

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: DANIEL J. WASMER,)
)
) No. 20-EEC-005
) Appeal of OEIG
) Revolving Door
) Determination

DECISION

This cause is before the Executive Ethics Commission (“Commission”) on appeal by Daniel J. Wasmer (“Appellant”) from a determination by the Office of the Executive Inspector General for Agencies of the Illinois Governor (“OEIG”). Appellant appears *pro se*. The OEIG is represented by Assistant Attorney General Neil MacDonald on behalf of the Office of the Attorney General.

FINDINGS OF FACT

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. The record consists of (i) Appellant’s appeal, dated April 3 and 4, 2020, of an OEIG Revolving Door “Restricted” determination that Appellant could not take employment with The Thresholds, Inc.; (ii) OEIG’s revolving door determination and file; (iii) Appellant’s April 10, 2020, filing of additional information in support of his appeal; (iv) the April 11, 2020, Response of Office of the Attorney General in Opposition to the appeal (Objection); (v) Appellant’s April 13, 2020, brief in support of his appeal; and (vi) public comment received by the Commission. The Commission also takes notice of certain facts as indicated below.

Based upon this record, the Commission makes the following findings of fact:

1. From February 1, 2000 until March 31, 2020, the last date of his State service before retirement, Appellant served as Deputy Director of Regional Administration for the Division of Mental Health, a subdivision of the Illinois Department of Human Services (“Department”). Before February 1, 2004, he did so as a contract employee; thereafter he was a regular State employee.
2. According to Appellant’s Ethics Officer’s Revolving Door Statement (RD-102), the Department identified Appellant’s position as one that may, by the nature of its duties, have the authority to participate personally and substantially in the award of contracts, grants, or change orders or in licensing and regulatory decisions under 5 ILCS 430/5-45(c).
3. The Commission takes notice that Appellant’s position has, according to the Revolving Door Tracking List for agencies under the Governor (<https://cmssecure.illinois.gov/RevolvingDoor/>), been on the “C’ List” due to its

authority to participate personally and substantially in the award of State contracts since at least December of 2014.

4. In his Revolving Door Notification of Offer (RD-101), Appellant acknowledged that, in the year prior to termination of his State employment, (i) he and his subordinates had the authority to execute, or approve the award of, contracts, grants or change orders and (ii) he participated in, or was a member of a committee or work group that participated in, the awarding of State contracts, grants, or change orders.
5. According to the position description for Appellant's position, the Deputy Director of Regional Administration is, *inter alia*, to:
 - Plan and direct, through subordinate supervisory personnel, mental health services, both purchased from community providers and operated by the State;
 - Establish and maintain relationships with providers to enhance continuity of care and services for patients with mental illness;
 - Develop, direct and implement plans, policies, and procedures to access the priorities and service needs for the regions;
 - Plan and develop system enhancements and initiatives;
 - Review data analytics specifically in regard to access to services, gaps in care, and quality of care as it relates to patients with mental illness receiving services from providers.
6. In November of 2018, the Department published a notice of funding opportunity ("NOFO"), pursuant to which the Department began implementation of a new Front Door Diversion Program ("Program") by competitively awarding grants to each of six successful grant applicants. The grants were intended to help achieve compliance with a requirement of a consent decree entered in *Williams v. Pritzker*, No. 05-C-4673 (N. Dist. Ill.) ("Consent Decree") that persons being referred to a nursing home be offered a community-based alternative.
7. One of the six grants was awarded to The Thresholds, Inc. ("Thresholds"), a not-for-profit corporation for which Appellant had worked for approximately 22 years before he became a State employee.
8. As project manager for the Program, Michael Pelletier, who was a contract employee reporting directly to Appellant, participated in drafting the NOFO and was charged with empaneling a review team and scoring grant applications.
9. By August of 2019, the Department had hired Ali Johnson to fill the new post of Olmstead Compliance Officer. Ms. Johnson reported directly to the Secretary of the Department and was responsible for oversight of consent decree operations.
10. By August, it had also become apparent that the Program was not achieving the outcomes expected for purposes of the Consent Decree. Although Appellant remained as Mr. Pelletier's official supervisor, Mr. Pelletier began working with Ms. Johnson with respect

to Consent Decree activities, including communications with grantees and other State agencies and site visits with the court monitor.

11. In November 2019 it was decided that the Program contracts would need to be modified, leading to the development of recommended changes. On December 17, 2019, the Consent Decree court monitor met with attorneys for the plaintiffs and the Department along with various members of upper level Department management to discuss the need to make changes to achieve the goals of the Consent Decree (“Small Parties Meeting”). Appellant attended that meeting for the purpose of providing a historical overview of the Program from inception as a pilot program in 2017 through October 2019, including data regarding five months’ performance results under the six grant agreements.
12. Ms. Johnson presented information at the Small Parties Meeting regarding reasons that goals were not being achieved and presented the State’s proposals for modifications to the Program, including programmatic and funding changes to overcome the identified obstacles. As a result of discussions with the plaintiffs and the court monitor, the parties agreed to make adjustments to the proposals, and the Department was to implement the adjusted modifications on a “fast-track” basis.
13. Due to the nature of the changes and the increased funding required to implement them, the modifications would ordinarily have required “renewal” of Program contracts, including the publication of a new NOFO. Due to time constraints, however, it was determined that certain necessary contract modifications could be made as change orders to the existing contracts without such publication under an exception in the Illinois Grant Accountability and Transparency Act (30 ILCS 708).
14. Generally speaking, before the Department’s fiscal officers could or would initiate such change orders, the Program Manager – Mr. Pelletier, in this case – needed to perform due diligence as to the changes needed and prepare an internal decision memorandum to summarize and justify the changes to be made in a contract amendment.
15. Mr. Pelletier and Appellant discussed with each of the six grantees the changes that would need to be made, budgetarily and contractual, in order to achieve the modifications necessitated by the agreement between the Consent Decree parties. According to Mr. Pelletier, grantees were told they could add more staffing to achieve Program goals, and they submitted new budgets based upon those representations. Mr. Pelletier and Appellant made no significant changes to the proposed budgets because, Mr. Pelletier continued, the need was so great that they were willing to accept everything the grantees could provide.
16. Mr. Pelletier prepared draft decision memoranda to which Appellant added information regarding prior results and future expectations. Appellant also reviewed and edited the draft memoranda. In his review, Appellant made sure that changes being requested from the grantees were consistent with what the court monitor requested. Appellant was responsible for the first level of review and for forwarding the memorandum for various fiscal and upper level approvals.

17. As to the Program modifications, on February 3, 2020, Appellant and Mr. Pelletier signed the Internal Decision Memorandum, setting forth the explanation and recommendation for the changes to be made to the contracts of all six Program grantees, including Thresholds. Among the changes was one to add staff positions for, in part, “increasing outreach to a larger number of community locations where at-risk people can be identified and referred.” Thresholds was to have the amount of \$199,328 added to its Program contract amount for FY20, bringing the total amount of the contract to \$899,000.
18. After additional approvals were obtained, specific contract changes were negotiated. Thresholds signed the amendment to Community Services Agreement # 45CYB04021 on February 13, and the Department completed execution on February 14.
19. In the meantime, Appellant, according to the investigative report of his interview, “heard through the grapevine” that an employee of Thresholds left his position. Appellant then called Thresholds and submitted an application and resume. He then formally interviewed for the position and, at some point before the end of February, received an offer of employment.
20. Appellant would like to accept an offer of employment from Thresholds for the position of Program Director, an on-site management position for a 44-unit apartment building for homeless people with co-occurring severe mental illness and substance use disorders at an annual salary of \$87,500. His duties would include supervision of two community outreach teams.
21. Appellant notified the OEIG of the Thresholds employment offer on March 11, 2020, indicating he would begin the new employment upon approval. The OEIG received the Ethics Officer’s Revolving Door Statement (RD-102) on March 16, 2020.
22. On March 26, 2020, the OEIG determined that Appellant was restricted from accepting the employment opportunity with Thresholds due to his personal and substantial involvement in the award of a State contract change order to Thresholds in February of 2020.
23. On April 3 Appellant submitted an appeal of that determination to the Executive Ethics Commission, which appeal he perfected on Saturday, April 4. Thus, Appellant is deemed to have appealed on April 6, 2020.
24. In accordance with 5 ILCS 430/5-45(g), the Executive Ethics Commission has sought written public opinion on this matter by posting the appeal on its website and posting a public notice at its offices in the William Stratton Building. Dozens of comments have been received and shared with the parties and are made a part of the record of this proceeding. Those comment strongly support the reversal of the OEIG’s determination

due to Appellant's strong character, ethical conduct, and long and devoted history of service to the population to be served.

CONCLUSIONS OF LAW

1. At all times relevant to this matter, Appellant was a "State employee" for purposes of the State Officials and Employees Ethics Act (5 ILCS 430). 5 ILCS 430/1-5.
2. An Executive Inspector General's determination regarding revolving door restrictions may be appealed to the Commission by the person subject to the decision or the Attorney General no later than the 10th calendar day after the date of the determination. 5 ILCS 430/5-45(g).
3. Appellant's appeal of the OEIG's March 26, 2020, revolving door determination is properly before the Commission, and the Commission has jurisdiction to consider the appeal.
4. Section 5-45 of the State Officials and Employees Ethics Act (5 ILCS 430/5-45) establishes revolving door prohibitions, notification requirements, and procedures for making and appealing determinations as to the applicability of the prohibitions. The relevant revolving door prohibition is found in subsection (a) of that section, which provides, in part:

(a) No former . . . State employee . . . shall, within a period of one year immediately after termination of State employment, knowingly accept employment or receive compensation or fees for services from a person or entity if the . . . State employee, during the year immediately preceding termination of State employment, participated personally and substantially in the award of State contracts, or the issuance of State contract change orders, with a cumulative value of \$25,000 or more to the person or entity, or its parent or subsidiary.

5 ILCS 430/5-45(a)

5. Appellant is subject to subsection 5-45(c), because he had, by the nature of his duties, the authority to participate personally and substantially in the award of State contracts.
6. Subsection 5-45(f) provides:

(f) Any State employee in a position subject to the policies required by subsection (c) or to a determination under subsection (d), but who does not fall within the prohibition of subsection (h) below, who is offered non-State employment during State employment or within a period of one year immediately after termination of State employment shall, prior to accepting such non-State employment, notify the appropriate Inspector General. Within 10 calendar days after receiving notification from an employee in a position subject to the policies

required by subsection (c), such Inspector General shall make a determination as to whether the State employee is restricted from accepting such employment by subsection (a) or (b). In making a determination, in addition to any other relevant information, an Inspector General shall assess the effect of the prospective employment or relationship upon decisions referred to in subsections (a) and (b), based on the totality of the participation by the former officer, member, or State employee in those decisions. A determination by an Inspector General must be in writing, signed and dated by the Inspector General, and delivered to the subject of the determination within 10 calendar days or the person is deemed eligible for the employment opportunity.

5 ILCS 430/5-45(f).

7. Subsection 5-45(g) provides, in part:

(g)...In deciding whether to uphold an Inspector General's determination, the appropriate Ethics Commission or Auditor General shall assess, in addition to any other relevant information, the effect of the prospective employment or relationship upon the decisions referred to in subsections (a) and (b), based on the totality of the participation by the former officer, member, or State employee in those decisions.

5 ILCS 430/5-45(g)

8. The OEIG determined on the basis of information before it that Appellant had participated personally and substantially in the issuance of a State contract change order with a value in excess of \$25,000 to Thresholds, the entity that offered employment to Appellant. In so doing, however, the OEIG did not present any evidence that it had assessed the effect of the proposed employment on the issuance of the change order.
9. Appellant argues that his role was ministerial and programmatic rather than personal and substantial, pointing out that he only reviewed changes that were necessary to implement agreements made by the parties, directed by the court monitor, developed by others, and approved by levels higher than his. He also argues that those changes did not themselves constitute change orders; change orders were initiated and executed by others.
10. As the Attorney General argues, however, one may participate personally and substantially in a decision without having final or signature authority, even if the same decision would have been made without the employee's involvement. Although Appellant may have considered his involvement in making recommendations for how contracts could be changed to implement the Consent Decree and in working with grantees to determine allowable contractual and budgetary adjustments to have been lower level responsibilities, that involvement effectuated steps necessary to the ultimate execution of the change orders, represented an exercise of judgement, and were substantial just the same. Moreover, those adjustments and change order execution were being accomplished at roughly the same time he was seeking employment with

Thresholds. While there was no direct evidence that Appellant's interest in seeking employment with Thresholds influenced the performance of his duties with respect to the change order, this is exactly the kind of situation in which there could be such an effect and that presents at least an appearance of impropriety.

11. Considering all relevant information and the effect of the prospective employment upon the contracting decisions referred to in subsection (a) of 5 ILCS 430/5-45, based upon the totality of the participation by the employee in those decisions, the Commission finds that Appellant Daniel J. Wasmer participated personally and substantially in the issuance of a contract change order with a value of more than \$25,000 to his prospective employer within one year of his termination of State employment.

WHEREFORE, for the foregoing reasons, the Commission upholds the Office of the Executive Inspector General's March 26, 2020, determination and rejects this appeal. Daniel J. Wasmer's proposed employment with The Thresholds, Inc., would violate the Revolving Door Prohibition. The Commission takes note of the strong show of support for Appellant as demonstrated by the volume and intensity of public comment. That comment, however, does not bear on the matter of the nature of Appellant's participation in a decision affecting the financial interest of his prospective employer, which is the only matter before the Commission.

SO ORDERED.

DATE: April 16, 2020

The Executive Ethics Commission

By: s/ Stephen J. Rotello
Administrative Law Judge