

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

G.S.G.,	:	
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Petitioner	:	
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	:	
v.	:	No. 1716 C.D. 2009
	:	Submitted: April 16, 2010
State Ethics Commission,	:	
	:	
Respondent	:	
	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE FLAHERTY

FILED: September 2, 2010

G.S.G. (Petitioner) petitions for review from the order and final adjudication of the State Ethics Commission (Commission) which determined that Petitioner violated Section 1104(a) of the Public Official and Employee Ethics Act (Act), 65 Pa. C.S. § 1104(a) when he failed to file Statements of Financial Interest (SFIs). We affirm. Additionally, we grant the Commission’s motion to strike Exhibit A attached to Petitioner’s brief because such document is not part of the certified record.

The procedural history of this case is as follows. Petitioner has been licensed to practice law in the Commonwealth of Pennsylvania since 1977. Since 2000, Petitioner has, at various times, served as Solicitor for

certain municipalities including three boroughs (Borough A, Borough B and Borough C) and a redevelopment authority (Redevelopment Authority) (collectively, Municipalities).

The Investigative Division of the Commission received a signed sworn complaint alleging violations of the Act by Petitioner. Thereafter, on April 15, 2005, the Investigation Division initiated a preliminary inquiry regarding the allegations pursuant to 65 Pa. C.S. § 1108(a). On June 14, 2005, the Investigation Division informed Petitioner that it was initiating a full investigation and provided an explanation of the specific sections of the Act alleged to have been violated. Specifically, the allegations stemmed from his service as solicitor for Borough A, his failure to file related SFIs and the backdating of subsequently filed forms.

In February, 2006 counsel for Petitioner negotiated a stipulation of findings and a “consent agreement” with the Investigative Division of the Commission, in which Petitioner would admit to violations concerning the SFIs, pay a penalty and rectify the filings. The proposed agreement, which was not signed by Petitioner, was filed with the Commission on February 9, 2006. On February 17, 2006, counsel for Petitioner contacted the Investigative Division, stating his desire to withdraw the agreement. The Investigative Division did not object to the withdrawal and forwarded the request to the Commission, three days before its scheduled hearing. On February 23, 2006, the Commission decided the matter. The Commission accepted the consent agreement and stipulations and, basing its order on them, concluded that Petitioner was subject to the filing requirements of 65 Pa. C.S. §1104. The Commission ordered Petitioner to pay \$500.00 to the

Commonwealth and to file complete and accurate SFIs, correcting alleged deficiencies, including the initial failure to timely file SFIs and the backdating of several filings.

Petitioner appealed to this court, raising numerous issues. This court entered an order vacating the Commission's order and remanding for further proceedings. G.S.G. v. State Ethics Commission, (Pa. Cmwlth., No. 724 C.D. 2006, filed April 9, 2007). Therein, we determined that the Commission failed to comply with the notice requirements of 65 Pa. C.S. §1107(5) before imposing a civil penalty on Petitioner, which is provided for in 65 Pa. C.S. §1109(f). This court stated:

The Commission failed to provide procedurally required detailed written notice to Petitioner, relying instead on the stipulation and findings in the tentative agreement, from which Petitioner withdrew before it was accepted by the Commission and became binding. Commission must comply with the detailed statutory written notice requirements in future proceedings.

For the above reasons, we vacate the order in question and remand to the Ethics Commission for further proceedings consistent with this opinion.

G.S.G., at 8.

Thereafter, on May 10, 2007, the Investigative Division of the Commission forwarded to Petitioner a detailed written notice letter pursuant to 65 Pa. C.S. §1107(5), detailing deficiencies in Petitioner's SFIs and detailing the possible penalties for failing to file or for filing deficient SFIs.

Prior to the Commission's hearing, the parties agreed upon factual stipulations, including stipulations as to testimony. After its hearing,

the Commission issued an order on August 4, 2009, concluding that Petitioner violated 65 Pa. C.S. §1104(a), by failing to timely file SFIs and directed Petitioner to file the SFIs.<sup>1</sup> This appeal followed.<sup>2</sup>

On appeal, Petitioner initially contends that the Commission has no authority to issue an order which contains a finding, conclusion or provision that Petitioner, or any other person, violated 65 Pa. C.S. §1104(a). Petitioner maintains that a finding or a conclusion of a violation of 65 Pa. C.S. §1104(a) is reserved to the exclusive province of a judge or jury following a criminal proceeding under 65 Pa. C.S. §1109(b). We disagree.

We observe that 65 Pa. C.S. § 1107 provides:

**§ 1107. Power and duties of commission**

In addition to other powers and duties prescribed by law, the commission shall:

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(13) Issue findings, reports and orders relating to investigations initiated pursuant

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<sup>1</sup> Specifically, the Commission determined that Petitioner, as Solicitor to Borough A violated Section 1104(a) of the Act when he failed to file SFIs for the 2001 calendar year by May 1, 2002, the 2002 calendar year by May 1, 2003 and the 2003 calendar year by May 1, 2004. As Solicitor for Redevelopment Authority, Petitioner violated Section 1104(a) of the Act when he failed to file SFIs for the 2001 calendar year by May 1, 2002, the 2002 calendar year by May 1, 2003 and the 2003 calendar year by May 1, 2004. Finally, as Solicitor for Borough B, the Commission concluded that Petitioner violated Section 1104(a) of the Act when he failed to file SFIs for the 2001 calendar year by May 1, 2002, the 2002 calendar year by May 1, 2003, the 2003 calendar year by May 1, 2004 and the 2004 calendar year by May 1, 2005. (Commission's order No. 1395-2, mailed August 4, 2009 at 1.)

<sup>2</sup> This court's review is limited to determining whether constitutional rights have been violated, whether an error of law was committed or whether the findings of fact are supported by substantial evidence. Bartholomew v. State Ethic Commission, 795 A.2d 1073 (Pa. Cmwlth. 2002).

to section 1108, which set forth the alleged violation, findings of fact and conclusions of law.

Here, the Commission did precisely what it was authorized to do. It conducted an investigation with respect to whether Petitioner violated 65 Pa. C.S. § 1104(a), issued its findings, and concluded that Petitioner violated the Act, in that he failed to file SFIs.

We note that the Act contains the possibility of criminal sanctions, 65 Pa. C.S. §1109, and the Commission may refer the matter for criminal prosecution, 65 Pa. C.S. §1108(a). Petitioner, however, was not subject to a criminal proceeding. Yocabet v. State Ethics Commission, 531 A.2d 536 (Pa. Cmwlth. 1987).

Next, Petitioner argues that he did not knowingly or intentionally fail to file SFIs for calendar years 2001-2004. Petitioner claims that he timely completed, executed and dated the SFIs before the statutory deadlines for each of the Municipalities, but unintentionally and inadvertently, failed to file the SFIs with the designated Municipalities prior to the statutory deadline of May 1, of each succeeding calendar year. As such, Petitioner claims there is no “mens rea” or “scienter” on his part to violate 65 Pa. C.S. §1104(a).

Specifically, Petitioner claims that there is nothing in the Act which requires that completed and signed SFIs be dated. As such, Petitioner argues that the dating, non-dating or erroneous dating of an SFI is irrelevant.

We observe that in accordance with 65 Pa. C.S. §1105(a):

The statement of financial interests filed pursuant to this chapter shall be on a form prescribed by the commission. All information requested on the statement shall be provided to the best of the

knowledge, information and belief of the person required to file and shall be signed under oath or equivalent affirmation.

The SFIs that Petitioner completed had both a signature line and a date line. Petitioner acknowledged in his testimony that a signature and date are required. Specifically, Petitioner stated: “[i]t’s way at the bottom and it says please sign the form and enter the current date.” (R.R. at 105b.)

Although, as Petitioner contends, there is no specific statute or regulation requiring that SFIs be dated, 65 Pa. C.S. §1105(a) requires that SFIs shall be on a form prescribed by the Commission and “[a]ll information requested on the statement shall be provided ....” Here, the SFIs provided lines for individuals who completed the form to both sign and date it. Further, we observe that the SFIs state thereon that the form is considered deficient if all blocks above are not completed. As such, failure to provide a date would deem the form incomplete.

Next, Petitioner claims that the Commission failed to properly comply with this court’s April 7, 2007 remand order. Petitioner points to the following language:

Commission has yet to provide proper notice to Petitioner, relying instead on the stipulations and findings in the tentative agreement, from which agreement Petitioner withdrew before it was accepted by the Commission and became binding. Commission must comply with the detailed statutory written notice requirements in future proceedings.

G.S.G. at 8.

According to Petitioner, following the issuance of this court’s April 7, 2007 order, the Commission sent Petitioner correspondence

detailing the alleged deficiencies in his SFIs. According to Petitioner, the deficiencies existed at the inception of the Commission's investigation, but have since been corrected by Petitioner. According to Petitioner, in spite of his full compliance, the Commission has continued to proceed with this matter, long after his compliance.

In the April 7, 2007 order, this court concluded that the Commission failed to comply with the notice requirements of 65 Pa. C.S. §1107(5) before imposing a civil penalty on Petitioner, which is provided for in 65 Pa. C.S. §1109(f). The notice provision of 65 Pa. C.S. §1107(5) provides:

Section 1107. Powers and duties of commission.

In addition to other powers and duties prescribed by law, the commission shall:

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(5) Inspect statements of financial interests which have been filed in order to ascertain whether any reporting person has failed to file such a statement or has filed a deficient statement. If, upon inspection, it is determined that a reporting person has failed to file a statement of financial interests or that any statement which has been filed fails to conform with the requirements of section 1105 (relating to statement of financial interests), then the commission shall, in writing, notify the person. Such notice shall state in detail the deficiency and the penalties for failure to file or for filing a deficient statement of financial interests.

Here, as acknowledged by Petitioner, “[f]ollowing the issuance of the Commonwealth Court Opinion and Order on April 9, 2007, and particularly on May 10, 2007, the State Ethic Commission sent correspondence to your Petitioner detailing the alleged deficiencies in Petitioner’s Statements of Financial Interests ....” (Petitioner’s brief at 23.)

Although Petitioner claims he has corrected his SFIs, the Commission is required to send a notice stating in “detail the deficiency and the penalties for failure to file or for filing a deficient statement of financial interests.” 65 Pa. C.S. §1107. Thus, the notice to Petitioner was proper, as the Commission informed him of the deficiencies and penalties for having failed to file SFIs.

Finally, Petitioner maintains that the Commission violated the confidentiality provisions of the Act when, in either late May or early June of 2008, in its annual published report, it referenced this court’s April 9, 2007 remand order and identified Petitioner by name.

We note that Petitioner did not raise this issue before the Commission but raised it for the first time in his brief to this court. Issues raised for the first time on appeal are waived. Pennsylvania Bankers Association v. Pennsylvania Department of Banking, 599 Pa. 496, 962 A.2d 609 (2008).

In accordance with the above, the decision of the Commission is affirmed.

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JIM FLAHERTY, Senior Judge



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Respondent	:	
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**ORDER**

Now, September 2, 2010, the order of the State Ethics Commission, in the above-captioned matter, is affirmed. The State Ethics Commission's motion to strike the document identified as Exhibit A attached to G.S.G.'s brief is granted.

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JIM FLAHERTY, Senior Judge