



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 – 1340 POYDRAS ST.
NEW ORLEANS LA 70112
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CITY CIVIL SERVICE COMMISSION

BRITTNEY RICHARDSON,
CHAIRPERSON
JOHN KORN, VICE-CHAIRPERSON
MARK SURPRENANT
RUTH WHITE DAVIS
ANDREW MONTEVERDE

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Tuesday, November 12, 2024

Robert J. Ellis, Jr.
650 Poydras St., Suite 2015
New Orleans, LA 70130

Re: **Nha Do VS.**
Department of Safety & Permits
Docket Number: 9564

Dear Mr. Ellis:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 11/12/2024 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Tammie Jackson
James M. Roquemore
Jay Ginsberg
Nha Do
file



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Tuesday, November 12, 2024

Robert J. Ellis, Jr.
650 Poydras St., Suite 2015
New Orleans, LA 70130

Re: **Nha Do VS.**
Department of Safety & Permits
Docket Number: 9599

Dear Mr. Ellis:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 11/12/2024 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

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Doddie K. Smith
Chief, Management Services Division

cc: Tammie Jackson
James M. Roquemore
Jay Ginsberg
Nha Do
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**NHA DO,
Appellant**

Docket Nos. 9564, 9599

v.

**DEPARTMENT OF SAFETY &
PERMITS,
Appointing Authority**

DECISION

Appellant, Nha Do, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from a February 12, 2024, emergency suspension and April 8, 2024, termination of his employment. (Exhibits H0-1, CNO-2). At all relevant times, Appellant had permanent status as an Electrical Inspector or a Chief Electrical Inspector in the Department of Safety and Permits. (Tr. at 10). A Hearing Examiner, appointed by the Commission, presided over a hearing on July 8, 2024. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated September 24, 2024, and controlling Louisiana law.

For the reasons set forth below, Mr. Do's appeal is DENIED.

I. PERTINENT FACTUAL BACKGROUND

The City of New Orleans Department of Safety and Permits hired Nha Do in 2008. (Tr. at 315). Mr. Do holds a degree in electrical engineering, and he is a certified residential and commercial electrical inspector. (Tr. at 314). Mr. Do described his job duties as performing

electrical inspections, monitoring employees processing permits, and releasing meters. (Tr. at 10).

His job duties encompassed the “whole nine yards in electrical.” (Tr. at 10).

On May 28, 2013, Mr. Do signed Employee Policy Memorandum 13-10, which contained the following conflict of interest policy:

Employee Transactions with the Department

Employees are not permitted to process any application or transaction, or conduct any inspections on properties or projects in which that employee has an interest either directly or indirectly. . . .

. . . . Employees are not authorized to process payments or edit permit data relating to their own projects. All payments, edits, inspections, and other processes are to be completed by other employees in the Department of an equal or higher rank.

(Ex. CNO-2). *See also* La. R.S. 42:1112 (prohibiting public employees from participating in transactions in which the employee or the employee’s immediate family member has a substantial economic interest). Mr. Do is the sole owner of NDT Investments, LLC (“NDT”). (Tr. at 25). NDT purchased properties in New Orleans and Metairie, and contracted with D3 Contractors, LLC, to renovate the properties before sale. (Tr. at 26, 28). Although Mr. Do has two brothers in the New Orleans area, Hoai Do and Hoang Do, and the pre-termination letter states that Mr. Do confirmed that he owned 33% of D3 Contractors, LLC, during his pre-termination hearing on March 28, 2024, at the July 8, 2024, hearing of this matter, Mr. Do denied he had an ownership interest in D3 Contractors, LLC. (Tr. at 27-28, 184). Instead, Mr. Do testified that his brother Hoai Do is the sole owner of D3 Contractors, LLC. (Tr. at 27-28).

Before 2020, Mr. Do was authorized to “close out” inspections and issue a certificate of occupancy or a certificate of completion. (Tr. at 31-34, 136). Mr. Do testified that he closed out inspections and issued a certificate of occupancy or a certificate of completion for several properties that he owned, and for which D3 Contractors, LLC, performed the construction,

including 4505 Cartier, 4605 Cartier, 4611 Cartier, and 4623 Cartier. (Tr. at 48, 56, 79; Ex CNO-5, EX. CNO-9, Ex. CNO-16). D3 Contractors, LLC, submitted the application for a permit for these properties. (Ex. CNO-4, Ex. CNO-7, Ex. CNO-12, Ex. CNO-13). Mr. Do “closed out” these permits and issued a certificate of completion/meter release or a certificate of occupancy for these properties in 2016 or 2017. (Ex. CNO-5, Ex. CNO-9, Ex. CNO-16).

Mr. Do testified that closing out a permit is simply an administrative step after all inspections are completed, and that he did not perform inspections of his properties. (Tr. at 71, 74). Larry Chan, the former Building Official, and Bridget Medus, Senior Electrical Inspector, testified that creating the certificate of completion is a purely administrative task. (Tr. at 308, 282-83). Mr. Chan resigned following an emergency suspension by the Department of Safety and Permits. (Tr. at 279-80). The Department of Safety and Permits terminated Ms. Medus’ employment. (Tr. at 312). Donna Foley, the former Electrical Secretary, testified that only inspectors could issue a certificate of occupancy, and that she lacked this authority. (Tr. at 289).

Tammie Jackson, the Director of the Department of Safety and Permits, testified that Randy Ferrell, a third-party inspector, performed the electrical inspections of some of Mr. Do’s properties, and that “the third party inspections need to be reviewed internally.” (Tr. at 211; *See, e.g.*, Ex. Do-9, Ex. Do-12, Ex. Do-14). Mr. Do testified that he uploaded the third-party inspections without reviewing the inspection. (Tr. at 347-48, 352; *See also* Tr. at 307).

Ms. Jackson became the Director of Safety and Permits on March 17, 2020. (Tr. at 135-36). Following an Office of Inspector General investigation into another employee for public corruption, Ms. Jackson reviewed the records at issue. (Tr. at 15). Ms. Jackson testified Mr. Do “should not have been closing or touching this file because he owned the property.” (Tr at 151-

52). “That’s a clear conflict.” (Tr. at 152). Ms. Jackson testified that Mr. Do failed to disclose his ownership of the properties to the chief building official. (Tr. at 185).

The Director of the Department of Safety and Permits notified Mr. Do by letter dated February 12, 2024, that the Department of Safety and Permits was imposing an emergency suspension based on violations of departmental conflict of interest policy and other ethical violations. (Ex. CNO-1). Following a pre-termination hearing on March 28, 2024, the Department of Safety and Permits terminated Mr. Do’s employment. (Ex. HO-1). This termination was based on violations of departmental policy and violations of the Code of Ethics, *inter alia*. (Ex. HO-1). Ms. Jackson stated in the letter that “the Louisiana Code of Ethics dictates that it is essential to proper operation that public employment is not used for private gain and that there be public confidence in the integrity of government.” (Ex. HO-1).

II. ANALYSIS

A. Legal Standard for Commission’s Review of Discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep’t*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep’t of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission

pursuant to Article X, § 8(A) of the Louisiana Constitution, the appointing authority has the burden of proving by a preponderance of the evidence: 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094).

1. The Appointing Authority must show the discipline was commensurate with the infraction

The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for disciplining the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984). The appointing authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

B. The Department of Safety & Permits has carried its burden of showing cause

The Department of Safety & Permits has shown the occurrence of the complained-of conduct. Mr. Do issued certificates of completion, meter releases, and/or certificates of occupancy

on properties he owned, in clear violation of departmental policy. The undersigned Commissioners credit the testimony of the Director of Safety and Permits that “closing out” a building permit or an electrical permit requires review by an inspector and is not merely an administrative task. The grant of authority to “close out” permits only to inspectors supports the Director’s testimony.

The Department of Safety & Permits also carried its burden of showing that the conduct impaired the efficient operation of the department. Ms. Jackson testified that Mr. Do exhibited a pattern of failing to disclose a conflict of interest between his personal financial interest and his official duties. (Tr. at 188). He also created a perception of self-dealing. (Tr. at 188). As Ms. Jackson stated in the termination letter, Mr. Do’s conduct impaired the “public confidence in the integrity of government.” (Ex. HO-1).

1. The discipline is commensurate with the violation

Mr. Do approved transactions in the permitting process in which he and his brother had a personal financial interest. Enforcement of conflict of interest policies is essential to combating public corruption. Termination is commensurate with Mr. Do’s pattern of disregard of the conflict of interest policy of the Department of Safety and Permits.

Mr. Do’s appeal is DENIED.

WRITER:

Mark C. Surprenant
[Mark C. Surprenant \(Nov 6, 2024 10:53 CST\)](#)

MARK SURPRENANT, COMMISSIONER

CONCUR:

Ruth White Davis
[Ruth Davis \(Nov 10, 2024 17:24 CST\)](#)

RUTH DAVIS, COMMISSIONER

DISSENT BY COMMISSIONER MONTEVERDE

I would grant Mr. Do's appeal, as the Department of Safety and Permits has failed to carry its burden of showing cause for the suspension of Mr. Do or the termination of his employment. The evidence offered to support the discipline of Mr. Do is surprisingly weak. Other than "closing out" permits on his own properties in 2016 and 2017, which Mr. Do admitted, the Department of Safety and Permits wholly failed to support the alleged complained-of conduct in the suspension and termination letters. For example, no evidence was offered about Mr. Do's alleged failure to cooperate with the OIG, and no evidence was offered to counter Mr. Do's testimony that he lacked an ownership interest in D3 Contractors.¹

Further, as to the factual allegation admitted by Mr. Do, the Department of Safety and Permits failed to show that "closing out" permits constituted a conflict of interest under departmental custom and practice in 2016 and 2017. The Department of Safety and Permits relied solely on the testimony of the Director, Tammie Jackson, about Mr. Do's alleged misconduct in 2016 and 2017, even though Ms. Jackson admittedly lacked personal knowledge about the culture and practice before she became Director in 2020. (Tr. at 203, 215-16). Based on the documents offered into evidence, Mr. Do's conduct of "closing out" permits was a conflict of interest under departmental policy. (Ex. HO-1; Ex. CNO-2). The testimony offered by Larry Chan, Bridget Medus, and Mr. Do that closing out a permit was an administrative step was un rebutted by a witness with personal knowledge. (Tr. at 308, 282-83). Therefore, the Department of Safety and Permits failed to rebut the testimony of three witnesses that the custom and practice of the

¹ Although the termination letter states that Mr. Do admitted he owned 33% of D3 Contractors during his pre-termination hearing, the Department of Safety and Permits offered no witness who heard Mr. Do make this statement. *See* La. C.E. art. 801(D)(2).

Department of Safety and Permits was to treat “closing out” permits as a clerical/administrative step under previous directors, leaving only a technical violation of departmental policy years in the past.

The Department of Safety and Permits also failed to carry its burden of showing any of the other alleged misconduct in the February 12, 2024, letter of suspension or the April 8, 2024, letter of termination occurred. In addition to the allegations about ownership of D3 Contractors and cooperation with the OIG, the Department of Safety & Permits failed to show that permits contained inaccurate or omitted information as to the four properties at issue. Ms. Jackson admitted that her opinion that the construction value of \$88,000 was too low for 4605 Cartier and 4623 Cartier was based on speculation. (Tr. at 221). The testimony conflicted about whether the work at 4860-62 Gilbert constituted structural work. The result of the failure to show that the construction values were inaccurate or the permits were inaccurate is that the Department of Safety and Permits failed to show that Mr. Do received any economic benefit from closing out permits on his own properties.

Therefore, because the Department of Safety and Permits failed to carry its burden of showing cause for the suspension of Mr. Do or the termination of his employment, I would grant his appeal.



Andrew Monteverde (Nov 6, 2024 10:45 CST)

ANDREW MONTEVERDE, COMMISSIONER