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State Personnel Board

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May 26, 2021

MEMORANDUM

TO: Judith Haney, Pro se
Ellen Leonard, Esq.

FROM: Jackie Graham 
State Personnel Director

RE: 36-26-27(b) Complaint filed by Judith Haney against Sam Davis and Neva Conway

Enclosed please find a copy of the Recommended Order to the State Personnel Board in connection with the above-referenced complaint. This matter will be placed on the Board's agenda for its next regularly scheduled meeting, currently set for June 16, 2021. At that time, the Board will issue a Final Order in this matter.

**BEFORE THE ALABAMA
STATE PERSONNEL BOARD
IN THE MATTER OF**

Judith Haney,)	
)	
Complainant,)	
)	
vs.)	CASE NO. 21-16-JJW
)	21-17-JJW
Sam Davis and Neva Conway,)	
In their Official Capacities as)	
Employees of the Alabama)	
Real Estate Appraisers Board,)	
)	
Respondents.)	

RECOMMENDED ORDER OF DISMISSAL

I. Procedural and Factual Background

On May 11, 2021, Judith Haney (“the Complainant” or “Haney”) a citizen and a licensee of the Alabama Real Estate Appraisers Board (“AREAB”) filed a complaint with State Personnel Department Deputy Director Alice Ann Byrne (“Byrne”) against Samuel Davis (“Davis”), an investigator in the classified service with AREAB alleging Davis did not do his job properly when he contacted her on March 1, 2021, by telephone while investigating a complaint filed with AREAB against Haney. Haney alleges Davis called her without advance notice to her, did not tell her he was recording the call, did not advise her she did not have to answer his questions, did not advise her she could have an attorney present and says she was caused to turn over her “work product” (an appraisal work file) without probable

cause. Haney further says Davis inappropriately read to her a portion of Ala. Admin. Code r. 780-X-14-.02 (d)(3).

On May 12, 2021, Haney filed a complaint with Byrne against Neva Conway (“Conway”), an attorney for AREAB, alleging that Conway had directed Davis to call Haney and engage in the conduct Haney alleges was inappropriate. Haney complains that her rights have been violated by Davis and Conway; they have acted with "negligent disregard" under color of state law to the detriment of Haney. Haney alleges Davis and Conway violated the basic duty of care in carrying out their duties, abusing their discretion and authority as employees of AREAB.

Haney complains that Davis read to her a portion of the AREAB Ala. Admin. Code r. 780-X-14-.02(3) which provides: "A respondent appraiser who requests and receives a copy of the complaint received by the Board shall not contact the individual who made the complaint unless the appraiser is responding to a request for corrections or reconsiderations in a report. A respondent appraiser shall not retaliate against the person who filed a complaint in any way. Violation of this section by a respondent will result in a 30 day suspension of the appraiser license if, after noticed (sic) and hearing provided for in this chapter, the board finds that the respondent has violated this section." Haney says Conway instructed Davis to read this rule to her which could be "interpreted as a warning, harassing, bullying, intimidating, frightening and restraining me from filing lawsuits against AREAB

complainants."¹ Haney alleges it was a form of "prior restraint." Haney complains that Davis and Conway are not properly supervised in their undertakings.²

Haney alleges that Conway and Davis "lacked probable cause" to request her appraiser work files in connection with a consumer complaint filed against Haney on March 23, 2020. Haney further alleges Conway failed to read the complaint against her before causing Davis to investigate it. Haney believes it was inappropriate for Davis and Conway to access her "appraiser work file" in the investigation of the B■■■■ R■■■■ complaint against her.

Davis and Conway answer that there is "no evidence" that neither of them have done anything inappropriate and have only done their respective jobs for AREAB. They contend that Haney is improperly attempting to use this proceeding to obtain information in connection with the pending complaint against Haney before the AREAB.

Haney sent a copy of her Motion to Dismiss an AREAB Complaint against her (AB-2010) and a copy of a Motion to Recuse Neva Conway to the State Personnel Department on May 10, 2021. The matter was referred to Chief Judge Randy Sallé. Haney filed her letter complaint against Davis with Judge Sallé on May 11, 2021. Haney filed her complaint against Conway on May 12, 2021. Judge Sallé

¹ Respondent's Exhibit 3.

² Complainant's Statement of Facts.

conducted a prehearing telephone conference with Haney and Ellen Leonard (“Leonard”), who represented Davis and Conway.

Judge Sallé assigned the cases to ALJ Wood, the undersigned, who issued a Scheduling Order on May 13, 2021, setting the hearing for May 21, 2021, beginning at 9:00 a.m. The Hearing took place as scheduled. Ms. Haney appeared *pro se*. Leonard represented Davis and Conway. Davis and Conway offered three (3) exhibits, which were admitted. Haney offered no exhibits. At Haney's request Respondents' Exhibit 1, was placed under seal owing to Haney's concern about HIPAA information.

II. The State Personnel Board has jurisdiction over this matter.

The Alabama Legislature placed within the laws of the State Personnel Board, *Ala. Code* 1975, §36-26-27(b), which states:

In addition to the removal by an appointing authority, persons in the classified service may be removed or disciplined in the manner described in this subsection. Charges may be filed by any officer, citizen or taxpayer of the state with the director who shall, within five days, cause a copy to be served upon the person complained against and shall set a day not less than 10 nor more than 20 days after such charges have been served on such employee for public hearing of such charges. This hearing may be before the director; a special agent appointed for the purpose by the director or the board itself. If before the director or a special agent, the director or special agent shall take testimony offered in support and denial of such charges and from the same submit to the board, within five days, a findings of facts and law involved and a recommended decision.

In this case, a citizen and taxpayer alleged classified employees violated General Work Rules as they carried out their assigned duties. Those facts squarely fall within the context of §36-26-27(b). Davis and Conway deny they violated any Work Rules.

Further, *State Personnel Bd. v. Prestwood*, 702 So.2d 176 (Ala. Civ. App. 1997), affirms the jurisdiction of the State Personnel Board in this matter. In that case, the State Personnel Board declined jurisdiction over a citizen complaint filed under *Ala. Code* 1975, §36-26-27(b), however, the Alabama Court of Civil Appeals remanded the case back to the State Personnel Board stating, “The repeated use of the word ‘shall’ in Section 36-26-27(b), as well as the declaration of what appeared to be mandatory time limits, indicate the Board has no discretion about whether to hear a ‘citizen’ complaint.” *Id.* at 179.

Once a complaint is filed, the undersigned only has the powers conferred upon him by the Board. The Board does not permit the undersigned to dismiss actions based upon limited sets of facts, directed verdicts, or based solely on the pleadings.

III. Findings of Fact

At the beginning of the hearing the ALJ explicitly denied any pending motions, not previously ruled on. The ALJ specifically declined to treat any Requests

for Admissions as Admissions owing to the constricted timeframes imposed by the Section 36-26-27(b).

Haney was offered an opportunity to make any objections or offers of proof on the record. The undersigned granted the objection of Davis and Conway to the testimony of three (3) AREAB employees: Carolyn Green, Tiffany Baker, and Margaret Anne Davis, who had no relevant, material personal knowledge or testimony.

The undersigned did not grant any Motions to Strike or Motions to Compel. When Haney implied she was disallowed possible witnesses she was offered the opportunity on the record to make a showing and offer of proof on what any such witness might have testified to if present, she declined.

Haney called Davis and Conway as witnesses. The undisputed testimony of both employees was that the treatment of Haney was consistent with the laws, rules, and regulations governing their work conduct. Both indicated that Haney was not mistreated. The handling of the consumer complaint involving Haney was handled in the "ordinary course of business" at AREAB.

Haney admitted she was mistaken about what Davis told her on the telephone call. He did tell her he was recording it. He did tell her he would call later if it were not convenient for her. The Respondents' Exhibit 1 clearly confirms that Davis was business like and professional in his questions of Haney. The normal investigative

procedures at AREAB routinely involve the investigator's ability to request and review an appraiser's work file in the course of his investigation.

Davis and Conway deny they breached a duty of care to Haney. They deny there was any "conspiracy" to deprive Haney of her rights under color of law. Both employees insist they have only done their respective jobs at AREAB.

Haney insists she has been mistreated in the AREAB complaint process. The undersigned does not doubt that she believes that. However, there is no evidence before the undersigned to establish Haney's claims. There is Haney's speculation and conjecture about why certain events transpired as they did, including why Haney's nomination to the AREAB by Lucy Baxley did not result in her appointment. Haney insists Conway has harmed her reputation with the AREAB Board. No proof has been adduced before the undersigned to that effect.

IV. Discussion


The law is well settled that a "preponderance of the evidence" standard requires a showing of a *probability* that the employee is guilty of the acts as charged. There must be more than a mere possibility or one possibility among others that the facts support the disciplinary action at issue. The evidence must establish that *more probably than not*, the employee performed, or failed to properly perform, as charged. See *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 117 S.Ct. 1953, 138 L.Ed. 2d 327 (1997), holding that a "significant possibility" falls far short of the

APA's preponderance of the evidence standard. *See also Wright v. State of Tex.*, 533 F.2d 185 (5th Cir. 1976).³ There was no admissible, credible evidence to support Haney's allegations against Davis and Conway.

V. Recommendation

WHEREFORE PREMISES CONSIDERED, the undersigned hereby recommends that the State Personnel Board Dismiss Haney's complaints against Davis and Conway, WITH PREJUDICE.

Done this 26th day of May 2021.



JAMES JERRY WOOD
Administrative Law Judge
State Personnel Department
64 North Union Street
Montgomery, Alabama 36130
Telephone: (334) 242-8353
Facsimile: (334) 353-9901

³ In *Bonner v. City of Pritchard*, 661 F.2d 1206, 1209 (11th Cir.1981), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

VIA E-MAIL AND FIRST-CLASS U.S. MAIL:

Judith Haney



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