

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

SUSAN HALING, in her capacity as)
EXECUTIVE INSPECTOR GENERAL for)
AGENCIES OF THE GOVERNOR,)
State of Illinois,)
)
Petitioner,)
v.) No. 20-EEC-001
)
MICHAEL WONS,)
)
Respondent.)

DECISION

This cause is before the Commission upon Petitioner’s Unopposed Motion for Summary Judgment. The parties of record in this matter and their addresses are:

Petitioner, Susan Haling, in her official capacity as the Executive Inspector General for the Agencies of the Governor (69 West Washington Street, Suite 3400, Chicago, Illinois 60602), who is represented by Assistant Attorneys General Francis Neil MacDonald (fmacdonald@atg.state.il.us) and Jonathan Sheffield on behalf of Attorney General Kwame Raoul (Office of the Illinois Attorney General, 100 W. Randolph Street, 11th Floor, Chicago, Illinois 60601;).

Respondent, Michael K. Wons, represented by Stephanie Stewart of Robinson, Stewart, Montgomery & Doppke (321 S. Plymouth Ct., 14th Floor, Chicago, IL 60604, sstewart@rsmldlaw.com)

On the basis of the record, including the parties’ joint stipulations of fact that were filed with the Unopposed Motion for Summary Judgment, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Petitioner Susan M. Haling is the Executive Inspector General for the Agencies of the Illinois Governor, duly appointed by the Governor of the State of Illinois pursuant to 5 ILCS 430/20-10.
2. Respondent Michael Wons was an employee of an agency of the Executive Branch of the State of Illinois that was under the jurisdiction of the Governor from August 17, 2015, through January 15, 2018.
3. Section 5-45(a) of the State Officials and Employees Ethics Act (“Ethics Act”) (5 ILCS 430/5-45(a)) is a revolving door provision that prohibits a former State employee from knowingly accepting employment or receiving compensation or fees for services from an entity

within one year immediately after termination of State employment if, during the year immediately preceding termination of State employment, the employee participated personally and substantially in the award of State contracts to the entity with a cumulative value of \$25,000 or more.

4. At all times relevant to the allegations in Petitioner's Complaint, Respondent was classified as a "c-list" employee, *i.e.*, a State employee who, as provided by section 5-45(c) of Ethics Act (5 ILCS 430/5-45(c)), "by the nature of [his] duties, may have the authority to participate personally and substantially in the award of State contracts."

5. The Ethics Act further provides that any c-list employee who is offered non-State employment, whether during employment or within a period of one year immediately after his or her departure from State employment, "shall, prior to accepting such non-State employment," notify the Office of Executive Inspector General ("OEIG") of the offer in order to permit the OEIG to make a determination as to whether the employee is restricted from accepting the offer by the Ethics Act's revolving door provisions. *Id.*, §5-45(f); 2 Ill. Admin. Code § 1620.610(g).

6. As a part of his State employment, Respondent participated in Ethics Act orientation on or about August 17, 2015, and thereafter in annual ethics training on May 23, 2016, and April 3, 2017. Each training addressed the Ethics Act's revolving door provisions and included information regarding a departing employee's duty to report to OEIG a prospective job offer before acceptance.

7. In addition, on or about May 2, 2017, Respondent requested and received from the Department of Information and Technology ("DoIT") General Counsel Michael Basil a packet of information about the revolving door process. The packet included multiple links to OEIG's website, revolving door general instructions, instructions to current and former State employees, and guidance on how to submit revolving door forms online to OEIG. Respondent, therefore, had knowledge, by no later than May 2, 2017, that he (a) was a c-list employee, and (b) was subject to reporting obligations placed on him by Section 5-45(f) of the Ethics Act.

8. On January 25, 2016, DoIT was created as a new State agency by Governor Bruce Rauner's Executive Order 1. DoIT was established for the purpose of consolidating into a single agency the information technology functions and services that previously had been assigned to numerous individual agencies. DoIT became operational on July 1, 2016.

9. Respondent began his State employment on August 17, 2015. In July 2016, Respondent was reassigned to DoIT and granted authority to execute and to approve the award of contracts and change orders on behalf of DoIT and authority to supervise others with such authority. He also served on a committee that participated substantially in the award of contracts and change orders.

10. The Illinois Student Assistance Commission ("ISAC"), a State agency, entered into and renewed contracts with a private, Kansas-based technology company called PayIt, which was involved in the development of a mobile device application ("mobile app") for payment of state and local government taxes, utilities, citations, professional licensing, and related governmental services or functions. These contracts were in effect from at least August 19, 2016, and were renewed and extended until at least December 31, 2018.

11. As part of its effort to facilitate the State's delivery of services and programs to Illinois residents, DoIT entered into and periodically renewed certain intergovernmental agreements and statements of work with ISAC, pursuant to which ISAC was to provide DoIT with information technology resources. Under one such statement of work (the "DoIT statement of work"), signed and dated by Respondent on February 2, 2017, Respondent was identified as the "business owner" and main point of contact at DoIT for purposes of the procurement, development, and roll-out of PayIt's mobile app for the Illinois First Technology services program.

12. Among the mobile app development contracts between ISAC and PayIt was one into which they entered on February 8, 2017, for \$58,000 to carry out the DoIT statement of work.

13. On November 7, 2017, PayIt extended to Respondent an offer of employment as its Chief Client Officer.

14. On November 17, 2017, a global risk management and compliance firm not affiliated with PayIt ("Global"), offered Respondent an employment opportunity. On November 20, 2017, Respondent submitted a Form RD-101 seeking OEIG review of the Global offer, in connection with which, Respondent knowingly acknowledged that, as DoIT's Chief Technology Officer, he held and exercised the authority to execute or approve the award of DoIT contracts and change orders, supervised others with such authority, and was a member of committees or work groups that participated in the award of DoIT contracts or change orders. Furthermore, Respondent disclosed specifically in the same Form RD-101 that he had reviewed statements of work for vendors including "IBM, Microsoft, HP, Presidio, and PayIt." Respondent's Ethics Officer confirmed these representations, and the OEIG determined on November 30, 2017, that Respondent was not restricted from accepting the Global offer.

15. Respondent notified DoIT on December 4, 2017, that he would be resigning from State employment, effective January 15, 2018. Respondent's last day of employment with DoIT was January 15, 2018, after which he worked for Global until July 17, 2018, when his subsequent resignation from that organization became effective.

16. In an email string dated between December 11 and 12, 2017, Respondent wrote to PayIt to inform them that he planned to work for Global, but he also made the following proposal:

For the PayIt opportunity I am saddened that we are delayed in working together but need to follow the process that the state has. I would like to suggest that you consider adding me as an advisor to the company so that we can continue to work together as we build (hopefully) to me joining in a full time capacity later in 2018.

The next day, Respondent wrote back to PayIt and informed them, "I am good to go on an Advisory Board Member role for PayIt."

17. On January 14, 2018, in furtherance of his proposal to work as a PayIt advisor or consultant, Respondent signed an agreement with PayIt (the "January Advisory Services Agreement") that provided, in part, as follows:

[Respondent] shall provide consulting services in the area of public affairs and government relations and such other services as [PayIt, LLC] and [Respondent] may mutually agree . . .

The term of this Agreement shall be for a period of four (4) years commencing on January 16, 2018. . . .

[PayIt, LLC] agrees to issue 20,000 Class B Member Units to [Respondent], dated as of the execution of this Agreement. Such Class B Units shall be issued to [Respondent] pursuant to the terms and conditions of the Amended and Restated Operating Agreement of the Organization and a subscription agreement . . . substantially similar to the Draft Subscription Agreement provided as an exhibit to this agreement.

A Subscription Agreement attached thereto, dated January 12, 2018, further explained in §1(b) that the Class B Member Units referenced above would vest as follows:

- (i) 25% of the Class B Member Units issued hereunder shall vest one (1) year after the date of this Subscription Agreement; and
- (ii) thereafter, the remaining 75% of the Class B Member Units issued hereunder shall vest equally each succeeding month for thirty six (36) months thereafter at a rate of 2.083% vested per month. . . .

Section 1(d) of the Subscription Agreement further provided:

Notwithstanding the provisions of Section 1(b), the Board of Managers shall have the right, at its discretion, to accelerate the vesting schedule set forth herein and deem any amount of the Class B Member Units issued to [Respondent] hereunder to be fully vested.

On January 14, 2019, the strike price of the 5,000 vested Class B Member Units was \$1.05 per unit (\$5,250.00, if exercised), with an additional 2.083% of the balance of the remaining 15,000 Class B Member Units vesting per month, for the remaining 36 months (strike price \$15,750.00, if exercised).

18. On May 23, 2018, PayIt submitted to Respondent an offer of employment (the “May 2018 Letter Offer”), inviting Respondent to join PayIt as its Chief Client Officer, under the following terms and conditions:

- a. an annual base salary of \$240,000.00, payable bi-monthly at a rate of \$9,230.77 per pay period. Respondent received from PayIt \$118,153.75 in compensation or fees for the 13 pay periods from July 18, 2018, through January 14, 2019; and
- b. participation in a fully paid medical/dental/health plan for Respondent and his family. PayIt paid premiums of \$3,610.65 for coverage of Wons and his family during the period between July 18, 2018, and January 14, 2019.

19. As part of its May 2018 Letter Offer, PayIt also offered to Respondent (an offer later amended, as explained in paragraphs 20 and 21), the opportunity to

- a. participate in a bonus incentive plan, under which Respondent could receive a one-time incentive bonus of up to \$100,000.00; and
- b. participate in a PayIt equity plan, consisting of an award of 470,000 Class B Member Units, with a strike price of \$1.05, and the right to purchase such units on the following schedule: 25% of the Member Units (117,500 units (strike price \$122,850.00, if exercised)) to vest one year after the date of his employment by PayIt, with an additional 2.083% of the balance of the remaining 352,500 units vesting per month thereafter, for the remaining 36 months (strike price \$370,125.00, if exercised).

20. According to Respondent, his participation in the PayIt equity plan had not been approved because PayIt's Board anticipated the possibility of a merger with another entity by December 2018. Instead, PayIt offered to make him "whole" by awarding him a one-time cash bonus "equivalent to the value of 117,000 Class B Units less \$1.05/unit" (strike price \$122,850.00, if exercised) in the event of a subsequent sale of PayIt to another entity prior to July 18, 2019. If, however, PayIt were sold on or after July 18, 2019, the bonus would be "equivalent to the value of 470,000 Class B Units less \$1.05 per unit" (strike price \$493,500.00, if exercised). The PayIt Sale Bonus Plan, dated October 9, 2018, "replaces the 'Equity Plan' section of Wons' employment offer letter," and is intended to "provide an economic outcome to Wons that is materially equivalent to that provided in the Equity Plan Section."

21. Respondent became a PayIt consultant or advisor no later than January 14, 2018, and became a PayIt employee by no later than July 18, 2018. At no time prior to his departure from State employment or at any time thereafter did Respondent notify his Ethics Officer, DoIT's General Counsel; or the OEIG of PayIt's offer to become a PayIt consultant, advisor, or employee; nor did Respondent notify the OEIG of his acceptance of those offers.

22. Petitioner filed the present complaint of violations of the Ethics Act on July 12, 2019. According to the Affidavit of Service, Respondent was served with the complaint personally on July 19, 2019. Respondent filed, and served Petitioner with, an Answer on August 30, 2019, and the Commission determined the complaint was sufficient to proceed on October 16, 2019.

CONCLUSIONS OF LAW

23. As a State employee, Respondent was subject to the provisions of the State Officials and Employees Ethics Act (5 ILCS 430) and the jurisdictions of Petitioner and the Executive Ethics Commission with respect to matters arising under that Act. 5 ILCS 430/1-5, 20-10(c), and 20-5(d).

24. Respondent's roles of signatory to the \$58,000 statement of work and of "business owner" and main point of contact at DoIT for purposes of the procurement, development, and roll-out of PayIt's mobile app for the Illinois First technology services program constituted personal and substantial participation in the award to PayIt of a State contract with a value in excess of \$25,000 during the year immediately preceding termination of Respondent's State employment for purposes of section 5-45(a) of the Ethics Act (5 ILCS 430/5-45(a)).

25. Respondent knowingly accepted two separate offers of employment, compensation, or fees for services from PayIt – a restricted employer – during the one-year period immediately following his departure from State employment in violation of section 5-45(a) of the Ethics Act. *Ibid.*

26. Respondent did not notify Petitioner of PayIt’s offers of employment to him despite being aware of his obligation to do so, thereby twice violating section 5-45(f) of the Ethics Act. *Id.* at §5-45(f).

27. The Commission is authorized to levy an administrative fine of up to \$5,000 against any person who violates any provision of the Ethics Act, including sections 5-45(a) and (f). 5 ILCS 430/50-5(e). Separately, the Commission may also levy an administrative fine “of up to 3 times the total annual compensation that would have been obtained in violation of Section 5-45.” *Id.* §50-5(a-1).

ANALYSIS

Motions that are potentially dispositive of the case must be determined by the Commission. 2 Ill. Adm. Code 1620.510(d). Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under Section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005). *Bloom Tp. High School v. Ill. Commerce Comm’n*, 309 Ill. App. 3d 163, 177, 242 Ill. Dec. 892, 903, 722 N.E.2d 676, 687 (1st Dist. 1999); *Cano v. Vill. of Dolton*, 250 Ill. App. 3d 130, 138, 189 Ill. Dec. 883, 889, 620 N.E.2d 1200, 1206 (1st Dist. 1993). Summary judgment is appropriate only where “the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c).

Where, as here, the material facts are undisputed, a triable issue precluding summary judgment may yet exist where reasonable persons might draw different inferences from the undisputed facts. Summary judgment should be allowed only when the right of the moving party is clear and free from doubt. *Adams v. N. Ill. Gas Co.*, 211 Ill.2d 32, 43, 284 Ill. Dec. 302, 310, 809 N.E.2d 1248, 1256 (2004).

Given the extent of the stipulations, there appear to be no reasonable inferences to be drawn other than that Respondent violated sections 5-45(a) and (f) of the Ethics Act and no triable issue precluding summary judgment. Moreover, Respondent does not object to the request in Petitioner’s Unopposed Motion for Summary Judgment that the Commission so determine. Therefore, the Commission grants the motion and finds that Respondent has twice violated sections 5-45(a) and (f) of the Ethics Act.

While acknowledging that their recommendation is not binding, the parties have recommended through their joint stipulations and Petitioner’s Unopposed Motion for Summary Judgment, a fine of \$193,689.60, representing the sum of various amounts related to contracted compensation as follows:

\$10,500.00, corresponding to par. 17 above;
\$118,153.95, corresponding to par. 18(a) above;
\$61,425.00, corresponding to pars. 19(b) and 20, above;
\$3,610.65, corresponding to par. 18(b) above.

The Parties recommend further that the total amount be paid in accordance with the schedule, and on the conditions, recommended in pars. 21 – 24 of the joint stipulations.

Commission rules establish 14 aggravating and mitigating factors the Commission may consider in assessing an appropriate fine. 2 Ill. Adm. Code 1620.530(b). There is no evidence in the record with respect to some of the factors, but it is clear that Respondent was in a position of substantial authority and was aware of his dealings with respect to PayIt and of his duty to seek a determination from the EIG with respect to the employment offer. He also stood to gain substantial financial advantage by avoiding an adverse determination. On the other hand, the value of the contract in which he participated was small relative to the amount of compensation he ultimately received, his experience in State employment was not long, and his settlement well before hearing showed a level of cooperation and helped to conserve the use of resources, money, and time to the State. Thus, it appears that a substantial penalty is warranted, but not necessarily the maximum penalties. The parties assert that the recommended fine is not only within the range of penalties allowed under sections 50-5(a-1) and (e) of the Ethics Act (5 ILCS 430/50-5(a-1) and (e)), but is fair, equitable, and consistent with the nature of the violative conduct. The Commission agrees.

WHEREFORE, the Executive Ethics Commission levies an administrative fine in the amount of \$193,689.60, payable in no more than 18 monthly installments, the first of which shall be at least \$10,760.54 and be due by the close of business on July 1, 2020, with successive payments of at least the same amount due no later than the first business day of each successive month thereafter until paid in full, and subject to the other terms and conditions set forth in paragraphs 21 through 24 of the Parties' Stipulations.

This is a final decision. Commission rules (2 Ill. Adm. Code 1620) do not provide for reconsideration.

SO ORDERED.

ENTERED: June 22 2020

This Decision is signed in counterparts. The "entered" date is the date of the last required signature. See 2 Ill. Adm. Code 1620.530(d).

Commissioner

Date

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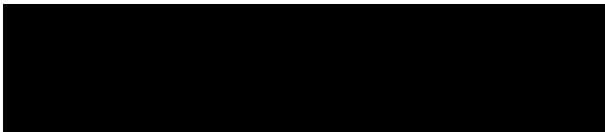
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SO ORDERED.

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(Commissioner

6-17-2020

Date

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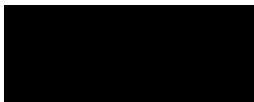
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SO ORDERED.

ENTERED: June 22, 2020

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Commissioner

June 15, 2020

Date

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This is a final decision. Commission rules (2 Ill. Adm. Code 1620) do not provide for reconsideration.

SO ORDERED.

ENTERED: June 22, 2020

This Decision is signed in counterparts. The "entered" date is the date of the last required signature. See 2 Ill. Adm. Code 1620.530(d).


Commissioner

6-15-20
Date

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SO ORDERED.

ENTERED: June 22, 2020

This Decision is signed in counterparts. The "entered" date is the date of the last required signature. See 2 Ill. Adm. Code 1620.530(d).

[REDACTED SIGNATURE]

Commissioner

June 16, 2020

Date

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Commissioner

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Date