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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
CIVIL ACTION
NO. 2284CR02661

GARY HALEY

vs.

COMMONWEALTH OF MASSACHUSETTS, STATE ETHICS COMMISSION

**MEMORANDUM OF DECISION AND ORDER ON CROSS
MOTIONS FOR JUDGMENT ON THE PLEADINGS**

The plaintiff, Gary Haley (“Haley”) seeks judicial review, under G.L. c. 30A, § 14, of a final decision and order by the State Ethics Commission (the “Commission”). The Commission found that Haley, while serving as a municipal employee as a member of the Select Board for the Town of Aquinnah (“Town”) violated G.L. c 268A section 19 by participating in a matter in which he had a financial interest by installing conduits and seeking payment and also by approving a payment warrant to himself. The Commission imposed a civil penalty of \$5000 for each violation for a total civil penalty of \$10, 0000.

The case is currently before the court on Cross-Motions for Judgment on the Pleadings. For the following reasons, the plaintiff’s motion is **DENIED**, and the Commission’s decision is **AFFIRMED**.

BACKGROUND

On May 19, 2021, the Commission' issued an Order to Show Cause ("OTSC") alleging

that Haley violated three sections of the conflict of interest law, G.L. c. 268A. The OTSC alleged that Haley violated § 19 twice as noted above. The OTSC also alleged that Haley violated § 20, which prohibits a municipal employee to have a financial interest in a contract made by the municipality he serves unless an exemption applies and section 23(b)(4) for a presentation of a false claim for payment.

On October 20, 2022, the Commission issued its Decision, finding that Haley violated § 19 twice, but did not violate § 20 or §23(b)(4).

FACTS

Haley had been a member of the Town of Aquinnah Select Board for approximately six years and a master electrician for over forty years.

In 2018, The Town of Aquinnah Community Preservation Committee ("CPC") undertook a project to improve the aesthetics at Aquinnah Circle. The project included removing overhead wires (power lines and other utility lines) at Aquinnah Circle and burying them underground. This potential project had been discussed for many years prior to 2018. Funding of this project was provided by a 2016 Special Town Meeting Warrant, specifically Article 4. In Article 4, the CPC requested \$300,000 at a maximum annual cost of \$35,000 over a 10-year period. The Article stated that the Select Board would have to approve the uses and purposes of the funds. Haley approved the Town Meeting Warrant as a Select Board member, along with Select Board members Julianne Vanderhoop and James Newman, on November 1, 2016. The Article passed at Town Meeting on November 29, 2016.

The Aquinnah Circle involved digging a trench, installing electrical or "primary" conduits, laying sand over the electrical conduits, installing telecommunication conduits, then laying

another layer of sand and covering the trench with rock or pavement.

In the spring of 2018, Eversource contacted the CPC Chairman about starting its part of the project work. Town Administrator Jeffrey Madison (“Madison”) called Comcast and Verizon, told them that the trench was going to be opened, and asked them to install their conduits. Comcast and Verizon could not accommodate his request. Madison wanted to complete the project before Memorial Day which was the beginning of the summer tourist season. Madison told Haley that Comcast and Verizon could not do the work at Aquinnah Circle and that this was an emergency. Haley told Madison he would install the telecommunications conduits for the Town for free.

Eversource hired Paul Bettencourt (“Bettencourt”), a preferred contractor for Eversource, to install the electrical conduits underground at Aquinnah Circle. Bettencourt hired a subcontractor, Maciel & Sons, to dig the trench, remove material, and backfill afterwards.

Bettencourt and Haley disagreed about the extent of the work required. Haley expected he would need to perform his work for an hour a day or less for six or seven days. Additionally, based on jobs that Haley had done previously, he expected Eversource to lay the sand over the electrical conduits before he put in the telecommunications conduits. Bettencourt believed that he was not required to backfill between the conduits. Accordingly, at the beginning of the project, Bettencourt told Haley that Haley would need to put the sand in the trench himself.

When Haley learned that Eversource would not do what he expected them to do in covering the electrical conduits, the scope of the work increased significantly because it required him to backfill the trench with sand by hand. Haley then hired two workers whom he would pay to help with the work. Haley then determined that he and the two workers he hired should be paid for their work.

Haley completed the work and submitted an invoice to the Town for \$17,445 on June 11, 2018. The invoice indicates that work was performed for ten days, for a total of 78 hours. Haley charged the town \$120 an hour for his own work, for a total of \$9,360, and \$50 an hour for each of two laborers, for totals of \$3,900 each. The total for labor was \$17,160. There was also a charge of \$285 for materials supplied.

Haley presented his invoice to Madison who did not expect Haley to charge the Town to lay the conduit. Haley told Madison that he was submitting an invoice to the Town because the specifications of the job had changed and he had to fill the trench, requiring more time and additional labor.

Madison then submitted Haley's invoice to be paid in "the ordinary course of business" by way of an expense warrant that had to be approved by the Select Board.

Payment of Haley's invoice followed the normal course which included each member of the Select Board signing off on the payment. Once the Select Board approves the payment, the Town Accountant prints checks and the treasurer signs and mails them.

Town of Aquinnah Warrant TW18-29, which included Haley's invoice for \$17,455, was posted on June 20, 2018. Haley signed the warrant that included his invoice and received a check in the amount of \$17,455 about three weeks later.

DISCUSSION

A motion for judgment on the pleadings is governed by G.L. c. 30A and Superior Court Standing Order 1-96. The plaintiff bears the burden of proving that the agency decision is invalid. *Coggin v. Massachusetts Parole Bd.*, 42 Mass. App. Ct. 584, 587 (1997). This court may affirm, remand, set aside, or modify an agency decision if the court determines that a party's rights have been substantially prejudiced by an agency decision that is, for example, based on an error of law, arbitrary or capricious,

or unsupported by substantial evidence. G.L. c. 30A, § 14(7). Chapter 30A directs the court to give “due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.” *Id.*

Where the agency’s decision is supported by substantial evidence, defined as evidence that “a reasonable mind might accept as adequate to support a conclusion,” this Court cannot substitute its judgment for that of the agency, even if the Court would have made a different choice had the matter been before it de novo. *S. Worcester County Reg’l Voc. School Dist. v. Labor Relations Comm’n*, 386 Mass. 414, 419-420 (1982).

The Commission, as the State agency charged with administering G. L. c. 268A, is due “substantial deference in its reasonable interpretation of the statute.” *Comtois v. State Ethics Comm’n*, 102 Mass. App. Ct. 424 (2023). The duty of statutory interpretation is for the courts, but where an agency’s determination is reasonable, a court does not substitute its own judgment. *Flemings v. Contributory Ret. Appeal Bd.*, 431 Mass. 374,375 (2000). Therefore, Haley has the “formidable burden” of showing that the Commission’s interpretation of its own statute is not rational.” *Ten Local Citizen Group v. New England Wind, LLC*, 457 Mass. 222,228 (2010) .

As noted above, the Commission held that Haley did not violate section 20 and section 23(b)(4). Accordingly, review is limited to the findings of the two violations of section 19.

Violation of section 19 as the result of Haley participating as a Select Board member in the Town’s decision as to who would install the telecommunication conduits for the Town

The Commission's conclusion that Haley violated §19 by participating as a Select Board

member in a particular matter in which he knew he had a financial interest is supported by substantial evidence. Proof of five elements by a preponderance of the evidence is required to demonstrate that Haley violated § 19: (1) Haley was a municipal employee; and (2) participated as such an employee; (3) in a particular matter; (4) in which he had a financial interest; and (5) had knowledge of the financial interest. See *In the Matter of Paul Pathiakis*, 2004 SEC 1167, 1174. There is substantial evidence that all five elements were proven to the Commission.

There is no dispute that Haley was a municipal employee. Additionally, there is sufficient evidence proving that Haley participated in the decision about who would install the telecommunications conduits for the Town. Ultimately, he made the decision himself and volunteered to do the work for free.

The Commission found that Haley's decision to do the conduit work was made in his capacity as a Select Board member and with knowledge of his financial interest in his decision. Haley did not inform Madison that he would be charging for the job and then unilaterally went forward with the decision to install the conduits for the Town and then seek payment. Haley participated in a "particular matter." The definition of "particular matter" includes "decision."¹

Haley challenges the Commission's conclusion that he violated § 19, arguing that proof that he "effectively awarded himself a contract" was required since the OTSC alleged it. Haley contends that no § 19 violation could be found because the Commission, in considering a count about a different provision, concluded that there was no contract. There is no merit to this argument. Proof of the § 19 violation required that Haley had a financial interest in a particular

¹ "Particular matter" means "any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding" G.L. c. 268A, § 1(k).

matter, but did not require proof of a financial interest in a contract.

Haley also argues that he did not have sufficient notice of the § 19 violation. G.L. c. 30A, § 11 requires that "(p)arties shall have sufficient notice of the issues involved to afford them reasonable opportunity to prepare and present evidence and argument." "Due process requires that, in any proceeding to be accorded finality, notice must be given that is reasonably calculated to apprise an interested party of the proceeding and to afford him an opportunity to present his case." *Strasnickv. Board of Registration in Pharmacy*, 408 Mass. 654,660 (1990), However, "[d]ue process does not require that notices of administrative proceedings 'be drafted with the certainty of a criminal pleading,' as long as the notice is sufficient for persons whose rights may be affected to understand the substance and nature of the grounds upon which they are called to answer." *Langlitz v. Board of Registration of Chiropractors*, 396 Mass. 374,377 (1985).

Haley had adequate notice as the OTSC specifically read "as a Town selectman, Haley was a municipal employee of the Town." The OTSC went on to define the "particular matter" and specify the financial interest.

The Commission's finding that Haley violated § 19 on the grounds noted above was amply supported by substantial evidence.

Violation of section 19 as the result of his participation in the vote to approve the expense warrant that included his own invoice

The Commission also found that Haley violated § 19 by voting as a Select Board member to approve an expense warrant that included his own invoice. The Commission found that Haley, who had submitted his invoice only days before he was called upon to

perform his duty as a Select Board member (to approve) was "willfully blind" to the fact that his invoice was included in the expense warrant.

There was substantial evidence that had sufficient knowledge for a violation of §19 based on this conduct. The evidence shows that at the time, Haley knew that the CPC expenses relating to the beautification project at Aquinnah Circle had to be approved by the Select Board. Moreover, as a Select Board member, he had signed a warrant for Special Town Meeting that included an article to that effect which passed on November 29, 2016.²

Haley submitted his invoice shortly before he was called upon to approve it. He then went on to sign off on his own expense. The only way Haley could not know that his invoice was included in Warrant TW18-29 was to deliberately ignore a fact placed directly in front of him. Based on this evidence, the Commission properly charged Haley with the knowledge that he had a financial interest in signing the expense warrant.

Haley argues that he thought his invoice would be paid at Town Meeting and "they would vote yes or no whether they wanted to pay it or not." However, Haley acknowledged that, to be approved, charges from the CPC go "through the town administrator, through the treasurer, through the town accountant and then to us in the end" - in other words, by way of expense warrant.

The Commission did not make an error of law in applying the willful blindness doctrine to the knowledge requirement in §19. Nor was its application arbitrary and capricious. From the evidence that Haley signed the warrant while deliberately ignoring that his own invoice

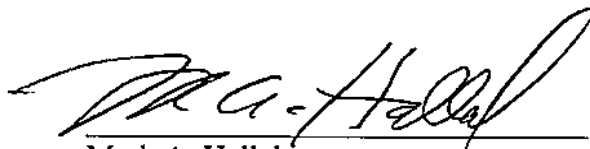
² In the Final Decision and Order of the Commission, the Commission writes "Haley was on notice, however, that payment from CPC funds for the beautification of Aquinnah because he has signed a Town Warrant that included an article to that effect in February of 2018." In fact, Haley signed the warrant in February of 2016 NOT 2018. This typo is insignificant as page 680 of the record indicates the correct date.

was included, the Commission properly inferred that Haley had knowledge of his financial interest in the matter.

The Commission's decision that Haley violated § 19 by approving the expense warrant that included his own invoice is well supported by the evidence in the record and will be affirmed.

ORDER

For the foregoing reasons, the plaintiff's Motion for Judgment on the Pleadings is **DENIED**, the Department's decision is **AFFIRMED**, and this appeal is **DISMISSED**.

A handwritten signature in black ink, appearing to read 'Mark A. Hallal', written over a horizontal line.

Mark A. Hallal
Justice of the Superior Court

February 5, 2024