

COMMONWEALTH OF MASSACHUSETTS
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 15-0001

IN THE MATTER

OF

ROBERT NICHOLS

Appearances: Candies Pruitt-Doncaster, Esq.
Counsel for Petitioner

Thomas R. Kiley, Esq.
Counsel for Respondent

Commissioners: Dortch-Okara, Ch., Trach, Quinlan, Mills¹

Presiding Officer: David A. Mills

**FINAL ORDER ON SUMMARY DECISION
AND CIVIL PENALTY**

On July 16, 2015, the Commission held a hearing on the civil penalty to be assessed against Respondent Robert Nichols. Upon Petitioner's Motion for Default Judgment, the Commission previously voted on May 21, 2015 to enter Summary Decision in favor of the Petitioner.²

¹ Commissioner Martin F. Murphy did not participate with regard to this Order.

² Nichols has not filed an Answer to the Order to Show Cause although, through a series of orders, the opportunity to do so was extended several times. An Answer was due on February 24, 2015. A series of orders extended this date first to April 10, 2015, then to May 19, 2015. The Commission voted to enter Summary Decision in favor of the Petitioner on May 21, 2015, and an Order dated June 3, 2015 scheduled the hearing on the civil penalty for June 18, 2015. Nichols did not file any formal motions for continuances, but sent informal requests by e-mail requesting continuances on the grounds that he sought to retain counsel who would not be available until August, 2015. In an Order dated June 18, 2015, the Commission continued the hearing on the civil penalty from June 18, 2015 to July 16, 2015 and ruled that if Nichols filed an Answer by July 1, 2015 and a formal written motion to vacate the entry of Summary Decision by no later than July 8, 2015, the Commission would entertain the motion to vacate at the hearing on July 16, 2015. The Order held that no further postponements of the hearing would be granted on the basis that Nichols did not have counsel or that his counsel was unavailable to attend the hearing. On July 15, 2015, Nichols again requested a continuance on the grounds that counsel would not be available until August and that he was in Washington, D.C. Consistent with its prior order, the Commission denied Nichols' request for the continuance on July 16, 2015. Through July 16, except for appearing at one pre-hearing conference by telephone, Nichols has shown little respect for this Commission's adjudicatory process and repeatedly has failed to file necessary pleadings and to appear for hearings of which he had ample notice.

After July 16, Nichols hired counsel, and on August 15, 2015, Nichols filed a Motion for Leave to File a Memorandum Addressing Disposition. Petitioner did not file an opposition to the Motion. On September 16, 2015, the Commission allowed the Motion.

Violations

Because of the present status of the case, Nichols' liability for the following conduct alleged in the Order to Show Cause has been established. Nichols served as a Chair of the Select Board for the Town of Blandford. Nichols also privately owned and operated Nichols International, LLC, d/b/a Berkshire Consulting. After Hurricane Irene destroyed a culvert and caused road damage on Hiram Blair Road in August, 2011, the Select Board, with Nichols participating, decided to replace the culvert and repair the road ("the Project"). At the time, because of a vacancy, only one other Selectman served on the Board.

Nichols represented to the Select Board that the Town's engineering consultant, Tighe & Bond, was unavailable to prepare the Project bid specifications and offered the services of Berkshire Consulting, falsely characterizing it as his "former employer." Through a contract between the Town and Berkshire Consulting, Nichols, in his capacity as Chair of the Select Board, hired Berkshire Consulting to draft the Town's bid specifications and perform other Project-related services.

Nichols himself drafted the Town's bid specifications for the project. He actively concealed his ownership of, and employment relationship with, Berkshire Consulting from the other Selectman on the Board by identifying Berkshire Consulting as his former employer based in New York City.

Berkshire Consulting issued a \$ 12,150.50 invoice to the Town for Project-related services on November 19, 2011. Nichols, as a Selectman, approved the payment to Berkshire Consulting. The Town issued a check for 12,150.50 on November 21, 2011, and Nichols deposited the check into a Berkshire Consulting bank account on November 22, 2011. Nichols and his wife were the only signatories to the bank account.

Our starting point in assessing a civil penalty is that:

Nichols violated § 19 by participating in decisions about selecting an engineering consultant to do work on the Project and in executing the contract between the Town and Berkshire Consulting when he, as the current owner and an employee of Berkshire Consulting, had a financial interest in the matters.

Nichols violated § 23(b)(2)(ii) by using his position as a selectman to secure an unwarranted privilege of substantial value -- \$12,150.50 -- for himself or others by misrepresenting the unavailability of Tighe and Bond and mischaracterizing his relationship to Berkshire Consulting to his fellow Selectman.

Finally, Nichols violated § 20 because, while serving on the Select Board, he knowingly had a financial interest in a contract made by the Select Board with Berkshire Consulting, a company he owned and operated.

Civil penalty

For violations of § 19, § 23(b)(2) or § 20, the Commission may assess a civil penalty of not more than \$10,000 for each violation. G.L. c. 268B, § 4(j)(3). Where the Commission finds pursuant to an adjudicatory proceeding that a Respondent has acted to his economic advantage, the Commission may order the violator to make restitution to an injured third party and also may require the violator to pay the Commission on behalf of the municipality damages in the amount of the economic advantage or \$500, whichever is greater. G.L. c. 268A, § 21(b). The statute explicitly states that this remedy shall be “in addition to” any civil penalty imposed under G.L. c. 268B, § 4(j)(3). G.L. c. 268A, § 21(c).

At the hearing on July 16, 2015, Petitioner proposed a penalty of \$22,500, representing \$7,500 per violation. The Commission was made aware that, as a result of criminal proceedings, Nichols already had reimbursed the Town of Blandford for the \$12,150.50 that he had deposited in Berkshire Consulting’s account. In determining a civil penalty, the Commission has considered Respondent’s Memorandum Addressing Disposition, which makes arguments in opposition to Petitioner’s proposed penalty of \$22,500.

Addressing the consequences for Nichols’ violations, the Commission takes into consideration that Nichols has reimbursed the Town for the full amount that it paid to Berkshire Consulting, and also that the Town got the benefit of the work that Nichols and Berkshire Consulting did on the bid specifications for the Project. The statute governing Commission adjudicatory proceedings explicitly enables the Commission to assess civil penalties in instances where reimbursement also has been required, however, and such an outcome is called for in this case in light of the misrepresentations that Nichols made to his fellow Selectman and the Town about the unavailability of a rival engineering consultant to work on the Project and about his own relationship to Berkshire Consulting. Nichols not only knowingly committed the Town to a contract with his own company instead of the Town’s usual consultant, but he also affirmatively misrepresented that he no longer had an affiliation with his own company. Civil penalties are appropriate because Nichols accomplished his objective of directing Town money to himself by means of active deception as well as concealment of facts of vital importance.

CONCLUSION

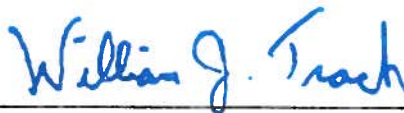
Accordingly, Summary Decision is entered in favor of the Petitioner, and the Commission assesses the following civil penalties to be paid by the Respondent: \$5,000 for his violation of G.L. c. 268A, § 19, \$5,000 for his violation of § 23(b)(2)(ii), and \$2,500 for his violation of § 20.

DATE AUTHORIZED: September 16, 2015

DATE ISSUED: October 14, 2015



Barbara A. Dortch-Okara



William J. Trach



Regina L. Quinlan



David A. Mills

NOTICE OF APPEAL

Respondent is notified of his right to appeal this Decision and Order pursuant to G.L. c. 268B, § 4(k) by filing a petition in Superior Court within 30 days of the issuance date.

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