

JUL 26 2017

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**BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS**

CONFIDENTIAL

In re: Julie W. Bujalski,

Respondent.

Complaint No. 16-204

ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

RESPONDENT/COMPLAINANT

Respondent, Julie W. Bujalski, serves as mayor of the City of Dunedin. Complainant is David R. Pauley of Dunedin, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Section 112.313(6), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on July 12, 2017.

ALLEGATION

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by receiving preferential treatment regarding past due payments owed to the City of Dunedin.

APPLICABLE LAW

Section 112.313(6), Florida Statutes, provides as follows:

MISUSE OF PUBLIC POSITION. No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

The term “corruptly” is defined by Section 112.312(9), Florida Statutes, as follows:

“Corruptly” means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

In order to establish a violation of Section 112.313(6), Florida Statutes, the following elements must be proved:

1. Respondent must have been a public officer or employee.
2. Respondent must have:
 - a) used or attempted to use his or her official position or any property or resources within his or her trust,
 - or
 - b) performed his or her official duties.
3. Respondent's actions must have been taken to secure a special privilege, benefit or exemption for him- or herself or others.
4. Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting him- or herself or another person from some act or omission which was inconsistent with the proper performance of public duties.

ANALYSIS

In November 2014, Respondent was elected the mayor of Dunedin after having served as a city commissioner since 2006. (ROI 3) In March 2012, Respondent and her husband, Thomas J. Bujalski, signed a revocable use agreement with the Dunedin Municipal Marina for the use of a deep-water boat slip for the storage of their 1986 28' Carver powerboat. (ROI 3) Pursuant to the agreement, the user fee for the boat slip was \$229 per month. (ROI 3) The agreement also states:

If payment is not received by the 15th day of the month, a delinquency charge of \$15.00 or 10 percent of the user fee (whichever is greater) will be assessed. In the event a user fee is delinquent after 60 days from the 1st of the month (City Ordinance Section 86-77), the vessel may not occupy the slip, and it is subject to removal from the marina or seizure for non-payment without further notice and immediate cancellation of the revocable use agreement.

(ROI 3)

City records reflect that after entering into the revocable use agreement, Respondent and Bujalski's delinquencies and relevant payments regarding the boat slip fees occurred as listed below:

October 1, 2013 – December 12, 2013: A \$744.80 payment was made to satisfy an outstanding balance. The payment included \$72.42 in late fees.

January 1, 2014 – April 2, 2014: A \$546.45 partial payment was made towards a \$1,171 outstanding balance.

May 1, 2014 – July 1, 2014: A \$1,447.87 payment satisfied the accrued outstanding balance. The payment included \$221.44 in late fees.

September 2, 2014 – February 2, 2015: A \$500 partial payment was made towards an outstanding balance of \$1,348.

September 15, 2015 – May 5, 2016: A \$400 payment was made towards a \$2,874 outstanding balance.

June 6, 2016: A \$1,300 partial payment was made.

August 10, 2016: A \$1,559 payment satisfied the outstanding balance. The payment included \$543.73 in late fees.¹ (ROI 4, Exhibit A)

Complainant alleges that after Respondent failed to make her monthly payments for the boat slip rental, she was allowed the continued use of the slip although the rental agreement calls for the removal or seizure of a vessel for non-payment. (ROI 1) In addition, Complainant alleges that Respondent was allowed to enter into a payment plan for the late slip fees, an option which had never been offered by the City. (ROI 1)

William Frantz, Harbormaster of the Dunedin City Marina, advised that from October 2013 until mid-August 2016, he was solely responsible for monitoring the status of the marina's slip rental accounts which he did by reviewing monthly slip account reports provided to him by the City's Finance Department. (ROI 9) He advised that when he noticed that a slip rental account became 30-60 days past due, he would place a courtesy call to the renter to encourage payment. (ROI 9) Normally when the account is 90 days or more past due, he would encourage the renter to remove the boat from the marina. (ROI 9) While the marina's standard policy was to provide delinquency notices at 30, 60, and 90 days past due as indicated in the rental agreement, Frantz advised that his response varied from time to time depending upon different factors. (ROI 9) The factors included whether the renter was easily contacted and how responsive the renter was to his request for payment. (ROI 9)

¹ Late fees were charged on all past due payments and were included in payments which satisfied outstanding balances. (ROI 4)

Frantz advised that Respondent and Bujalski's boat slip rental account was routinely past due. (ROI 7) Frantz advised that he contacted Respondent by telephone in December 2013 when the rental payment became 60 days past due. (ROI 5) Frantz advised that Respondent expressed surprise that the account was delinquent. (ROI 5) She told Frantz that her husband, Bujalski, pays the bills for the family and that she would speak to him regarding the past due bill. (ROI 5) Frantz advised that Respondent did not ask him to take any action or direct him in any way regarding the past due account. (ROI 5)

Frantz advised that Bujalski called and directed that he not contact Respondent in the future regarding any issues relating to their boat or rental of the boat slip. (ROI 6) Frantz advised that he has had no further communication with Respondent regarding the rental account. (ROI 6) As Frantz monitored the status of the account, he would contact Bujalski when it became overdue to request payment. (ROI 7) He advised that Bujalski demonstrated a willingness to provide regular payments. (ROI 10)

Frantz acknowledged that Respondent's past due account was not handled in a manner consistent with the slip rental agreement. (ROI 8) He advised there have been other occasions when City employees have had late slip rental fees. (ROI 8) At the time that Respondent and Bujalski's account became most delinquent, Frantz contacted his supervisor, Dunedin Parks and Recreation Manager Vince Gizzi, to obtain guidance on how to proceed because the outstanding balance was significantly higher than is tolerated by the City. (ROI 12)

Gizzi advised that he was unaware of the state of the Bujalskis' boat slip account. (ROI 14) He advised that he was surprised that no formal notice of delinquency had been forwarded to them considering the excessive past due amount. (ROI 15) He further advised that since no formal notice had been sent, the City's ability to exercise more aggressive fee recovery measures such as

requiring the removal of the Bujalskis' vessel or initiating seizure procedures, seemed inappropriate. (ROI 15) As such, Gizzi directed Frantz to contact Bujalski while he (Gizzi) contacted Respondent. (ROI 14, 15)

Respondent told Gizzi that she was unaware of the account's past due status and would discuss the matter with her husband so that she could advise Gizzi about a plan to address the delinquency. (ROI 16, 30) Respondent told Gizzi that her family was having significant financial problems caused by her husband's inability to work due to an injury he suffered. (ROI 16, 31) They discussed the situation again the following day. (ROI 17) During this conversation, Respondent asked if the City offered a payment plan for marina boat slip renters who are temporarily unable to meet their monthly slip rental obligations. (ROI 17, 32) Gizzi offered to look into matter and contacted Interim City Manager Douglas Hutchins and City Finance Director Joe Ciurro. (ROI 18)

Gizzi advised that he and the two other City leaders were in favor of a payment plan because they were not aware of any City regulation or policy which prohibited such an arrangement. (ROI 18, 21) Also, he advised that they agreed that the timely resolution of the Respondent's delinquent account was a priority. (ROI 18) Gizzi contends that a payment plan similar to Respondent's would have been made available to other delinquent slip renters had a request been made. (ROI 20)

Ciurro developed a six month payment plan similar to payment schedules offered to delinquent utility customers. (ROI 23) He advised that Respondent and Bujalski were required to pay all fees associated with the outstanding account, including late fees and taxes. (ROI 23) He further advised that they were not charged interest on the outstanding balance because the payment

plan was not a loan from the City. (ROI 23) While a payment plan had not been offered to a renter in the past, Ciurro advised plans have been offered to numerous utility customers. (ROI 21)

Ciurro advised that he met with Frantz and Bujalski on July 19, 2016 where Bujalski signed a document, which contained an amortization schedule, agreeing to make payments as indicated in the aforementioned schedule. (ROI 24, Exhibit B-1) City records reflect that Bujalski paid off the outstanding balance on August 10, 2016, which was in advance of the scheduled six-month payment plan. (ROI 25) The boat slip account has not been delinquent since the August payment. (ROI 27)

Respondent denied directing or pressuring Gizzi to take any specific action or that she used her official position in any way to obtain a more favorable payment plan arrangement than would otherwise have been available to her or any other City resident. (ROI 32) Gizzi advised that Respondent did not direct him to take any action regarding the outstanding account or in any way attempt to use her position to obtain favorable arrangements regarding the account in either conversation. (ROI 16, 17) Ciurro advised that he had no contact with Respondent regarding her delinquent account or the payment plan. (ROI 23) Hutchins advised that he had no contact with Respondent regarding her slip rental account. (ROI 28)

City Attorney Thomas Trask advised that he is unaware of any City policies or regulations which prohibit the establishment of a payment plan for past due marina slip rental fees. (ROI 29)

A violation of Section 112.313(6) requires that Respondent 1) used or attempted to use her official position or any property or resources within his or her trust or 2) performed her official duties in a corrupt manner to secure a special privilege, benefit, or exemption. The evidence does not show that Respondent used her position to direct any other City officials or performed her duties in the aforementioned manner.

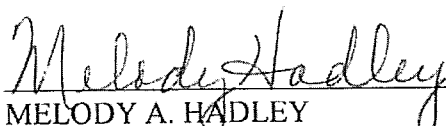
Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

RECOMMENDATION

It is my recommendation that:

There is no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by receiving preferential treatment regarding past due payments owed to the City of Dunedin.

Respectfully submitted this 26th day of July, 2017


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