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2018 JUL 24 PM 12:48

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 18-0007

IN THE MATTER

OF

THOMAS FLEMING

DISPOSITION AGREEMENT

The State Ethics Commission (“Commission”) and Thomas Fleming (“Fleming”) enter into this Disposition Agreement pursuant to Section 3 of the Commission’s *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On November 16, 2017, the Commission initiated a preliminary inquiry, pursuant to G.L. c. 268B, § 4(a), into possible violations of the conflict of interest law, G.L. c. 268A. On May 17, 2018, the Commission concluded its inquiry and found reasonable cause to believe that Fleming violated G.L. c. 268A, §§ 4 and 6. The Commission and Fleming now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Thomas Fleming, a resident of Dracut, Massachusetts, was an employee of the Northern Essex Community College (“NECC”) at all relevant times.
2. In late summer/early fall 2014, Fleming began work as a part-time salaried employee of All Sports Heroes Uniforms Sporting Goods and Promotions, Inc. (“All Sports”), a private uniform and sporting goods supply company.

3. NECC's President hired Fleming in the fall of 2014 as a consultant to assist in establishing its Police Academy.

4. The NECC Police Academy offered its first class in February 2015 and has subsequently run several 24-week training programs. Program participants are primarily "recruits" whose fees are paid by the municipal police departments in which they will serve ("sponsoring police departments"). Those fees are later repaid by the recruits.¹

5. In July 2015, Fleming began earning commissions on All Sports sales, including sales of physical training gear to NECC. The invoices for the sales identified him as an All Sports' sales representative. Fleming's commissions were 50% of the profit on those sales.²

6. The NECC President appointed Fleming NECC Police Academy Director on August 3, 2015, and he has held that position since that time.

Physical Training Gear

7. NECC orders and pays for physical training gear, books and equipment for all Police Academy recruits. The physical training gear includes items such as t-shirts, hats, pants, water bottles and patrol bags. NECC issues invoices to the sponsoring police departments, which itemize the charges for the physical training gear and the fees to be paid by them.

8. Prior to the start of the first NECC Police Academy class in February 2015, Fleming as an NECC consultant recommended that NECC purchase physical

¹ The fee schedule and reimbursement methodology are set forth in a line item of the annual state appropriation act. See 2014 Mass. St. c. 165, § 2, line item 8200-0222.

² Fleming continues to work for All Sports but stopped receiving commissions on the sales to NECC.

training gear from All Sports. On Fleming's recommendation, NECC purchased physical training gear from All Sports in January 2015.

9. On multiple occasions thereafter, from 2015 through 2017, Fleming, as an employee of All Sports and as the NECC Police Academy Director, presented All Sports' price quotes for the purchase of physical training gear to the NECC Police Academy.

10. Acting in this dual capacity with respect to the NECC Police Academy's purchases from All Sports was not in the proper discharge of Fleming's official duties as NECC Police Academy Director.

11. The NECC Purchasing Department used All Sports' quotes presented by Fleming to issue purchase orders.

12. On multiple occasions from 2015 through 2017, invoices issued by All Sports identified Fleming as All Sports' representative on physical training gear sales to the NECC Police Academy.

13. Fleming, as an All Sports employee, also filled the NECC Police Academy's physical training gear orders for delivery to the Academy.

14. On multiple occasions from 2015 through 2017, Fleming, as NECC Police Academy Director, approved payment of All Sports' invoices for physical training gear purchased by the Academy.

15. From July 2015 through 2017, Fleming earned a total of approximately \$5,000 in commissions on All Sports' sales of physical training gear to the NECC Police Academy.

16. Fleming knew that he and/or All Sports had financial interests in the sale of physical training gear to the NECC Police Academy.

Additional Facts

17. The Commission's Enforcement Division interviewed Fleming informally on June 28, 2017, and under oath on April 11, 2018.

18. By letter dated June 28, 2017, Fleming notified the President of NECC that, among other concerns, Fleming had been employed by All Sports since 2014 and may have had an indirect financial interest in contracts between All Sports and NECC.

19. Shortly after the June 2017 interview, Fleming tendered a check to NECC for \$2,200. Shortly after the April 2018 interview, he tendered a second check to NECC for \$752. Those payments represented the commissions Fleming believed he had earned on All Sports' sales of physical training gear to be used by recruits at the NECC Police Academy.

Conclusions of Law

§ 4(c)

20. NECC Police Academy is a state agency and, as the Academy's director, Fleming is a state employee³ as that term is defined in G.L. c. 268A, § 1(q).

21. All Sports is a business organization because it engages in the sale of goods. See *EC-COI-07-2*

22. Section 4(c) of G.L. c. 268A prohibits a state employee from, otherwise than in the proper discharge of his official duties, acting as agent or attorney for anyone

³ "State employee" is defined, in part, as:

[A] person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the general court and executive council.

in connection with any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest.

23. The decision to order physical training gear from All Sports was a particular matter in which the NECC Police Academy, a state agency, was a party and had a direct and substantial interest.

24. Fleming, whom All Sports identified as its representative on invoices to the NECC Police Academy, acted as agent for All Sports in connection with the decision to order physical training gear by providing quotes and filling the NECC Police Academy orders. These acts of agency were not performed in the proper discharge of Fleming's official duties as NECC Police Academy Director. By so acting, Fleming repeatedly violated § 4(c).

§ 6

25. Except as otherwise permitted,⁴ § 6 of G.L. c. 268A prohibits a state employee from participating⁵ as such an employee in a particular matter⁶ in which, to his knowledge, he or a business organization in which he is serving as an employee, has a financial interest.⁷

⁴ None of the exemptions applies.

⁵ "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

⁶ "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, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

⁷ "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population. *See Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. *See EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

Initial Recommendation

26. While employed by NECC in a consultant capacity, Fleming was a state employee.

27. The decision to order physical training gear for the February 2015 NECC Police Academy class was a particular matter.

28. Fleming participated in that particular matter as a state employee by, as an NECC consultant, recommending the NECC Police Academy purchase physical training gear from All Sports.

29. Fleming knew at the time of the recommendation that the business organization in which he was serving as an employee, All Sports, had a financial interest in its sale of physical training gear to the NECC Police Academy.

30. By, as an NECC consultant, recommending the purchase of physical training gear from All Sports, Fleming participated as a state employee in a particular matter in which, to his knowledge, his private employer had a financial interest. By doing so, Fleming violated § 6.

Continued Selection of All Sports

31. From July 2015 through 2017, each decision to select All Sports to provide physical training gear for the NECC Police Academy was a particular matter.

32. Fleming participated in those particular matters as a consultant and/or NECC Police Academy Director by, on multiple occasions, deciding to forward All Sports' quotes to the NECC Purchasing Department, which the NECC Purchasing Department used to issue purchase orders to All Sports.

33. From July 2015 through 2017, Fleming had a financial interest in the selection of All Sports because he earned commissions on the sales of physical training gear to NECC.

34. Fleming's private employer, All Sports, also had a financial interest in the sale of physical training gear to the NECC Police Academy.

35. Fleming knew of his financial interest and that of All Sports each time he decided to forward quotes to the NECC Police Academy for the purchase of physical training gear.

36. By, as NECC Police Academy Director, on multiple occasions deciding to forward quotes from All Sports to the NECC Police Academy for physical training gear, Fleming repeatedly participated as a state employee in particular matters in which, to his knowledge, he and his private employer had financial interests. By doing so, Fleming repeatedly violated § 6.

Approval of Payments to All Sports

37. From 2015 through 2017, each decision to approve payment of All Sports' invoices for physical training gear was a particular matter.

38. Fleming participated in such particular matters as NECC Police Academy Director by on multiple occasions approving payments to All Sports.

39. Fleming had a financial interest in approving payment of All Sports' invoices because he earned commissions on the sales of physical training gear to NECC.

40. All Sports also had a financial interest in Fleming's approval of its invoices for payment.

41. Fleming knew of his financial interest and that of All Sports each time he approved payments of All Sports' invoices for physical training gear.

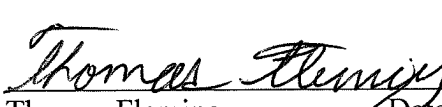

42. By, as NECC Police Academy Director, on multiple occasions approving payment of All Sports invoices for physical training gear used by recruits at the NECC Police Academy, Fleming repeatedly participated as a state employee in particular matters in which, to his knowledge, he and his private employer had financial interests. By doing so, Fleming repeatedly violated § 6.

In view of the foregoing violations of G.L. c. 268A by Fleming, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the following terms and conditions agreed to by Fleming:

- (1) that Thomas Fleming pay to the Commonwealth of Massachusetts, with such payment to be delivered to the Commission, the sum of \$5,000 as a civil penalty for violating G.L. c. 268A, §§ 4 and 6; and
- (2) that Thomas Fleming waive all rights to contest, in this or any other administrative or judicial proceeding to which the Commission is or may be a party, the findings of fact, conclusions of law and terms and conditions contained in this Agreement.

By signing below, Thomas Fleming acknowledges that he has personally read this Disposition Agreement, that it is a public document, and that he agrees to all terms and conditions therein.

STATE ETHICS COMMISSION

	
Thomas Fleming	David A. Wilson
<u>7/24/18</u> Date	<u>8/6/18</u> Date
	Executive Director