NO. CV 10 6003844S : SUPERIOR COURT

PRISCILLA DICKMAN : JUDICIAL DISTRICT OF

v. : NEW BRITAIN

OFFICE OF STATE ETHICS, CITIZEN'S ETHICS ADVISORY BOARD : AUGUST 31, 2011

8-31-11 Mailed copy of decision to atty Geldo, Hanson + O'Dowd + official reporter of judicial decisions

MEMORANDUM OF DECISION

The plaintiff, Priscilla Dickman, appeals from a final decision of the defendant office of state ethics, citizen's ethics advisory board (the board). Pursuant to General Statutes § 1-82 (b), the board unanimously voted on January 12, 2010, at the conclusion of its public hearing, to fine the plaintiff $15, 000 for violations of General Statutes § 1-84 (c)–using one's office to obtain financial gain for herself.[1] Also, in accordance with § 1-82 (b), on January 15, 2010, the board issued a "finding, memorandum and order" setting forth its findings and the reasons therefor; statutorily this is the final decision for purposes of appeal.

The record shows that a probable cause finding on a complaint against the plaintiff was made by a judge trial referee pursuant to § 1-82 (a) (2) on August 13, 2009. (Supplemental Return of Record (SROR) July 12, 2011). In keeping with § 1-82 (b), the

1 The plaintiff was sanctioned and therefore is aggrieved for purposes of § 4-183 (a).

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board commenced a public hearing on September 11, 2009, took a vote on conclusion of evidence on January 12, 2010,[2] and in its January 15, 2010 memorandum made the following relevant findings of fact:

1. It is found that between 1978 and 2005 the respondent was an employee at the University of Connecticut Health Center ("UCHC"), an executive branch state agency.

* * *

7. It is found that at all times relevant to the complaint, and by virtue of her employment at the UCHC, the respondent had access to the UCHC's state resources, including UCHC computers, email system, telephones, internet access and printers.

8. It is also found that at all times relevant to the complaint, the respondent, in addition to engaging in her state employment at the UCHC, owned and/or operated a private jewelry business, which was registered with the state Department of Revenue Services.

9. It is found that the jewelry business was operated under the respondent's own name and/or "Priscilla's Custom Designed Jewelry" and/or "Pricill's Custom Designed Jewelry" (hereinafter "jewelry business").

10. It is concluded that the jewelry business was a business with which the respondent was associated, within the meaning of § 1-79 (b), because such business was an entity through which business for profit was conducted and the respondent was an owner of such business.

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[2] The vote was unanimous that the plaintiff had violated § 1-84 (c).

11. It is found that the respondent, on multiple occasions, used her access to the UCHC's state resources in furtherance of her private jewelry business.

12. Specifically, it is found that the respondent, on state time, used the UCHC's state computers, email system, telephones, internet access and printers in furtherance of her private jewelry business.

13. It is further found that the respondent, even when not on state time, accessed and used the UCHC's email system from remote locations to conduct her private jewelry business.

14. It is also found that the jewelry business did not have a computer during 2004 and 2005, and that the respondent relied on, and used the state's computers to run her jewelry business.

15. It is also found that during 2004 and 2005 the respondent was a registered travel consultant and agent and operated with a travel agent identification number from the International Air Transport Association.

16. It is concluded that the travel consulting business was a business with which the respondent was associated, within the meaning of § 1-79 (b), because such business was an entity through which business for profit was conducted and the respondent was an owner of such business.

17. It is found that the respondent, during state time, used the UCHC's phones and e-mail in furtherance of her travel consulting business.

18. It is concluded that the respondent's conduct described in paragraphs 11, 12, 13, 14 and 17 of the findings above, constituted a use of her public office or position, within the meaning of § 1-84 (c).

19. It is found that the respondent engaged in the conduct described in paragraphs 11, 12, 13, 14 and 17 of the findings above, to obtain financial gain, within the meaning of § 1-84 (c).

20. It is also found that such conduct resulted in financial gain for herself or a "business with which [s]he is associated," within the meaning of § 1-84 (c).

21. Specifically, it is found that the 2004 state tax records filed for Priscilla's Custom Designed Jewelry, which tax records are signed by the respondent, declare that such business had $14,315 in gross receipts for the direct sale of jewelry in 2004.

22. It is also found that the tax records further indicate gross receipts of $45,672.00 from indirect sales of jewelry.

23. It is further found that the respondent's 2005 state tax records reflect an amount of $850.00 reported in gross receipts from sales of goods.

24. It is further found that the respondent obtained financial gain by way of commissions from her travel consulting business.

25. In sum, it is found that the respondent obtained financial gain from a variety of sources, such as: a) revenues from her business, b) commissions, c) cash sources, d) tax benefits, and e) the avoidance of costs, which costs she would have incurred, had she not used the state's computers, email system, telephones, internet access and printers in furtherance of her private businesses.

26. It is further found that the respondent was advised that conducting non-UCHC business was prohibited and that the respondent continued to engage in such conduct.

* * *

28. It is found that by engaging in the acts and course of conduct described in paragraphs 11, 12, 13, 14 and 17 of the findings above, the respondent knowingly acted in her own financial interest in violation of § 1-84 (c).

29. It is also found that by engaging in the acts and course of conduct described in paragraphs 11, 12, 13, 14 and 17 of the findings above, the respondent knowingly received financial advantage, resulting from a violation of § 1-84 (c).

30. Consequently, in accordance with § 1-88 (d), the respondent "shall be liable" for damages in the amount of the financial advantage.

The board reached the following conclusions:

1. Respondent Priscilla Dickman violated Connecticut General Statutes § 1-84 (c) as alleged in Counts One and Three of the complaint.

2. Respondent Priscilla Dickman knowingly acted in her financial interest and knowingly received a financial advantage, within the meaning of Connecticut General Statutes § 1-88 (d) and as alleged in Counts Two and Four of the complaint.

The board imposed the following sanctions:

1. Forthwith, the respondent Priscilla Dickman shall pay a civil penalty of $10,000 with respect to the violation found in connection with Count One of the complaint;

2. Forthwith, the respondent Priscilla Dickman shall pay a civil penalty of $5,000 with respect to the violation found in connection with Count Three of the complaint;

3. Forthwith, the Office of State Ethics shall inform the Attorney General that respondent Priscilla Dickman may be liable for damages in accordance with § 1-88 (d). (Return of Record, ROR, pp. 167-176).

This appeal was timely taken from the board's final decision. The issues raised by the plaintiff, to the extent that they involve statutory interpretation, are required by appellate rulings to be resolved as follows: "When construing a statute, our fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of the case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretative guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." (Brackets omitted, citations omitted.) *Mayfield* v. *Goshen Volunteer Fire Co.*, 301 Conn. 739, 744, __ A.2d __ (2011). See also *Commissioner of Public Safety* v. *Freedom of Information Commission*,

301 Conn. 323, 337-38, 21 A.3d 737 (2011).

With regard to the standard of review, "judicial review of an administrative agency's action is governed by the Uniform Administrative Procedure Act . . . and the scope of that review is limited. . . . Conclusions of law reached by the administrative agency must stand if . . . they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts . . . . The court's ultimate duty is only to decide whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion." (Brackets omitted; citations omitted, internal quotation marks omitted.) *Merchant* v. *State Ethics Commission*, 53 Conn. App. 808, 812, 733 A.2d 287 (1999).

As the Supreme Court recently stated: "In accordance with the Uniform Administrative Procedure Act . . . we review an administrative agency's decision for abuse of discretion to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable . . . . [Where a] case presents a question of law and does not involve an agency's time tested interpretation of its regulations . . . the standard of review is de novo." (Citations omitted; internal quotation marks omitted.) *Connecticut Motor Cars* v. *Commissioner of Motor Vehicles*, 300 Conn. 617, 622, 15 A.3d 1063 (2011).

The first issue[3] raised by the plaintiff stems from two complaints filed by a newspaper reporter with the freedom of information commission (FOIC). These complaints to the FOIC alleged that the board violated the open meeting provisions of the freedom of information act (FOIA) twice[4] during the proceedings that led to the board's sanctions against the plaintiff. On September 22, 2010 and on January 28, 2011 the FOIC ruled in favor of the reporter. The FOIC orders in these final decisions were identical in that the board was directed not to violate FOIA "henceforth" and to post on the board's

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The plaintiff also raised several issues in her brief that were not discussed at the oral argument in any detail. (1) The court adheres to the burden of proof standard set forth in *Goldstar Medical Services, Inc.* v. *Dept. of Social Services*, 288 Conn. 790, 818, 955 A.2d 15 (2008) (agency must meet preponderance of the evidence standard). (2) Given the managerial discretion given the JTR at the public hearing by § 1-82 (b), the court finds no error in the JTR's ruling on the continuances allowed to the board to complete the hearing beyond ninety days and the JTR's denial of the plaintiff's request for a continuance at the beginning of the hearing. (3) Similarly given the discretion that the JTR has to make evidentiary decisions, the plaintiff has not established a violation by the JTR in admitting the board's evidence not directly related to a violation of § 1-84 (c). (4) The record indicates that the plaintiff was invited to review the entire file of the board. (ROR, pp. 1148, 1400). Therefore no claim may be made by the plaintiff that she did not receive a "bill of particulars" or exculpatory material. (5) Finally, the plaintiff questions the probable cause decision of Judge Wollenberg. On the other hand, the matter was subsequently heard at the public hearing with a higher standard of proof for the board than the probable cause standard used by Judge Wollenberg. The board found unanimously against the plaintiff.

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The first meeting occurred during the public hearing when the board met privately to discuss the plaintiff's request for a continuance. The second meeting occurred when the board held its deliberations, in private, on the charges against the plaintiff at the conclusion of the public hearing.

website reconstituted minutes of the meetings that had improperly been closed to the reporter. Even though § 1-206 (b) (2) of FOIA also permitted the FOIC to impose as a sanction the voiding of the board's orders against the plaintiff, in neither of its final decisions did the FOIC declare null and void the board's final decision in this case. Further, the plaintiff did not participate as a joint complainant along with the newspaper reporter before the FOIC.[5]

The plaintiff now argues that this court, in light of the FOIC's final decisions, should declare the orders of the board null and void. This contention is not supported by clear precedent from our appellate courts. The case of *Pane* v. *Danbury*, 267 Conn. 669, 678, 841 A.2d 684 (2004) held that FOIA "does not give rise to a private cause of action." Damages for FOIA violations were only available through the applicable FOIA statute allowing for the imposition of a civil penalty. See also *Massey* v. *Branford*, 119 Conn. App. 453, 471, 988 A.2d 370 (2010).

In *Spitz* v. *Board of Examiners of Psychologist*, 127 Conn. App. 108, 12 A.2d

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[5] The board appealed both the final decision of September 22, 2010 and the final decision of January 28, 2011 to this court and the court dismissed the board's appeals. Therefore, the court has approved the conclusions reached by the FOIC in its final decisions. See *State of CT, Citizen's Ethics Advisory Board* v. *Freedom of Information Commission*, Superior Court, judicial district of New Britain, Docket No. CV 106007661 (July 15, 2011, *Cohn, J.*) and *State of CT, Citizen's Ethics Advisory Board* v. *Freedom of Information Commission*, Superior Court, judicial district of New Britain, Docket No. CV 116009483 (July 15, 2011, *Cohn, J.*).

1080 (2011), the Appellate Court applied *Pane* in an administrative appeal context. In *Spitz*, the plaintiff complained to the FOIC that the agency had convened without justification in executive session. The FOIC agreed, but as here, the sanction given to the agency was to amend its minutes "to include the purpose of the executive session and to reconstruct the substantive discussion held during the executive session" and did not include an order declaring the agency's sanctions against the plaintiff null and void. Id., 112, n.8. In a § 4-183 appeal, the plaintiff argued "that the trial court committed reversible error in upholding the final decision of the board notwithstanding a violation of the FOIA." Id., 122.

The Appellate Court's reasons for rejecting this argument directly apply to the plaintiff's contentions in this appeal: "The trial court declined to provide the plaintiff with a remedy that he was unable to obtain from the commission. We agree with the court. In the present case, the plaintiff previously availed himself of the statutory process under General Statutes§ 1-206 (b), which provides the exclusive remedy for the violation of a right conferred by the FOIA [citing *Pane* v. *Danbury*]. The plaintiff prevailed[6] and was provided relief for the FOIA violations. He had the ability to appeal from the

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While the plaintiff did not bring the FOIA complaints in this case as had the plaintiff in *Spitz*, this is not a material difference as the plaintiff had every right to join in the newspaper reporter's complaints to the FOIC and failed to do so. As FOIA provides, "any person" may bring a complaint for violation of the open meeting provisions. § 1-206 (a) (1).

commission's decision pursuant to § 1-206 (d), were he dissatisfied with the relief provided. Accordingly, we will not disturb what the commission deemed to be the proper remedy for the board's violation of the FOIA." (Footnote numbers omitted). Id., 122-23.

Spitz also held that under *Pane* no claim could be made that the Uniform Administrative Procedure Act (UAPA) was violated by an agency issuing an order that failed to meet FOIA standards. Id.,122, n.17. Thus *Spitz* is precedent to reject the plaintiff's argument here that this court should go beyond the FOIC's decree to void the board's post-hearing sanctions against the plaintiff.

The plaintiff's second ground of appeal is one of statutory construction. The board concluded that the plaintiff had committed several violations of the portion of § 1-84 (c) providing that "[n]o . . . state employee shall use his . . . position . . . to obtain financial gain for himself. . . ." The plaintiff claims that, even assuming the record supports the board's factual findings, the statute does not apply to the plaintiff's conduct. Her argument is based on the statutory word "position." In her proposed reading, the statute only censures personal use of state facilities for private financial gain to the extent that such use directly relates to her *position*, that is, the employment for which she was hired. Thus, as the plaintiff sets forth at page 9 of her brief, if a microbiologist furnishes a lab report prepared on state time to a physician in exchange for private compensation, § 1-84 (c) is violated; but if the microbiologist conducts a jewelry business at work using

a state computer, § 1-84 (c) is not violated. The plaintiff, of course, admits that conducting the jewelry business on state time might constitute "theft of services" (§ 53a-117), a matter for the prosecutorial authorities, but not within the jurisdiction of the board.

The board replies that the legislature passed § 1-84 (c) to halt the *use* of one's position for financial gain, whether such use was directly or indirectly related to one's state position or job description.[7] The board is supported in its argument by the dictionary definition of "use." See Webster's Third International Dictionary, defining "use" as "the act or practice of using something" and giving the following example: "employment: <a *use* of his public post to secure a favor for a friend.>"

In *Merchant* v. *State Ethics Commission*, supra, 53 Conn. App. 813, the Appellate Court found jurisdiction in the board to sanction a state official who "used his public office for personal financial gain." The specific conduct was that he "unilaterally determined that it was appropriate for him to claim work time when out of the state on

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[7] To the degree that the scope of § 1-84 (c) is ambiguous, the legislative history of the section supports the board's interpretation. Senator Beck stated that the purpose of the section was to prohibit a state employee from using "public office held in such a way as to obtain financial gain for him or for herself." (Senate, May 31, 1977, p. 3278). The intent was, according to Representative Hendel, "to pass a stronger code of ethics bill this year. I think it's important that we help to increase public trust and improve the total image of our state government . . . . The strength of this bill lies in the oversight powers that will rest with a new ethics commission." (House of Representatives, June 6, 1977, pp. 6417-18).

personal business and, thereafter, vouched for the accuracy of his time sheets as head of [his] office . . . ." In *Council* 4, *American Federation of State, County & Municipal Employees* v. *Connecticut State Ethics Commission*, Superior Court, judicial district of New Britain, Docket No. CV 09 4020353 (July 26, 2010, *Cohn, J.*), the court upheld the board's advisory opinion that while court monitors had the right to sell their transcripts, they could not prepare them on state time while drawing a state salary.

The plaintiff distinguishes these cases on their facts–in *Merchant*, a supervisor, whose job included approving employee absences, was overly-generous with his own attendance record, and in *Council* 4 the employees sought permission to prepare transcripts for private parties on state time. In the plaintiff's view, these violations of § 1-84 (c) relate to the job descriptions of the employees.

As the board contends, however, § 1-84 (c) has a wider application. This is seen in two cases from other states where the identical language of § 1-84 (c) is in effect. In *McCutcheon* v. *Commonwealth, State Ethics Commission*, 466 A.2d 283 (Pa. Commonwealth, 1983) the court affirmed the Pennsylvania ethics commission's finding that two town officials misused their office by arranging for unauthorized pensions for themselves. In *Davidson* v. *Oregon Government Ethics Commission*, 712 P.2d 87 (Or. 1985), the court held that a state employee had used his office for financial gain when he obtained an automobile for himself at a discount as an "add-on" to a state fleet purchase

order. *Davidson* did not accept the argument made there, and here as well, that the Oregon (and hence the Connecticut) statute applied only to misusing the power and influence inherent in the public office itself. Id., 92.

According to *Davidson*, the employee "used his public office because he 'availed himself of' the add-on purchase by buying a car at a price available to him only as a public official. As a private citizen he could not have walked into the car dealership, asked for an add-on purchase fleet discount and received it. Only because he was an employee [of the agency] did he qualify for the [agency] purchase price discount. The term 'use' is not restricted only in influence peddling. The concept of public trust extends to all matters within the duties of the public office. The broad policy of the ethics laws is to ensure that government employees do not gain personal financial advantage through their access to the assets and other attributes of government." Id.

For the purposes of this ground of appeal, the plaintiff agreed to the facts as found by the board. In keeping with *Davidson*, the plaintiff's use of state facilities logically falls within the jurisdiction of § 1-84 (c) as the plaintiff obtained financial gain through her "access to the assets and other attributes of government." As indicated above, the legislature, in passing § 1-84 (c), sought to disallow such conduct.

In addition to the court's own plenary review, the board has demonstrated that it is entitled to "special deference" in the court's determination of what is meant by using

one's position for financial gain. Such deference is justified when the agency's interpretation is "time-tested and reasonable."[8] See *Commissioner of Public Safety* v. *Freedom of Information Commission*, supra, 301 Conn. 336; *Family Garage, Inc.* v. *Commissioner of Motor Vehicles*, 130 Conn. App. 353, 358, 23 A.3d 752 (2011). At least five times between 1998 and 2005, the board's predecessor ruled that obtaining financial gain through the use of state work time or facilities (e-mail, computer website and storage, telephone) while holding a position of a state employee violated § 1-84 (c). See brief of board, pages 17-18. The board's interpretation is found to be reasonable.

Finally, the court relies on the *Merchant* decision as regards the plaintiff's contention that the board cannot enforce § 1-84 (c) when a criminal statute forbids theft of services. "The plaintiff's alleged activity clearly falls within the jurisdiction of the commission[9] under the ethics code. Absent a statutory provision designating which commission is to have overriding responsibility . . . the fact that the legislature has given responsibility to more than one agency suggests that each must exercise its own authority, using its standards and procedures, regardless of what the other agencies do under their delegation of power from the state." (Internal quotation marks omitted.) *Merchant* v.

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The fact that the Appellate Court decided that the board had acted correctly under § 1-84 9(c) in *Merchant* also supports deference to the board's interpretation.

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The ethics commission has been legislatively replaced by the board.

State Ethics Commission, supra, 53 Conn. App. 813-14.

The plaintiff's third ground of appeal involves a letter written by the plaintiff's attorney ten days before the plaintiff's public hearing commenced on September 11, 2009. The letter questioned the legality of the appointment of a member of the board, G. Kenneth Bernhard on the ground that his appointment violated § 1-80 (b) (2) (no board member "shall . . . have held public office . . . for a three-year period prior to appointment. . . .") On September 9, 2009, Connecticut State Representative Lawrence Cafaro, who had originally appointed Bernhard to the board, issued a new appointment letter appointing Bernhard to a term commencing immediately for a duration of four years. The board issued an advisory opinion on September 24, 2009, indicating that Bernhard's appointment commencing November 15, 2007 was void, that Bernhard's appointment of September 9, 2009 was valid and any actions taken by Bernhard from November 15, 2007 to September 9, 2009 were validated by the "de facto officer" doctrine. See Volume LXXI, No. 15 Connecticut Law Journal, page 10c (October 13, 2009).

The plaintiff argues that the board erred by holding the November 15, 2007 appointment of Bernhard void. Rather she contends that Bernhard was "de facto" in office from November 15, 2007. When he was appointed on September 9, 2009, he was therefore in violation of § 1-80 (a) that limits a board member to "one four-year term."

The court, however, agrees with the analysis set forth in Advisory Opinion 2009-9. When Bernhard was appointed on November 15, 2007, he did not qualify for his appointment pursuant to § 1-80 (b), as he had held a public office (state representative) within three years (January 5, 2005) of his appointment date. The November 15, 2007 appointment was therefore void and of no effect. See *Furtney* v. *Zoning Commission*, 159 Conn 585, 596, 271 A.2d 319 (1970). The general rule was stated in *Baker* v. *State*, 833 A.2d 1070, 1079 (Md. 2003): "The appointment of an ineligible person is a nullity, except that the official acts of such a person are regarded as the acts of an officer *de facto*."

Further, the September 9, 2009 appointment of Bernhard to the board cannot be affected or limited by his earlier appointment, as the earlier appointment was of no legal effect. The final point made in the advisory opinion is that any actions taken by Bernhard before his proper September 9, 2009 appointment were validated by the *de facto* officer doctrine. The court need not resolve whether the *de facto* officer doctrine applies in the context of this administrative appeal. The plaintiff has not raised any issue as to actions by Bernhard occurring before the public hearing that commenced on September 11, 2009 when Bernhard's appointment was valid. See brief of plaintiff, pp. 29-31.

The plaintiff also contends that another board member who participated in the public hearing, Shawn T. Wooden, also should have been disqualified. The plaintiff's

basis for disqualification is not elaborated upon, other to state that Wooden was a delegate to the Democratic National Convention in 2008. This analysis is inadequate for further discussion by the court. Courts "are not required to review issues that have been improperly presented . . . through an inadequate brief." *In re Jorden R.*, 293 Conn. 539, 555, n.14, 979 A.2d 469 (2009).

Even if the court were to consider the merits of the Wooden disqualification, the plaintiff's case would fail. The board voted unanimously by seven votes for the discipline here. Striking Wooden from the total would still produce six votes in favor, and this is the number needed for passage under § 1-82 (b). The plaintiff has failed to make a showing of prejudice. See *Murach* v. *Planning & Zoning Commission*, 196 Conn. 192, 206, 491 A.2d 1058 (1985).

The plaintiff's final contentions relate to the evidence in the record. There is clearly substantial evidence that the plaintiff was making use of state resources for her private financial gain. There were e-mails in the record relating to gem orders from her supplier, confirming jewelry orders and pickups, transmittal of photos of jewelry to clients, and confirming payment by clients. (ROR, pp. 488-503, 504, 544, 596, 605, 610, 617, for example). Similarly there are e-mails relating to travel packages and quotes for clients. (ROR, pp. 453, 456, 710, for example). The plaintiff also accessed state e-mail when out of the office. (ROR, pp. 600-601, for example). Finally, she also made use of

state telephones for jewelry and travel business. (ROR, pp. 1304-07, 1529, 1846-48, 2100-02, for example).

The plaintiff raises three points from the record. The first is that the board's final decision, issued on January 15, 2010, was inadequate as it did not analyze the evidence in any detail. The findings of the board are to be examined, however, in light of the evidence in the record to determine if substantial evidence exists. See *Connecticut Motor Cars*, supra, 300 Conn. 622. As indicated by the above references to the record, there is substantial evidence to support the board's findings.

Secondly, the plaintiff argues that there was no substantial evidence that her use of her position led to her financial gain. The record shows that there was a link between the plaintiff's use of state facilities and her financial gain in both her jewelry business and her travel business. [ROR, pp. 1239, 1246-1247, 1304-1306 (jewelry); p. 2633 (travel); pp. 2627-33 and exhibit 36 (sales tax returns)].

Finally, the plaintiff argues that the University of Connecticut Health Center had not established a policy that disallowed using e-mail for personal use. The plaintiff's evidence consists of employees of the Health Center who testified that they knew of no such policy. The record contradicts the plaintiff because the Health Center had a written policy from 2002 (ROR, pp. 201-03) banning use of office computers for personal use. E-mail usage would certainly be covered by this policy. The policy also stated that the

disregard of this policy by a supervisor was not controlling. Virtually all the employees had received training on these restrictions. (ROR, p. 1563).

Since the board did not acted illegally, arbitrarily, unreasonably or in abuse of its discretion in issuing its final decision and orders, the plaintiff's administrative appeal is dismissed.

Henry S. Cohn, Judge