction" of the LPTFA.

resolution transferred responsibility for the Cypress Trails Project from the LPTFA to Cypress Trails Inc. and Cypress Trails LP, making it unnecessary for the LPTFA to consider matters related to the project. Appellants further contend the EAB improperly disregarded the fact that the LPTFA, Cypress Trails Inc., and Cypress Trails LP were each separate and distinct legal entities in concluding the Cypress Trails Project was under the "supervision or jurisdiction" of the LPTFA.

An examination of the November 4, 2009 resolution does not support appellants' contentions. The resolution provides:

> BE IT RESOLVED, that the Chairman and the Vice Chairman and the LPTFA General Counsel are authorized, empowered and directed to do all things necessary or advisable to cause **the LPTFA's tax credit affordable housing project**, Cypress Trails[,] to proceed to closing, including but not limited to engaging architects, engineers, contractors, development consultants and professionals, obtaining construction loan financing, causing the formation of the one or more entities to become participants in the development entity for the Cypress Trails project and engaging a development manager for the Cypress Trails Project (the "Cypress Trails Action"). (Emphasis added.)

Contrary to the testimony of Mr. Arceneaux and Mr. Becker, nothing in the resolution transferred authority for the Cypress Trails Project away from the LPTFA to other legal entities. It merely authorized certain individuals, including Mr. Gachassin as board chairman, to act *on behalf of the LPTFA* with respect to "the LPTFA's tax credit affordable housing project" (i.e., the Cypress Trails Project) without the necessity of obtaining further board approval. Among other actions, the resolution authorized the specified individuals to engage professionals, consultants, a development manager, and to create legal entities to become participants in the development entity for the Cypress Trails Project. Moreover, since there was nothing in the resolution indicating it was irrevocable, the LPTFA could have passed another resolution at any time revoking the authority granted to the specified individuals by the November 4, 2009 resolution.

Cypress Trails Inc., which was created specifically to act as an

instrumentality of the LPTFA, and Cypress Trails LP were legal entities created by the LPTFA to implement the Cypress Trails Project. Cypress Trails Inc. was responsible for managing the affairs of Cypress Trails LP. Its articles of incorporation provide, in pertinent part, that Cypress Trails Inc. was "[t]o conduct its business and affairs so as to vest in the LPTFA ... all right, title and interest ... in or to all of its properties and assets free of all encumbrances ... which have been created subsequent to the acquisition of such property by the Corporation."

As stated in the November 4, 2009 resolution, Cypress Trails was a project of the LPTFA. Neither the resolution nor the fact that Cypress Trails Inc. had responsibility for managing the affairs of Cypress Trails LP divested the LPTFA of its supervision or jurisdiction over the project since Cypress Trails Inc. was a mere instrumentality of the LPTFA. Through its Board of Trustees, consisting of the same members as Cypress Trails Inc.'s Board of Commissioners, the LPTFA retained supervision or jurisdiction over the Cypress Trails Project. The periodic updates on the project supplied to the LPTFA board by Mr. Gachassin and the board's ensuing discussions of various issues related thereto further demonstrated the LPTFA's continuing supervision and jurisdiction over the Cypress Trails Project. Consequently, in view of the nature of the respective relationships between the LPTFA, Cypress Trails Inc., and Cypress Trails LP, to hold that the Cypress Trails Project was not under the "supervision or jurisdiction" of the LPTFA would thwart the goals of the Ethics Code and lead to absurd results.

Appellants raise the additional argument that the phrase in La. R.S. 42:1113(B) prohibiting appointed board members and legal entities in which they have a substantial economic interest from being "in any way interested" in contracts or transactions under the supervision or jurisdiction of the appointed member's agency is unconstitutionally overbroad, general, and vague. They note the Ethics Code does not define the phrase "in any way interested," and contend it

fails to adequately inform purported violators of the conduct prohibited.

We decline to address this argument, finding it is not in a proper posture for this court's review. While there is no single procedure for attacking the constitutionality of a statute, a party making such a challenge *must* first raise the issue of unconstitutionality in the district court. ***Vallo v. Gayle Oil Company, Inc.***, 94-1238 (La. 11/30/94), 646 So.2d 859, 864-65; ***In Matter of Jones***, 15-1352, pp. 2-3 (La. App. 1st Cir. 9/16/16) (unpublished). Moreover, a party must specially plead a statute's unconstitutionality in a pleading particularizing the grounds of the claim. ***Vallo***, 646 So.2d at 864-65; ***In Matter of Jones***, 15-1352 at pp. 2-3.

In this case, appellants improperly raised the issue of the constitutionality of La. R.S. 42:1113(B) in a memorandum it filed in opposition to the BOE's motion for summary judgment. Even if appellants had raised the issue in a pleading, the EAB lacked authority to consider the constitutionality of La. R.S. 42:1113(B). See ***Albe v. Louisiana Workers' Compensation Corporation***, 97-0581 (La. 10/21/97), 700 So.2d 824, 827. As previously noted, challenges to a statute's constitutionality must be raised first in the district court. Appellants failed to file any pleading in the district court challenging the constitutionality of La. R.S. 42:1113(B). See ***In Matter of Jones***, 15-1352 at pp. 3-4. See also ***ANR Pipeline Company v. Louisiana Tax Commission***, 02-1479 (La. 7/2/03), 851 So.2d 1145, 1151.

In making the argument that an appeal was the only available method for them to challenge the constitutionality of La. R.S. 42:1113(B), appellants appear to misinterpret this court's holding in ***Fontenot v. Louisiana Board of Ethics***, 12-0034 (La. App. 1st Cir. 4/10/13) (unpublished). Unlike appellants, the plaintiffs in ***Fontenot*** properly challenged the constitutionality of the applicable statute in the district court. The fact that it was necessary for the district court in that case to hold adjudication of the constitutionality issue in abeyance until the EAB decided whether the BOE charges stated a cause of action did not alter the

requirement that the constitutional challenge must be first raised in the district court. In no way does ***Fontenot*** support appellants' assertion that an appeal was the only way it could challenge the constitutionality of the language of La. R.S. 42:1113(B).

ASSIGNMENT OF ERROR NUMBER FOUR

Appellants contend the EAB erred in concluding Mr. Gachassin assisted Cartesian rather than Cypress Trails LP in transactions involving the LPTFA that occurred within two years of his resignation. They argue Mr. Gachassin merely conducted Cartesian's business in the period following his resignation and "was not ... as a matter of law, assisting Cartesian." They assert Cartesian could not have fulfilled its contractual obligations without Mr. Gachassin, since he was Cartesian's sole shareholder, director, president, and employee.

Louisiana Revised Statutes 42:1121(A)(1) provides:

> No former agency head[11] ... shall, for a period of two years following the termination of his public service as the head of such agency ..., **assist another person**, for compensation, in a transaction, or in an appearance in connection with a transaction, involving that agency or render any service on a contractual basis to or for such agency. (Emphasis added.)

The Ethics Code defines "assist" as meaning "to act in such a way as to help, advise, furnish information to, or aid a person with the intent to assist such person." La. R.S. 42:1102(4). Moreover, "person" is defined in the Ethics Code as "an individual or legal entity other than a governmental entity, or an agency thereof." La. R.S. 42:1102(16). Because they are distinct legal entities, corporations such as Cartesian are considered "persons" under the Ethics Code. ***Bankston v. Board of Ethics for Elected Officials***, 98-0189 (La. 6/22/98), 715 So.2d 1181, 1185-87; see also La. R.S. 42:1113(D)(1)(a)(ii)(eee)(iii); ***McDonough***

[11] The Ethics Code defines "agency head" to mean "the chief executive or administrative officer of an agency or any member of a board or commission who exercises supervision over the agency." La. R.S. 42:1102(3). Mr. Gachassin was an "agency head" when he served as the chairman of the LPTFA.

Marine Service, a Division of Marmac Corporation v. Doucet, 95-2087 (La. App. 1st Cir. 6/28/96), 694 So.2d 305, 308.

The EAB explained its conclusion that Mr. Gachassin assisted Cartesian in violation of La. R.S. 42:1121(A)(1) as follows:

> In the present case, the BOE alleged that Gachassin assisted Cartesian, for compensation, in several transactions or in appearances in connection with transactions, involving the LPTFA. These include several appearances before the LPTFA to update them on the status of Cypress Trails, renegotiating the Cypress Trails ... project consultant [agreement], and reviewing and submitting multiple requests for payment on Cypress Trails. All of these transactions occurred in the two-year period following Gachassin's resignation as Chairman of the LPTFA. Gachassin was acting in his capacity as the sole paid employee of Cartesian. Gachassin assisted Cartesian and received payment for his services as an employee of Cartesian. The BOE proved by clear and convincing evidence that Gachassin assisted Cartesian for compensation. (Footnotes omitted.)

The EAB's conclusions are supported by the record and are neither arbitrary nor capricious. For purposes of La. R.S. 42:1121(A)(1), appellants' argument that Mr. Gachassin merely "conducted" Cartesian's business rather than "assisting" Cartesian is a distinction without a difference. Within two years of his resignation from the LPTFA, Mr. Gachassin received compensation for appearances he made and services he performed on behalf of Cartesian involving transactions with the LPTFA. Gachassin's actions, as detailed in the EAB's decision, clearly assisted Cartesian by helping and aiding it in the fulfillment of its contractual obligations. See La. R.S. 42:1102(4). In fact, Cartesian could not have fulfilled its obligations under the Cypress Trails consultant agreement without Mr. Gachassin's assistance. To accept appellants' contention that because Cartesian was a distinct legal entity, Mr. Gachassin was permitted to undertake actions while acting in a corporate capacity on behalf of Cartesian that he was prohibited from undertaking in his individual capacity would largely undermine the goals of the Ethics Code. As the Louisiana Supreme Court has previously held, "the separate corporate entity

privilege is not without limits and does not permit a public official ... to use his wholly-owned and controlled corporation to do that which the [Ethics Code] expressly commands he shall not do." ***Glazer v. Commission on Ethics for Public Employees***, 431 So.2d 752, 758 (La. 1983).

ASSIGNMENT OF ERROR NUMBER FIVE

In its decision, the EAB also found Mr. Gachassin assisted Cartesian for compensation within two years of his resignation from the LPTFA by renegotiating the Villa Gardens consultant agreement during this period. Appellants argue the EAB erred in finding the renegotiation of this consultant agreement violated La. R.S. 42:1121(A) because the Villa Gardens Project did not involve Mr. Gachassin's former agency, the LPTFA, and there was no evidence the LPTFA was in any way involved in the amendments to the Villa Gardens consultant agreement.

We conclude it is unnecessary to reach this issue since the EAB found only one violation of La. R.S. 42:1121(A) by Mr. Gachassin. The EAB based its finding on Mr. Gachassin's actions in the two-year period following his resignation with respect to both the Cypress Trails and Villa Gardens projects. As discussed in the preceding assignment of error, the record clearly establishes Mr. Gachassin's actions regarding the Cypress Trails Project violated this provision. Therefore, the EAB's finding of a La. R.S. 42:1121(A) violation must be affirmed, regardless of whether or not Mr. Gachassin also violated this provision with respect to the Villa Gardens Project.

ASSIGNMENT OF ERROR NUMBER SIX

Appellants contend the EAB erred in finding they violated the Ethics Code to their "economic advantage" so as to authorize the EAB's imposition of a $1.5 million penalty under La. R.S. 42:1155(A). First, they argue they did not derive any economic advantage whatsoever as a result of the consultant agreements

because, on a comparative basis, Cartesian received less payment than others would have received on the same type of project and probably less than Cartesian could have received if it had undertaken other opportunities available to it. Second, appellants contend the EAB legally erred in interpreting "economic advantage" to mean the price of the project consultant agreements. Appellants argue the EAB was required under the rule of lenity to interpret the phrase in the manner most lenient to them. They maintain the most reasonable and lenient interpretation is to construe "economic advantage" to mean the net profit obtained by the violator.

Louisiana Revised Statutes 42:1155(A) provides, in pertinent part:

> If an investigation conducted pursuant to this Part reveals that any public servant or other person has violated any law within the jurisdiction of the Board of Ethics to his **economic advantage**, and after an adjudicatory hearing on the matter, the Ethics Adjudicatory Board may order the payment of penalties. **Recovery may include, in addition to an amount equal to such economic advantage, penalties not to exceed one half of the amount of the economic advantage**. ... (Emphasis added.)

The starting point in the interpretation of any statute is the language of the statute itself. ***M.J. Farms, Ltd. v. Exxon Mobil Corp.***, 07-2371 (La. 7/1/08), 998 So.2d 16, 27. Louisiana Revised Statutes 1:3 provides, in pertinent part, that "[w]ords and phrases shall be read with their context and shall be construed according to the common and approved usage of the language." Louisiana Revised Statutes 1:4 provides that "[w]hen the wording of a Section [of a statute] is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit." See also La. C.C. art. 9. However, "when the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law." La. C.C. art. 10. Moreover, "when the words of a law are ambiguous, their meaning must be sought by examining the context in which they occur and the text of the law as a whole.

La. C.C. art. 12; ***M.J. Farms, Ltd.***, 998 So.2d at 27.

Additionally, this court has held the provisions of the Ethics Code must be strictly construed. ***Louisiana Board of Ethics in re Great Southern Dredging, Inc.***, 15-0870 (La. App. 1st Cir. 5/27/16), 195 So.3d 631, 637-38, writ denied, 16-1208 (La. 10/17/16), 207 So.3d 1063; ***Ellis v. Louisiana Board of Ethics***, 14-0112 (La. App. 1st Cir. 12/30/14), 168 So.3d 714, 724, writ denied, 15-0208 (La. 4/17/15), 168 So.3d 400. Under the rule of lenity, where there is any doubt as to the interpretation of a criminal or civil penal statute, including the penalties imposed by those statutes, "any doubt in the construction of a penal statute must be resolved with lenity and in favor of the person subject to the fine or penalty." ***Ellis***, 168 So.3d at 724.

In its decision, the EAB concluded the phrase "economic advantage" was susceptible of more than one reasonable interpretation, and the rule of lenity required application of the interpretation most lenient to the appellants. In concluding the most lenient interpretation was to construe "economic advantage" to mean the price of the project consultant agreements, the EAB opined:

> Another possible interpretation is that "economic advantage" is the economic benefit achieved by [the appellants] due to their noncompliance with the Ethics Code. Some federal and state regulators have employed a complex analysis to calculate the economic benefit regulated entities obtained as a result of violating regulatory requirements. For example, the Louisiana Department of Natural Resources (DNR) considers factors such as the nature and gravity of the violation; the gross revenues generated by the violator; the degree of culpability, recalcitrance, defiance, or indifference to regulations or orders; the monetary benefits realized through noncompliance; and the costs of bringing and prosecuting an enforcement action, such as staff time, equipment use, hearing records, and expert assistance. Similarly, the federal Environmental Protection Agency (EPA) employs a "BEN" (short for "benefit") model in its efforts to recapture the economic benefit of noncompliance with environmental regulations.
>
> The evidence shows that Cartesian did not exist prior to the Cypress Trails and Villa Gardens projects. Through their violations of the Ethics Code, [the appellants] deprived another consultant of the opportunity to perform the work on those projects. Since its inception

> in November 2009, the volume of Cartesian's projects has exceeded $70 million. Utilization of a BEN-type or "economic benefit" analysis would result in a significantly greater penalty than what is sought by the BOE in this matter. Therefore, application of the rule of lenity supports the BOE's interpretation of "economic advantage" as the price of the project consultant agreements.

[Footnotes omitted.]

We agree with the EAB's conclusion that the phrase "economic advantage" is susceptible to more than one reasonable interpretation, which renders it ambiguous. See ***Yount v. Handshoe***, 14-919 (La. App. 5th Cir. 5/28/15), 171 So.3d 381, 386. According to Mr. Charles Theriot (appellants' expert in economics and forensic accounting), "economic advantage" is not a term used in the accounting field. Therefore, in considering the proper interpretation of this phrase, the words used must be considered according to their common usage, in the context of the Ethics Code as a whole, and in the matter best conforming to their purpose. La. R.S. 1:3; La. C.C. art. 10.

We reject as unreasonable appellants' contention that "economic advantage" should be construed to mean "net profit." To accept this contention would allow indirect expenses incurred by Cartesian in operating its business to be deducted in calculating the "economic advantage" appellants received as of result of their violations. By deducting such indirect expenses from the $1 million in payments Cartesian received Mr. Theriot arrived at the conclusion that Cartesian made a combined profit of only $168,000.00 from the two consultant agreements.[12] Included in the indirect expenses claimed by appellants were items such as the

[12] An examination of Mr. Theriot's calculations is informative. According to his report, in 2010 Cartesian received total income of $233,505.70 from the two consultant agreements and incurred direct expenses of only $3,746.54 attributable to those projects, yet sustained a loss of $30,444.54 after the deduction of indirect expenses claimed by appellants. In 2011, Mr. Theriot calculated Cartesian received total income from the two projects of $465,256.20, incurred direct expenses thereon of $3,165.66 and made a combined profit of $197,299.07 on the projects after the deduction of indirect expenses. In 2012, Mr. Theriot calculated Cartesian received total income from the two projects of $260,708.49, incurred no direct expenses thereon, yet made a combined profit of only $62,413.94 on the two projects after the deduction of indirect expenses.

salary paid by Cartesian to Mr. Gachassin, meals and entertainment, and political contributions made by Cartesian. The absurdity of allowing an Ethics Code violator to deduct such expenses is apparent and would have an effect akin to subsidizing the business operations Cartesian conducted in violation of the Ethics Code.

The word "advantage" is commonly used to mean "[a]ny benefit or gain." See **Black's Law Dictionary** (10th ed. 2014). Considering this meaning, together with the common usage of "economic," we find the EAB legally erred in concluding the "economic advantage" achieved by appellants was the total price of the two consultant agreements. While the EAB's interpretation of "economic advantage" is arguably reasonable, it is not the most lenient reasonable interpretation. Because of the penal nature of La. R.S. 42:1155(A), the phrase must be given the reasonable interpretation most favorable to appellants. ***Ellis***, 168 So.3d at 724. On that basis, we conclude the phrase "economic advantage" should be interpreted to mean the profits derived by appellants from the two consultant agreements, consisting of the price received by appellants minus the direct expenses attributable to those projects for which evidence is provided in the record.

Because the EAB erred in its legal interpretation of La. R.S. 42:1155(A), the $1.5 million penalty imposed on appellants must be vacated. Since the imposition of a penalty under this provision falls within the discretion of the EAB, we will remand this matter to allow the EAB to exercise its discretion in imposing a new penalty. Upon remand, the EAB is to reconsider the penalty to be imposed in light of the interpretation of "economic advantage" set forth in this opinion and the evidence in the record.[13]

[13] Because we have set aside the $1.5 million penalty imposed, we pretermit consideration of assignments of error numbers eight and nine, which raise issues related to this penalty.

ASSIGNMENT OF ERROR NUMBER SEVEN

Appellants contend the EAB erred in assessing $30,000.00 in fines on Mr. Gachassin for violating La. R.S. 42:1112. Specifically, appellants argue the EAB lacked authority to impose three $10,000.00 fines on Mr. Gachassin for violating three separate subparts of La. R.S. 42:1112. In making this argument, appellants emphasize that the violations found by the EAB of La. R.S. 42:1112(A), (B), and (D) all arose from "the *same* occurrence when Mr. Gachassin participated in votes before the LPTFA" on November 4, 2009. Under such circumstances, appellants argue the maximum fine authorized by La. R.S. 42:1153(A)[14] for the violations of La. R.S. 42:1112 was a single $10,000.00 fine. In response, the EAB argues the EAB did not err in assessing $30,000.00 in fines because Mr. Gachassin's committed multiple violations of La. R.S. 42:1112.

The EAB found Mr. Gachassin violated La. R.S. 42:1112(A), (B), and (D) by participating in transactions before the LPTFA in which he had substantial economic interests. His participation consisted of discussing, failing to recuse himself, and voting on the resolution to move forward with the Cypress Trails Project and the motion to recast the loan made to the LHA that was associated with the Villa Gardens Project. The EAB imposed a separate $10,000.00 fine for each violation.

Initially, we note the fine imposed on Mr. Gachassin for the violation of La. R.S. 42:1112(B) must be eliminated since we have previously concluded the record does not support this violation. Moreover, we find merit in appellants' argument that the EAB erred in imposing more than one fine for the other violations of La.

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[14] This provision provides, in pertinent part:

> Upon a determination that any elected official or other person has violated *any provision* of any law within the jurisdiction of the Board of Ethics ... the Ethics Adjudicatory Board may censure the elected official or person, or impose a fine of not more than ten thousand dollars, or both. (Emphasis added.)

R.S. 42:1112 considering that the same discussions and votes formed the basis for each of the two remaining violations of this provision. The EAB could have chosen to impose a penalty under either La. R.S. 42:1112(A) or (D) since Mr. Gachassin's conduct violated each of those subsections. However, given that the two violations arose from the same conduct [15], the imposition of a $10,000.00 fine for the violation of each subsection penalized Mr. Gachassin twice for the same conduct. Particularly in view of the rule of lenity, we do not believe this result was the intent of La. R.S. 42:1153. See ***Morris v. Cactus Drilling Company***, 07-1248 (La. App. 3d Cir. 4/30/089), 982 So.2d 957, 963-64 (the court reduced the penalties imposed in a workers' compensation case to eliminate duplicative penalties); see also ***Haws v. Professional Sewer Rehabilitation, Inc.***, 1998-2846 (La. App. 1st Cir. 2/18/00), 763 So.2d 683, 691-92. The fines imposed on Mr. Gachassin for violating La. R.S. 42:1112 will be reduced from $30,000.00 to $10,000.00.

CONCLUSION

For these reasons, we reverse the portion of the EAB decision finding Greg Gachassin violated La. R.S. 42:1112(B). Further, we amend the decision of the EAB to reduce the $30,000.00 in fines imposed on Greg Gachassin for violating La. R.S. 42:1112 to $10,000.00, and affirm the two $10,000.00 fines imposed on Mr. Gachassin for violating La. R.S. 42:1113(B) and 42:1121(A), respectively, as well as the $10,000.00 fine imposed on Cartesian for violating La. R.S. 42:1113(B). We also vacate the portion of the EAB decision imposing a penalty of $1.5 million on Greg

[15] In fact, it appears the EAB could have found two distinct acts by Mr. Gachassin that violated La. R.S. 42:1112, instead of finding that he violated multiple subsections of this statute through a single course of conduct. Even though the matters related to the Cypress Trails and the Villa Gardens Projects came before the LPTFA at the same meeting, each matter was separately discussed and voted on by the LPTFA, with each vote arguably constituting a separate and distinct act by Mr. Gachassin violating La. R.S. 42:1112. However, the EAB chose to find that Mr. Gachassin's actions in voting on the two matters at the same meeting constituted a single course of conduct.

Gachassin and Cartesian. This matter is remanded to the EAB for reconsideration of an appropriate penalty to be imposed under La. R.S. 42:1155 in light of the views expressed in this opinion. The judgment of the EAB is affirmed in all other respects. The costs of this appeal, totaling $6,086.00, are to be paid one-half by appellants, Greg Gachassin and Cartesian, and one-half by appellee, the Board of Ethics, in the amount of $3,043.00 each.[16]

AFFIRMED IN PART, AMENDED IN PART, REVERSED IN PART, VACATED IN PART, AND REMANDED WITH INSTRUCTIONS; MOTION TO ASSESS COSTS DENIED.

[16] We deny the motion filed by appellants to assess costs for allegedly unnecessary portions of the appellant record designated by appellee pursuant to La. C.C.P. art. 2128 and Uniform Rules–Courts of Appeal, Rule 3–1.1, choosing to exercise our discretion under La. C.C.P. art. 2164 to assess costs in a manner we deem to be equitable under the overall circumstances.