

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE MATTER OF:)
COMPLAINT C2017-072)

State Ethics Commission,)
Complainant,)

Mary Lori Manning,)
Respondent.)
_____)

BEFORE THE STATE ETHICS COMMISSION

CONSENT ORDER

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This matter comes before the South Carolina State Ethics Commission (Commission) by way of a complaint filed by the Commission on February 15, 2017. Pursuant to S.C. Code Ann. § 8-13-320(10)(i), the complaint against Mary Lori Manning (Respondent) was considered by the Commission and probable cause was found to warrant an evidentiary hearing. Prior to the call of the case, Respondent agreed to entry of the following Statements of Fact, Conclusions of Law, Discussion, and Disposition in this matter.

STATEMENTS OF FACT

The facts of this case are complex and involve a number of individuals and businesses outside of South Carolina. For this reason, the facts are hereby categorized into broad subjects, as discussed below: (1) alleged improper contracts and other financial dealings involving Respondent, her associates, and public charter schools; and (2) alleged nepotism by Respondent.

I. Contracts and Financial Dealings

In 2010, Respondent and Katie B. Stellar (Stellar) co-founded Faith in Action Fort Worth, Inc. (FIA), a Texas-based non-profit organization, to establish charter schools in Texas. Stellar and Respondent served on FIA's Board of Directors (Board) as President and Treasurer, respectively. In 2012, following failed attempts to establish a charter school in Texas, FIA obtained authorization from the Secretary of State to operate as a non-profit organization in

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South Carolina for the same purpose. Respondent subsequently resigned from the FIA Board to focus her efforts on establishing a charter school in South Carolina, but was given an independent contract with FIA and retained the title of Executive Director.

The charter for High Point Academy-South Carolina (HPA-SC) was approved on June 18, 2013. HPA-SC was scheduled to open for the 2014-2015 school year with Respondent employed as the Superintendent. Respondent and Stellar then jointly drafted a ten (10) year contract for charter school management organization (CMO) services between HPA-SC and FIA. On July 1, 2014, the parties executed the CMO contract wherein FIA agreed to provide the following to HPA-SC:

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GENERAL CONTRACT FOR SERVICES
FIAFW, Inc. and High Point Academy

This Contract (this "Contract") is made effective as of July 01, 2014, by and between FIAFW, Inc., of 1609 N. Riverside Drive, Fort Worth, Texas 76111, and High Point Academy Inc., of 500 Evangel Rd., Spartanburg, South Carolina 29301, (High Point Spartanburg and any and all subsequent High Point campuses in South Carolina).

1. DESCRIPTION OF SERVICES. Beginning on July 01, 2014, FIAFW, Inc. will provide to High Point Academy Inc. the following services (collectively, the "Services"):

- Professional Development Services for grades K-12;
- Tutoring Services;
- HR Support Services;
- Administrative and Educational Consulting;
- Grant Writing;
- Benchmarking Data Analysis;
- Strategic Planning;
- Website and APP (ios and google play) Services and Hosting;
- After School Servicing as necessary for a per student cost-Zenith
- Uniform Servicing as necessary
- Other Services as needed and contracted by the Board of Directors.

FIAFW has the right to do business as (DBA) "The Zenith Group" for after school services.

In exchange for these services, HPA-SC agreed to pay FIA as follows:

2. PAYMENT. Payment shall be made to FIAFW, Inc., 1609 N. Riverside Drive, Fort Worth, Texas 76111.

High Point Academy Inc. agrees to pay FIAFW, Inc. as follows:

One time Fee: \$24,000

Monthly @ \$12,000 (\$144,000 for first year)

Approximately: 6% of the first year budget includes the \$24,000 administrative fee.

The remaining nine years will be paid at no more than 4% for contracted services listed above.

Uniforms and After School will be invoiced for separate payment.

Both the Uniform and Afterschool servicing is month-to-month and not required for fulfillment of the contract between High Point Academy and FIAFW.

FIAFW Services are payable on the 30th day of the month.

During the 2014-2015 and the 2015-2016 school years, FIA billed HPA-SC monthly for CMO services rendered under the contract. FIA, doing business as the Zenith Group (Zenith), also separately billed HPA-SC for after-school services. Zenith, in turn, paid Respondent \$10,000 to serve as its "on-site executive administrator" for the after school program. In addition, Stellar, acting as an independent contractor, billed HPA-SC \$5,550 each month to provide "educational services" and "fine arts oversight." In total, HPA-SC paid the following: (1) \$199,531 (2014-2015) and \$207,064 (2015-2016) to FIA; (2) \$132,484 (2014-2015) and \$203,422 (2015-2016) to Zenith; and (3) \$60,000 (2014-2015) and \$22,069 (2015-2016) to Stellar. On June 2, 2016, Respondent sent correspondence to Stellar outlining the amount HPA-SC intended to budget for FIA's CMO services for the 2016-2017 school year, \$290,000. However, in July of 2016, HPA-SC placed Respondent on administrative leave and suspended payments to FIA.¹ The following is a summary of the revenue sources FIA, Zenith, and Stellar

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¹ Respondent ultimately resigned as Superintendent on October 27, 2016.

received from HPA-SC:

Stellar, FIAFW & Zenith Revenue Sources	School Year	Gross Revenue	Operating Expenses	Gross Profit
CMO Contract	2014-15	\$199,531	(\$55,759)*	\$143,772
	2015-16	\$207,064	(\$55,759)	\$151,305
Subtotals		\$406,595	(\$111,518)	\$295,077
After School Program	2014-15	\$152,484	(\$65,561)	\$86,923
	2015-16	\$203,422	(\$98,651)	\$104,771
Subtotals		\$335,906	(\$164,212)	\$171,694
Independent Contract	2014-15	\$60,000	\$0	\$60,000
	2015-16	\$22,069	\$0	\$22,069
Subtotals		\$82,069	\$0	\$82,069
Grand Totals		\$824,570	(\$275,730)	\$548,840

Meanwhile, in Texas, FIA received approval to establish High Point Academy-Fort Worth (HPA-FW), a public charter school, in 2014. Stellar served as CEO and Superintendent for HPA-FW, which opened its doors to students for the 2015-2016 school year. Respondent subsequently formed Zenith Educational Services (ZES), a Texas-based for-profit corporation organized to provide CMO services. Respondent's sister, Robin Watts, operated ZES on Respondent's behalf. On July 1, 2015, ZES contracted with FIA² for CMO services in a contract nearly identical to the FIA/HPA-SC contract. Pursuant to that agreement, FIA paid ZES approximately \$290,000 for the 2015-2016 school year. The parties executed a similar contract the following year on July 1, 2016.

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During the 2015-2016 school year, Respondent, while employed by HPA-SC as Superintendent, acted as an "Operations Officer" for FIA. In this capacity, Respondent appeared

² In South Carolina, a non-profit entity is formed to govern a charter school through its application process and until the election of a Board of Directors made up of individuals from the community, at which time that Board becomes the governing body. However, in Texas, the non-profit entity continues to serve as the charter school's Board for the entire existence of the charter school. Thus, all contracts with HPA-FW are actually executed and managed by FIA.

via teleconference during FIA Board meetings on the following dates: September 29, 2015; October 26, 2015; February 29, 2016; March 28, 2016; April 18, 2016; May 16, 2016; June 27, 2016; and August 18, 2016. During each meeting, Respondent presented a financial report to the Board, including the financial/academic status of the charter and budgetary issues such as monthly cash flow projections.

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II. Nepotism

Prior to the 2014-2015 school year, Respondent hired her husband, Timothy Manning, to handle logistics/transportation and to teach Algebra to students in need of additional instruction. On May 22, 2015, Respondent promoted Mr. Manning to a salaried position as a transportation/logistics staff member with a salary of \$32,000 for the 2015-2016 school year.

On February 22, 2016, Respondent corresponded with the South Carolina Public Charter School District (PCSD) requesting confirmation that Mr. Manning's employment was not a "conflict of interest" under the Ethics Act. Respondent advised PCSD that Mr. Manning was not in her chain of command and that she was not involved in any way with her husband's employment. The PCSD opined that no conflict existed if supervisory and grievance functions were removed from Respondent's responsibilities. On May 26, 2016, Respondent promoted Mr. Manning to HPA-SC Director of Transportation/Logistics with a salary of \$48,000 for the 2016-2017 school year. Respondent's signature appears on Mr. Manning's letter of promotion. Shortly thereafter, Respondent approved discretionary year-end bonuses for Mr. Manning (\$2,200) and herself (\$3,300).

CONCLUSIONS OF LAW

Based upon the Statements of Facts, the Commission concludes, as a matter of law:

1. Pursuant to S.C. Code Ann. § 59-40-50, employees of public charter schools became subject to the Ethics Act on June 11, 2015. At all times thereafter, Respondent was a public employee, as defined by S.C. Code Ann. § 8-13-100(25):

“Public employee” means a person employed by the State, a county, a municipality, or a political subdivision thereof.

2. The Commission therefore has personal jurisdiction over Respondent and subject matter jurisdiction over events occurring after June 11, 2015.

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3. S.C. Code Ann. § 8-13-700 provides, in part, as follows:

(A) No [public employee] may knowingly use his [employment] to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated . . .

(B) No [public employee] may make, participate in making, or in any way attempt to use his [employment] to influence a governmental decision in which he, a family member, an individual with whom he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:

- (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

...

- (3) if he is a public employee, he shall furnish a copy of the statement to his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate supervisor, he shall take the action prescribed by the State Ethics Commission.

4. S.C. Code Ann. § 8-13-750(A), provides, in part:

No [public employee] may cause the employment, appointment, promotion, transfer, or advancement of a family member to a state or local office or position in which the [public employee] supervises or manages.

5. S.C. Code Ann. § 8-13-775 provides, in part:

A [public employee] may not have an economic interest in a contract with the State or its political subdivisions if the [public employee] is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or the award of the contract.

6. At all times relevant to this Complaint, Timothy Manning was Respondent's family member as defined by S.C. Code Ann. § 8-13-100(15):

"Family member" means an individual who is: (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, or grandchild; (b) a member of the individual's immediate family.

7. At all times relevant to this Complaint, FIA, FIA d/b/a Zenith, and ZES were businesses with which Respondent was associated as defined by S.C. Code Ann. § 8-13-100(4):

. . . a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

8. At all times relevant to this Complaint, Katie Stellar was an individual with whom Respondent was associated as defined by S.C. Code Ann. § 8-13-100(21):

. . . an individual with whom the person or a member of his immediate family mutually has an interest in any business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value

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and which constitutes five percent or more of the total outstanding stock of any class.

9. At all times relevant to this Complaint, Respondent, Stellar, and their respective businesses possessed an economic interest in the FIA/Zenith/HPA-SC contract and the FIA/ZES contract, as defined by S.C. Code Ann. § 8-13-100(11)(a):

“Economic interest” means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a [public employee] may gain an economic benefit of fifty dollars or more.

10. S.C. Code Ann. § 8-13-130, allows the Commission to “levy an enforcement or administrative fee on a person who is in violation” of the Act.
11. S.C. Code Ann. § 8-13-320(10)(l)(i), allows the Commission to require payment of a civil penalty of up to \$2,000 for each violation of the Act.

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DISCUSSION

The Commission found probable cause to charge Respondent with the following: (1) one violation of § 8-13-700(A); (2) one violation of § 8-13-700(B); (3) one violation of § 8-13-775; and (4) one violation of § 8-13-750(A).

Through this Consent Order, the Commission agrees not to prosecute the alleged violations of § 8-13-750(A) or § 8-13-775 in exchange for Respondent’s admission that she violated the Ethics Act as follows: (1) by using her employment with HPA-SC to obtain an economic interest for herself or a family member when she promoted her spouse to Director of Transportation/Logistics, in violation of Section 8-13-700(A); and (2) by participating in a governmental decision in which she or an individual/business with which she was associated had an economic interest, in violation of Section 8-13-700(B); to wit, Respondent participated in

matters related to the contracts between HPA-SC and FIA/Stellar, a business/individual with which she was associated.

DISPOSITION

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1. The Commission hereby finds Respondent Mary Lori Manning in violation of one (1) count of S.C. Code Ann. § 8-13-700(A) for using her public employment to obtain an economic interest for herself or a family member and one (1) count of S.C. Code Ann. § 8-13-700(B) for participating in a governmental decision in which she or an individual/business with which she was associated had an economic interest.
2. The Commission hereby adopts the Statements of Fact, Conclusions of Law, Discussion, and Disposition as agreed upon by the Respondent.

THEREFORE, the Commission orders Respondent to pay the Commission, within one-hundred and eighty (180) days from receipt of this Order, a reduced civil penalty of \$4,000 and an administrative fee of \$500, for a total of \$4,500.

By executing this Consent Order, Respondent understands that she is not only admitting to violations of the Ethics Act, but also confessing to a judgment of \$8,000 (less any money paid to the Commission) in the event she does not make full and timely payment as provided for in this Order. In that event, the Commission shall file a Judgment against Respondent with the Clerk of Court in her last known county of residence. Upon said filing, the Clerk of Court shall enter this Order in the amount of \$8,000 (less any money paid to the Commission) in its Judgment Rolls, without cost to the Commission.

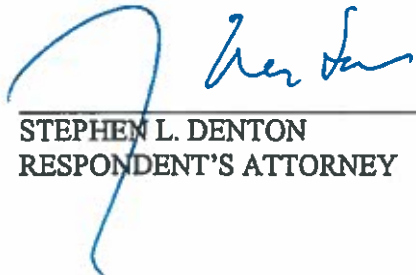
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AND IT IS SO ORDERED THIS 14 DAY OF February 2019.

STATE ETHICS COMMISSION


BRIAN M. BARNWELL, CHAIR


MARY LORI MANNING
RESPONDENT


STEPHEN L. DENTON
RESPONDENT'S ATTORNEY