



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 – 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
CLIFTON J. MOORE, JR. VICE-
CHAIRPERSON
BRITTNEY RICHARDSON
JOHN H. KORN

LISA M. HUDSON
DIRECTOR OF PERSONNEL

LATOYA CANTRELL
MAYOR

Thursday, June 6, 2019

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

Re: **Larry Chan VS.**
Department of Safety & Permits
Docket Number: 8828

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 - 6/6/2019 - 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: Zachary R. Smith
Renee E. Goudeau
Jay Ginsberg
Larry Chan
;
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

<p>LARRY CHAN, Appellant,</p> <p>vs.</p> <p>DEPARTMENT OF SAFETY & PERMITS, Appointing Authority.</p>	<p>DOCKET No.: 8828</p>
---	-------------------------

I. INTRODUCTION

Appellant, Larry Chan, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Department of Safety and Permits for City of New Orleans, (hereinafter “Appointing Authority”) suspended Appellant for thirty days without pay after substantiating allegations of misconduct against Appellant.

At all times relevant to the instant appeal, Appellant had permanent status as a classified employee. A referee appointed by the Commission presided over one day of hearing during which both Appellant and the Appointing Authority had an opportunity to call and cross-examine witnesses and introduce evidence into the record. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we GRANT the appeal and render the following judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

On July 31, 2018 the Appointing Authority placed Appellant on an unpaid emergency suspension pending the completion of an investigation into serious misconduct allegedly perpetrated by Appellant. (H.E. Exh. 1a). Specifically, the Appointing Authority alleged that Appellant had instructed a subordinate to issue Appellant an electrical contractor's license even though Appellant had failed to produce the appropriate documentation required for such a license. *Id.* The Appointing Authority further alleged that Appellant instructed a subordinate to waive the license fee that the Appointing Authority typically charges for the issuance of personal licenses. *Id.* According to the notice of emergency suspension, Appellant's alleged misconduct violated numerous City Ordinances, State Laws and City Policies. *Id.* The specific policies, laws and ordinances at issue are produced below:

- City Code of New Orleans, Chapter 2: Subdivision III – City Code of Ethics: Sec. 2-774 (Other laws, rules, and policies related to standards of conduct) – This provision of the City Code incorporates by reference Louisiana Revised Statute 42:1101 et seq., (the State Code of Governmental Ethics).
- City Code of New Orleans, Chapter 2: Subdivision III – City Code of Ethics: Sec. 2-769 (Responsibility of Public Office) – Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the constitution of the United States and the constitution of this state and to carry out impartially the laws of the nation, state and city and thus to foster respect of all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern.
- Louisiana Revised Statute 42:1112(C) - Every public employee, excluding an appointed member of any board or commission, shall disqualify himself from participating in a transaction [including, but not limited to the issuance of licenses] involving the governmental entity when a violation of this Part would result.

- Louisiana Revised Statute 42:1116 - No public servant shall use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to provide himself, any other public servant, or other person with anything of economic value.
- CAO Policy Memorandum No. 64 (Revised) – Only the Mayor or Chief Administrative Officer shall waive or adjust, when legally permitted to do so, any City assessed fines, fees, or charges.
- CAO Policy Memorandum No. 83(R): General Standards – An Employee shall not accept or solicit a valuable gift from any person, business, or organization for personal benefit. If an employee questions what is valuable, a supervisor, Civil Service, or the Ethics Review Board should be consulted.
- CAO Policy Memorandum No. 139 – Prohibits City employees from engaging in fraud. As defined by the policy, “fraud” is the “intentional act or concealment of any act designed to inappropriately or illegally deriving (sic) a benefit.”
- Department of Safety and Permits Employee Policy Memorandum 13-02 – Employees shall not use their official position, identification, or employment within the City of New Orleans of the Department of Safety and Permits for any direct or indirect personal gain, financial or otherwise.
- Department of Safety and Permits Employee Policy Memorandum 13-10 – Employees are not permitted to process any application or transaction, or conduct any inspections on properties or projects in which that employee has a financial interest either directly or indirectly.

Appellant allegedly violated each of the above-cited laws, policies and ordinances by “instructing a subordinate to issue [Appellant] a license without payment or appropriate documentation.” (App. Auth. Exh. 1b).

On August 31, 2018, the Appointing Authority issued Appellant notice that his emergency suspension was over and directed him to return to work on the 31st. (H.E. Exh. 1b). Through the August 31st notice, the Appointing Authority indicated that it would not issue any further disciplinary action against Appellant other than the thirty-day suspension he had already served.¹

Id.

¹ It appears that Appellant’s emergency suspension covered thirty calendar days as opposed to thirty business days.

B. Summary of Evidence and Testimony

Employees within the Appointing Authority are responsible for the general oversight of construction, land-use regulation, for-hire vehicles, short-term rentals and most other uses of movable and immovable property that impacts public safety. (Tr. at 9:15-23). Included within this scope of authority is the issuance and regulation of trade licenses (e.g., electrical, mechanical, HVAC, etc.). *Id.* at 9:21-10:21. Residents seeking to obtain a license through the Appointing Authority apply through the submission of required forms and documentation. *Id.* at 11:7-16. The Appointing Authority also charges administrative fees for the issuance of any license or permit. *Id.* at 11:21-23.

In 2013, then-Director of the Appointing Authority, Jared Munster, promulgated a policy entitled “Standards of Professional Behavior” (hereinafter “Policy 13-02”). *Id.* at 12:14-13:15. The purpose of Policy 13-02 was to “ensure that the behavior of all employees is maintained in a manner consistent with the highest standards of professionalism” as well as with state and local laws. *Id.* at 12:23-13:10. Section III(A) of Policy 13-02 prohibits employees from soliciting “anything of value where there is direct or indirect connection between the solicitation and their employment.” (App. Auth. Exh. 1). Along the same lines, Policy 13-02 also prohibits employees from using their position as an employee of the Department of Safety and Permits for “direct or indirect personal gain whether that be financial or otherwise.” *Id.* According to Dr. Munster, the Appointing Authority disseminated all departmental policies via email to all staff, including Appellant. (Tr. at 16:6-14). There was no particular incident(s) that led Dr. Munster to issue the new policy. He was simply trying to update the Appointing Authority’s various employee policies.

In addition to Policy 13-02 pertaining to general standards of conduct for Appointing Authority employees, Dr. Munster developed a policy that specifically addressed transactions

between Appointing Authority employees and the Appointing Authority itself (hereinafter referred to as “Policy 13-10”). (App. Auth. Exh. 2). According to Dr. Munster, the Appointing Authority developed the policy in order to address the reality that employees – who are required by City ordinance to live in Orleans Parish – would necessarily have to interact with the Appointing Authority to address personal business. (Tr. at 17:8-21). In order to prevent employees from leveraging their status as employees to gain an unfair advantage – and to avoid the appearance of an unfair advantage – the Appointing Authority established strict guidelines for employees transacting personal business with the Appointing Authority. Included within such guidelines is the following provision:

Employees [of the Appointing Authority] are not permitted to process any application or transaction, or conduct any inspections on properties or projects in which that employee has a financial interest either directly or indirectly.

(App. Auth. Exh. 2). The purpose of the above-cited provision is to make clear that employees must refrain from using their position with the Appointing Authority to gain an unfair or unethical advantage. (Tr. at 18:1-11).

Within the same section, Policy 13-10 prohibits employees from processing payments or editing permit data for personal “projects.” Policy 13-10 also mandates that an employee of equal or higher rank must process transactions involving another employee’s personal **project**. (App. Auth. Exh. 2). The purpose of such a provision is to lessen the possibility that employees will seek to exert undue influence over the permitting or inspection process. (Tr. at 18:12-18).

In addition to Policies 13-02 and 13-10 cited above, the Appointing Authority introduced CAO Policy 83(R) as a document governing the conduct of employees. CAO Policy 83(R) prohibits employees from accepting or soliciting “a valuable gift from any person, business, or organization for personal benefit.” (App. Auth. Exh. 3).

Dr. Munster posited that a permit or license issued by the Appointing Authority was a “thing of value” for the purposes of the above-cited policies because it enables the permit/license holder to take an action he/she would otherwise not be permitted to take. (Tr. at 26:3-16). For example, a HVAC license or petty cab license allows the holder to seek gainful employment in a trade. *Id.* There are also various administrative fees associated with the issuance of each license or permit payable by the individual seeking the license or permit. The fees are the same whether the applicant is a resident or employee of the Appointing Authority. *Id.* at 26:17-27:4. Dr. Munster acknowledged that he had heard about an “old policy” that allowed employees of the Appointing Authority to renew licenses without a fee, but testified that there was never a written policy or established practice that would allow for such a fee waiver. *Id.* at 27:5-13.

On cross-examination, Dr. Munster recalled an incident during which he had to **remind** an Appointing Authority employee that fees required for license renewals may not be waived, even for a chief mechanical inspector employed by the Appointing Authority. *Id.* at 32:3-18. Prior to this interaction, Dr. Munster was not aware that some Appointing Authority employees were renewing licenses without submitting the typical paperwork or fees. *Id.* at 33:6-9.

Appellant testified that he had been an employee with the Appointing Authority for thirty-one years and held the position of “building official” since 2008. *Id.* at 34:4-12. In his capacity as building official, Appellant oversaw the Appointing Authority’s electrical, mechanical and building divisions. Three employees reported directly to Appellant and there were other subordinate employees in Appellants chain of command to him, including Lisa Grimble. *Id.* at 35:8-23. And, over the course of his thirty-one years with the Appointing Authority, Appellant had not previously been required by pay for an “inactive electrical contractor’s license” due to a custom within the Appointing Authority. *Id.* at 52:14-20.

While Appellant could not recall signing statements acknowledging his receipt of specific Appointing Authority policies, he admitted that there were several he did sign including those for Policy 13-02. (Tr. at 37:4-14; App. Auth. Exh. 5). Appellant denied being aware of Policy 13-10 even though the Appointing Authority produced an email that purported to be addressed to Appellant with an attachment that included Policy 13-10. (Tr. at 44:24-45:6; App. Auth. Exh. 6). Additionally, Appellant acknowledged that employees of the Appointing Authority should be familiar with the various policies governing their conduct. *Id.* at 48:19-49:3. But, Appellant denied that he had ever received specific training regarding Policy 13-10 and no member of the Appointing Authority told him that he had to approach the renewal of his electrical license as if he were a “civilian.” *Id.* at 55:25-56:6. Appellant further testified that it was not until after his suspension that he learned that he could not request a subordinate renew his license without paperwork or a fee. *Id.* at 56:7-10.

Appellant was candid during his testimony and admitted that he had asked a subordinate (Lisa Grimble) to issue him an electrical license. At the time he made his request, Appellant had not submitted any paperwork or fee for the license. *Id.* at 49:25-50:10. Importantly, however, Ms. Grimble did not ask Appellant for the typical fee and indicated that she would enter the fee as “gratis” in the electronic filing program maintained by the Appointing Authority. *Id.* at 61:3-14. Appellant explained that he did not view the license as a “thing of economic value” because the license was a “useless” and described it as a “placeholder.” *Id.* at 52:2-10. Appellant went on to explain that it was his understanding that he was not allowed to maintain an “active” license because using it would be a “conflict of interest.” *Id.* at 53:2-22.

Appellant went into detail in order to explain what he perceived to be the difference between an “active” license and “inactive” license. First, in order to activate his occupational

license, he would have to produce updated paperwork that established he had sufficient worker's compensation insurance. Then, he would have to prove that he had \$500,000 of comprehensive liability insurance. Finally, through the City's application process, he would have to prove that he did not owe any local taxes. *Id.* at 57:4-16.

According to Appellant, the paperwork required for the renewal of an inactive license merely required an updating of personal contact information, which the City already maintained for him. *Id.* at 54:22-55:9. And, Appellant testified that he had been able to renew his license over twenty times during his career with the Appointing Authority without having to pay a fee. *Id.* at 55:14-17. The renewal fee at the time was thirty dollars (\$30). *Id.* at 59:23-25.

Jennifer Cecil was the Deputy Director of Safety and Permits and the individual responsible for the administration of the Appointing Authority's electronic database on permits and licenses for all times relevant to the instant appeal. *Id.* at 69:9-70:6. Ms. Cecil testified that the renewal of an inactive "Class (A) electrical license" would involve a thirty dollar fee (plus a late fee of ten dollars for each month the license had lapsed) and some paperwork through which the applicant would update his/her personal information. *Id.* at 71:10-72:13. Ms. Cecil also noted that the applicant would have to verify that his/her inactive license had been renewed within the past two years. According to Ms. Cecil, the primary benefit of an inactive license was that it allowed its holder to avoid having to take certification exams when/if he/she decided to return to active status. *Id.* at 77:1-14. Finally, Ms. Cecil speculated that other parishes in Louisiana may recognize an "inactive" license from Orleans Parish as a valid active license and allow the holder to work as an electrical contractor under an inactive license. *Id.* at 79:21-80:3. Appellant contradicted Ms. Cecil's testimony on this point and stated that there was no reciprocity between Orleans Parish and

any other parish in Louisiana that would allow the holder of an inactive license to work as if it were an active license issued by the parish in which the work would be done. *Id.* at 139:10-140:3.

Ms. Cecil testified that Appellant's electrical license had lapsed in 2012 and that Appellant did not take any action to renew his license until May 2018. *Id.* at 76:2-9. As a result of the prolonged lapse of Appellant's license, he should not have been allowed to renew even an inactive license per City ordinance. *Id.* at 82:21-83:5.

On cross-examination, Ms. Cecil testified that she had found a "few" examples of Appointing Authority inspectors being issued licenses without complying with the requirements of departmental policy between 2013 and 2017. *Id.* at 84:25-85:3. And, while Ms. Cecil was not responsible for administering training on departmental policies to employees in the field, she did provide training for Appointing Authority employees responsible for processing license applications, including Ms. Grimble. *Id.* at 88:11-15.

The Director of the Department of Safety and Permits, Zachary Smith, testified that he was responsible for issuing the final disciplinary action for Appellant. Mr. Smith believed that a thirty-day suspension was warranted given the nature of the work performed by employees within the Appointing Authority and Appellant's status as a senior member of the Appointing Authority's leadership. In weighing the level of discipline, Mr. Smith took into consideration an element of his investigation that revealed that several employees within the Appointing Authority did not fully appreciate the requirements of existing departmental policies. *Id.* at 101:18-24. He also noted that there had been a different corporate culture in place under prior administrations in which rules regarding self-dealing and conflicts were not strictly followed. *Id.* at 101:24-102:5. Nevertheless, Mr. Smith believed that Appellant should have known better than to attempt to secure a license without the required paperwork and fees based upon clearly published policies.

Ms. Grimble, the Appointing Authority employee who processed Appellant's license renewal, began working for the Appointing Authority processing license applications shortly after Hurricane Katrina. *Id.* at 118:20-2. In that time, Ms. Grimble recalled renewing the licenses of three Appointing Authority inspectors, including Appellant. *Id.* at 119:3-8. According to Ms. Grimble, she was trained to process license renewals for inspectors without charging a fee. *Id.* at 119:15-23. And, although Ms. Cecil claimed that she had trained administrative support staff (including Ms. Grimble) on all departmental policies, Ms. Grimble denied that she ever received training that called into question her earlier training on license renewal for inspectors. *Id.* at 120:3-11. Therefore, when Appellant asked Ms. Grimble to renew his license, she did not view the request as improper since it was in line with her earlier training. *Id.* at 120:16-121:1. Ms. Grimble later added that Appellant's position as a building officer influenced her decision to renew the license without a fee, but admitted that she probably would have taken the same step with any other inspector. *Id.* at 121:6-11.² On cross-examination, Ms. Grimble stated that the last time she had renewed a license for an inspector was around 2012 or 2013. *Id.* at 122:1-16.

Rudy Hardouin, the Chief Mechanical Inspector for the Appointing Authority, testified that he maintained an "inactive" mechanical contractor's license while employed by the Appointing Authority. *Id.* at 130:9-24. During Mr. Hardouin's thirty-three-year career with the Appointing Authority, he had renewed his inactive license without paying a fee. But, in 2018, when he attempted to renew his license, he was informed by Elizabeth Ballard (an administrative assistant) that he would have to pay a fee. *Id.* at 132:6-24. Not sure what to do, Mr. Hardouin decided to let his license lapse. *Id.* at 132:21-133:6. Mr. Hardouin did not recall any training or policy that

² Ms. Grimble did not satisfactorily explain her testimony as to why she would have checked with another supervisor if a lower-ranking inspector requested that she renew a license. This seems to be inconsistent with her earlier testimony that she had always renewed inspector licenses without a fee per her earlier training. It is not clear what would have prompted Ms. Grimble to check with a supervisor.

addressed the Appointing Authority's new approach to license renewals for inspectors. *Id.* at 135:1-6. Mr. Hardouin was not disciplined for seeking a license renewal without first submitting the required fee.

III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an 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 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline "was commensurate with the infraction." *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

Appellant appeared to be very familiar with certain aspects of his ethical obligations as an employee of the Department of Safety and Permits. The primary example of this was his testimony regarding why he maintained an “inactive” electrical license rather than an “active” one. As an employee of the Department of Safety and Permits, Appellant understood that he could not serve as the “responsible person” on a construction or renovation project within Orleans Parish. Therefore, Appellant, like other inspectors and supervisors within the Appointing Authority, turned in his active license on the first day of employment with the City and walked away from the possibility of earning compensation as a licensed electrical contractor in Orleans Parish.

Appellant’s understanding of the restrictions on Appointing Authority employees issuing permits and conducting inspections on property from which employees derived some manner of benefit appears consistent with Policy 13-02 and 13-10. But the conduct at issue here is not Appellant’s issuance of a permit or inspection of a property but rather a request to renew an inactive electrician license. As part of his duties as building officer, Appellant did not process applications for licenses. That duty fell to administrative office staff within the Appointing Authority.

State ethics laws (and City ordinances which incorporate such laws) prohibit a City employee from engaging in a transaction with the City where he/she has a “substantial economic interest.” The state ethics laws define a “substantial economic interest” as “an economic interest which is of greater benefit to the public servant or other person than to a general class or group of persons.” La. Rev. Stat. 42:1102(21). The Appointing Authority argued that the economic interests at issue here were: 1) Appellant’s avoidance of the renewal fee (along with any late charges), 2)

the ability to streamline the activation of his license, and 3) the ability to use his inactive license as an active one in other parishes due to reciprocity. The Commission accepts Appellant's testimony that this last alleged economic benefit – reciprocity for an inactive Orleans Parish license – is nonexistent. Additionally, there are additional steps regarding Workman's Compensation and general liability insurance that serve as substantial hurdles Appellant would have had to address prior to activating his license. That leaves the renewal fee and avoidance of re-taking a certification exam as the remaining items of economic benefit.

Appellant does not need to maintain an active or inactive license in order to hold the classified position of building official. The fact that he had let his license lapse for six years supports Appellant's perception that the inactive license was a mere "placeholder." Nevertheless, when he learned from a co-worker that the Appointing Authority expected employees to maintain up-to-date licenses, he sought to renew his license in the same way he had in 2012. The landscape, however, had apparently changed since he last renewed his license.

In the course and scope of his employment as a building official, Appellant supervised enforcement of various City codes pertaining to electrical, mechanical and building permits. As we have noted, Appellant did not process or review applications for trades' licenses. Ms. Grumble, on the other hand, had been processing applications for trades' licenses with the Appointing Authority since 2005 or 2006. As an employee responsible for processing trades' license applications, it was incumbent upon Ms. Grumble to familiarize herself with the various City Ordinances that pertained to her primary job duty. The Commission is sensitive, however, to Ms. Grumble's assertion that, when she first began working for the Appointing Authority, her trainer instructed her not to charge inspectors the typical fee for licenses. Ms. Grumble denied receiving any training on changes to this practice. Given how pervasive the prior practice of fee waiver was

L. Chan
No. 8828

within the Appointing Authority, it may have warranted a more intense form of intervention by leadership to effect a change. Such intervention, however, was not forthcoming because neither Dr. Munster nor Mr. Smith were aware that there was a problem until investigating Appellant's actions.

The Code of City Ordinances requires that the holder of an inactive Class A Electrical Contractor License pay an annual renewal fee of \$30 in order to maintain his/her license. CCNO 26-15, § 2714. A delinquent fee of \$10 per month is added to the renewal fee for each month the holder fails to timely renew. CCNO 26-15, § 2713. But, when the holder of an inactive license fails to renew his/her license for longer than two years, no license renewal may issue unless and until the holder passes an examination as a new applicant. CCNO 26-15, § 2714. Therefore, it appears that the City Code envisions the maximum delinquent fee to be \$240 (24 months) after which time the license holder must reapply as a new applicant. Given the facts of the case, it is clear that, when Ms. Grimble realized that Appellant's license had lapsed for more than two years, she should have treated the request as a new application. Instead, she renewed Appellant's long-expired inactive license, unintentionally violating the City Code in the process.

Appellant approached Ms. Grimble and asked her to renew his license following the same process that he used during his prior thirty years with the Appointing Authority. At no point in his interaction with Ms. Grimble did Appellant threaten Ms. Grimble, and Ms. Grimble never requested that Appellant remit any payment or produce any form of documentation related to the renewal. This is in stark contrast to Mr. Hardouin's experience when he went to renew his HVAC license. In that instance, Ms. Ballard – who presumably performs a similar function as Ms. Grimble – informed Mr. Hardouin that there was a mandatory fee associated with the renewal. When Mr. Hardouin pushed back and explained that there was never a fee associated with an

inspector's renewal in the past, Ms. Ballard escalated the issue to Dr. Munster who informed Mr. Hardouin that the same standards apply to the renewal of a license regardless of who is applying. Mr. Hardouin was not reported or disciplined for trying to coerce Ms. Ballard into violating ethics laws. Instead, Mr. Hardouin simply chose not to pay the fee and did not renew his license.

Mr. Hardouin's attempt to renew his license differs from Appellant's in an important aspect. Namely, that Mr. Hardouin was asked for a fee and refused to pay it and argued that the Appointing Authority's past practice was to waive the fee. This is a far more aggressive approach than the one employed by Appellant. In Appellant's case, he did not refuse to pay a fee, Ms. Grimble simply never asked him for one. Ms. Grimble relied on her earlier experiences and simply renewed Appellant's license without requesting a fee or additional documentation. The record does not establish that Appellant ever instructed Ms. Grimble to waive the license renewal fee or the requirement for updated information. Instead, it is more likely than not that Ms. Grimble, per her long-standing practice based on prior training and experience, never thought to ask Appellant for a fee or documentation. Had Appellant been extended the same opportunity as Mr. Hardouin, it is likely that he would not now be facing a lengthy suspension.

The Appointing Authority further argued that Appellant violated Policy 13-10 when he failed to bring his request for a license renewal to his superior. The Commission does not find that Policy 13-10 applied to Appellants license renewal. Policy 13-10 specifically references "processing" a transaction or conducting inspections related to properties or projects in which the employee has a direct or indirect financial interest. Policy 13-10 goes on to direct employees not to process payments or edit payment data for "their own projects." Through application of Policy 13-10, the Appointing Authority asks the Commission to equate an employee's "project" with the application for a license. Given that Policy 13-10 pertains specifically to property (and projects related to

property), the Commission finds that it was reasonable for Appellant to believe that Policy 13-10 did not cover a request to renew an inactive license. Furthermore, Appellant did not process his license renewal; that duty fell to Ms. Grimble.

The Appointing Authority's case depends largely upon establishing that Appellant directed or instructed Ms. Grimble to waive the license renewal fee and requirement for supplemental documentation. Based upon the record before us, there is no evidence that Appellant took such action. Instead, the record shows that Ms. Grimble, per her normal practice, processed Appellant's license renewal as she had for the past fourteen years. Namely, by simply entering the renewal information and issuing a renewed license. There is no evidence that Appellant coerced or otherwise threatened Ms. Grimble.

Based upon the above findings of fact, the Commission holds that the Appointing Authority failed to establish that Appellant engaged in the misconduct alleged in the disciplinary notice.

V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby GRANTS the instant appeal. The Appointing Authority shall rescind the disciplinary notices identified above as Appointing Authority Exhibits 1a and 1b. Furthermore, the Appointing Authority shall remit to Appellant all back pay and emoluments related to the unpaid suspension days Appellant served in connection with the allegations contained in the underlying appeal.

L. Chan
No. 8828

Judgment rendered this 6th day of June, 2019.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

WRITER



CLIFTON MOORE, JR., VICE-CHAIRPERSON

5/27/19

DATE

CONCUR



MICHELLE D. CRAIG, CHAIRPERSON

5/31/2019

DATE



BRITTNEY RICHARDSON, COMMISSIONER

5/24/2019

DATE