

**IN THE EXECUTIVE ETHICS COMMISSION  
IN THE STATE OF ILLINOIS**

|                                     |   |            |
|-------------------------------------|---|------------|
| SUSAN M. HALING, in her capacity as | ) |            |
| the EXECUTIVE INSPECTOR             | ) |            |
| GENERAL for the AGENCIES OF         | ) |            |
| THE ILLINOIS GOVERNOR,              | ) |            |
|                                     | ) |            |
| Petitioner,                         | ) |            |
|                                     | ) |            |
| v.                                  | ) | 21-EEC-004 |
|                                     | ) |            |
| THOMAS SMITH,                       | ) |            |
|                                     | ) |            |
| Respondent.                         | ) |            |

ORDER

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 M. Haling, in her capacity as Executive Inspector General for the Agencies of the Illinois Governor (607 East Adams Street, 14th Floor, Springfield, Illinois 62701, Springfield, Illinois 62704), who is represented by Assistant Attorneys General Francis Neil MacDonald ( [REDACTED] ) on behalf of Attorney General Kwame Raoul (Office of the Illinois Attorney General, 100 W. Randolph Street, 11th Floor, Chicago, Illinois 60601).

Respondent Thomas Smith ( [REDACTED] ), who appears *pro se* ( [REDACTED] ).

NATURE OF THE CASE

The Office of the Attorney General filed a Complaint on behalf of Petitioner in this matter, alleging that Respondent had violated revolving door provisions of the State Officials and Employees Ethics Act (“Ethics Act”) (5 ILCS 430). In particular, the Complaint alleged that Respondent had violated section 5-45(f), in that Respondent knowingly failed to notify Petitioner of an offer of non-State employment before accepting the offer, and had violated section 5-45(a) in that he had knowingly received compensation for services performed for a non-State entity within one year after termination of his State employment, even though he had participated personally and substantially in the award of a State contract to that entity in the year immediately preceding termination of his State employment. Section 5-45 of the Ethics Act provides, in pertinent 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 officer, member, or 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.

\* \* \*

(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.

\* \* \*

5 ILCS 430/5-45(a), (f).

On the basis of the record, including the verified statements and exhibits 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. Respondent was employed from August 2015 through October 15, 2018, as the Chief Technology Officer in the Information Technology Department at the Teachers' Retirement System ("TRS"), an agency of the Executive Branch of the State of Illinois under the jurisdiction of the Governor.
2. As Chief Technology Officer, Respondent had authority to approve and execute contracts, grants, and change orders; to draft requests for proposals; and to evaluate and select information technology ("IT") vendors to provide services under various contracts.
3. Respondent was classified as a "c-list" employee, meaning his position had been determined to be one that, by the nature of its job duties, may have carried with it the authority to participate personally and substantially in the award of State contracts or in regulatory or licensing decisions in accordance with subsection (c) of section 5-45 of the Ethics Act.
4. On August 31, 2015, during the TRS employment orientation process, Respondent participated in an ethics training that specifically addressed the Ethics Act's revolving door provisions, including an employee's duty to report prospective job offer before acceptance for up to one-year following departure from State employment.

5. Thereafter, Respondent completed annual ethics trainings, which also addressed the Ethics Act's revolving door provisions and the duty to report, on April 13, 2016, April 6, 2017, and March 20, 2018.

6. In his capacity as Chief Technology Officer, Respondent prepared and executed an IT Staff Augmentation Request for Proposal ("RFP"), by and on behalf of TRS, under which Provaliant Retirement, LLC ("Provaliant"), a retirement industry consulting entity, was selected to be a vendor. On July 23, 2018, TRS then entered into an agreement for Provaliant to provide professional IT services to TRS for TRS's staff augmentation project from July 23, 2018, through June 30, 2023, at a cost eventually valued in excess of \$100,000.

7. In addition to drafting the RFP, Respondent evaluated bidders that responded to the RFP, serving as the RFP's principal scorer. Respondent also assisted in the selection of Provaliant employees to staff the IT Augmentation project.

8. Respondent was terminated from TRS employment on October 1, 2018, but he remained on the State's payroll through October 15, 2018.

9. On October 3, 2018, Respondent was advised via email by the TRS Ethics Officer of his obligations under the Ethics Act's revolving door provisions.

10. In July 2019, Respondent and his wife incorporated PIT Strategies, Inc. ("PIT Strategies"), a corporation that served as a vehicle for Respondent to provide consulting services to smaller public pension systems that need technology management services but did not need permanent staffing.

11. On or about August 1, 2019, PIT Strategies and Provaliant entered into an Independent Contractor's Agreement ("Agreement") for PIT Strategies to provide consulting services to the Louisiana Municipal Police Employees Retirement System, located in Baton Rouge, Louisiana.

12. Under the terms of the Agreement, which ran from August 1, 2019, until December 1, 2019, Provaliant was to pay PIT Strategies \$150 per hour for on-site work and \$125 per hour for off-site work.

13. Respondent failed to notify Petitioner of Provaliant's offer to serve as a consultant prior to the execution of the Agreement.

14. PIT Strategies received compensation or fees from Provaliant in the total amount of \$21,662, in accordance with the following schedule:

|                    |        |
|--------------------|--------|
| September 4, 2019  | \$4062 |
| September 25, 2019 | \$1350 |
| October 1, 2019    | \$6625 |
| October 9, 2019    | \$5125 |
| October 16, 2019   | \$4500 |

15. The five payments PIT Strategies received from Provaliant from September 4, 2019, until October 16, 2019, which totaled \$21,662, were payments for services rendered under the terms of the Agreement.

16. PIT Strategies invoiced Provaliant on a rolling basis for work it had performed and Provaliant would take approximately two weeks to pay each invoice received. As a result, the October 16, 2019, Provaliant payment was for services rendered by PIT Strategies approximately two weeks prior and within a year after termination of Respondent's State employment.

17. In accordance with the terms of the Agreement, PIT Strategies submitted invoices and received payments from Provaliant after the October 16, 2019 payment.

18. The Attorney General filed a two-count complaint on behalf of Petitioner, alleging violations of the Ethics Act's revolving door provisions, with the Executive Ethics Commission on April 9, 2021.

19. Petitioner filed an Unopposed Motion for Summary Judgment on July 30, 2021.

20. Respondent filed a Verified Mitigation Statement on August 6, 2021.

#### CONCLUSIONS OF LAW

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. 5 ILCS 430/20-10(b).

2. At all times relevant to the allegations set forth in Petitioner's Complaint, Respondent was subject to the provisions of the Ethics Act (5 ILCS 430), and to the jurisdiction of the Executive Ethics Commission with respect to matters arising under the Ethics Act. 5 ILCS 430/20-5(d).

3. Respondent is also subject to the Petitioner's jurisdiction with respect to possible violations of the Ethics Act. *Id.*, § 20-10(c).

4. At all times relevant to the allegations put forth in the Complaint, Respondent had a duty to comply with the provisions of the Ethics Act, and with the rules adopted pursuant thereto.

5. Respondent personally and substantially participated in the award of a State contract to Provaliant with a cumulative value in excess of \$25,000 during the year immediately preceding termination of his employment with TRS.

6. Respondent knowingly received compensation from Provaliant in the amount of \$21,662, for consulting services he provided to Provaliant by and through PIT Strategies during the year subsequent to his departure from State employment in violation of subsection 5-45(a) of the Ethics Act.

7. Respondent entered into the Agreement with Provaliant, by and through PIT Strategies, without first having notified Petitioner of Provaliant's offer of employment in violation of subsection 5-45(f) of the Ethics Act.<sup>1</sup>

8. The Executive Ethics Commission has jurisdiction over this matter.

### 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).

In this case, there is no dispute as to any material fact or as to whether Respondent violated sections 5-45(a) and (f) of the Ethics Act. Moreover, Respondent provided a verified statement of the material facts that form the basis of Petitioner's Unopposed Motion for Summary Judgment, acknowledged his responsibility for the conduct, and stated that he would not contest or challenge the facts as set forth in his verified statement. Thus, there is no triable issue precluding summary judgment. Therefore, the Commission grants the motion and finds that Respondent has violated subsections 5-45(a) and (f) of the Ethics Act.

### PENALTY

Subsection 50-5(a-1) of the Ethics Act (5 ILCS 430/50-5(a-1)) authorizes the Commission to levy an administrative fine in an amount of up to three (3) times the total annual compensation that would have been obtained in violation of section 5-45. The total amount of compensation that was earned in violation of section 5-45 was \$21,662. In addition, subsection 50-5(e) (*Id.*, § 50-5(e)) authorizes the Commission to levy an administrative fine of up to \$5,000 against any person who violates the Ethics Act, which would include a violation of section 5-45(f) of the Ethics Act, the requirement to notify the appropriate executive inspector general

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<sup>1</sup> Pursuant to 2 Ill. Adm. Code 1620.610(c)(5), a State employee who leaves State employment to become an independent contractor has a duty to notify the EIG initially of each known client with which the employee's business intends to contract and, for one year after termination of employment, of the name of each additional client that may be acquired.

before accepting an offer of non-State employment within a year after terminating State employment. Combined, fines could amount to a maximum of \$69,986.

The parties have not recommended any penalties in this matter and have left this issue to the Commission's discretion. Commission rule establishes 14 aggravating and mitigating factors the Commission may consider in assessing an appropriate fine. 2 Ill. Adm. Code 1620.530(b). The rule provides:

- b) When the Commission is determining an appropriate fine pursuant to Section 50-5 of the Act after a finding of liability, the Commission may consider the following mitigating and aggravating factors:
  - 1) nature of violations;
  - 2) the scope of the violation or scheme of violations;
  - 3) the use of title or position;
  - 4) the extent of the use of resources, money, time to the State;
  - 5) the extent of a respondent's intent or knowledge of the facts surrounding the violation;
  - 6) premeditation;
  - 7) the duration of any series of violations;
  - 8) position of authority;
  - 9) involvement of others, especially other State employees;
  - 10) self-disclosure;
  - 11) cooperation;
  - 12) in the absences of substantial aggravating factors, a self-employed person's incidental business or employment matters that are not reported under Section 5-45(f) of the Act in a timely manner or involve subject matter not directly related to prior State employment and that entail monetary amounts of less than \$5,000 are deemed to be offenses warranting a warning or minimal fine;
  - 13) prior disciplinary record or Ethics Act violation; and
  - 14) years of service and type of service with the State.

Respondent was in a position of substantial authority and responsibility with respect to the TRS contract with Provaliant and participated to a great extent in the award of that contract. He had received multiple trainings with respect to his revolving door responsibilities and received a clear description of those responsibilities when, after he was terminated, he asked about the possibility of employment with TRS contractors with whom he had signed contracts. Not only should he have been aware of his duty to seek a determination from the OEIG with respect to the offers of employment from TRS IT contractors, he admitted that he had known about the requirement and had committed the violations.

On the other hand, Respondent submitted a Verified Mitigation Statement in which he requested mercy from the Commission in the assessment of a fine, and Petitioner has not objected to the Statement. Although Respondent had been a State employee for little more than three years, he had been in public service for 17 years before that, including six years in the U.S. Marine Corps. and 11 years serving the education community in Missouri. He was elected to serve a three-year as president of the Public Retirement Information Systems Managers Association, and TRS recruited him to serve as its Chief Technology Officer. With TRS he was trying to reform what he believed to be unethical procurement practices when he was asked to resign. In support of his efforts, he cites the termination of the employment of TRS's executive director, chief financial officer, chief human resources officer, chief legal counsel and his replacement as chief technology officer due to an internal investigation that revealed unethical business practices.

Respondent forthrightly admitted that he violated the Ethics Act and appears to have cooperated fully with the OEIG's investigation, saving the State resources. Petitioner's summary judgment was filed in fewer than four months after the complaint was filed, and it may have come even more quickly had it not been for problems with the OAG's computer network that began the same weekend Petitioner's Complaint was filed.

Respondent explained that in the nine months between his loss of State employment and the establishment of his company, PIT Strategies, he had been unemployed, had exhausted his unemployment benefits, and was paying for costly health insurance. When he first established the company, he performed a small contract for a municipal school district out-of-State, which led Provaliant to offer him work for another out-of-State retirement system. By that point, 10 months after his termination, he had forgotten about revolving door restrictions and was focused on finding a way to support his family, he said. Given the nature of his departure from State employment and the length of time involved, it does not appear that Respondent's actions with respect to the contract award to Provaliant were intended to advance his job prospects with Provaliant. The violations do not appear to have been premeditated, did not involve any other State employees, were of brief duration, and were not vast in scope. No evidence of any prior disciplinary action or Ethics Act violations was presented.

WHEREFORE, the Executive Ethics Commission hereby grants Petitioner's Unopposed Motion for Summary Judgment and:

- A. Finds that Respondent violated 5 ILCS 430/5-45(a) and (f);

- B. Levies against Respondent an administrative fine in the amount of \$10,831 for his violation of 5 ILCS 430/5-45(a).
- C. Levies against Respondent an administrative fine in the amount of \$500 for his violation of 5 ILCS 430/5-45(f).


The total of fines imposed against Respondent is \$11,331.


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


SO ORDERED.


ENTERED: October 19, 2021


  
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Patricia Schuh, Commissioner

  
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Amalia Rioja, Chair

  
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Cara Hendrickson, Commissioner

  
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Chasity Boyce, Commissioner

  
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Maria Kuzas, Commissioner

  
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Cynthia Ervin, Commissioner

  
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Patricia Yadgir, Commissioner