

**STATE OF LOUISIANA  
DIVISION OF ADMINISTRATIVE LAW  
ETHICS ADJUDICATORY BOARD**

**BOARD OF ETHICS**

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\* **DOCKET NO. 2016-0919-ETHICS-A**

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**IN THE MATTER OF**

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**DAVID RODRIGUEZ, ET AL.**

\* **AGENCY TRACKING NO. 2015-552**

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**DECISION AND ORDER**

The Board of Ethics charged David Rodriguez and David Rodriguez doing business as At Your Service Staffing with violations of La. R.S. 42:1111(A), La. R.S. 42:1111(C)(2)(d), La. R.S. 42:1112, and La. R.S. 42:1113(A)(1) of the Code of Governmental Ethics. The Board of Ethics alleged that Mr. Rodriguez received funds that he was not entitled to receive, that he received a thing of economic value from a prohibited source, that he approved and paid invoices to a prohibited source, and that he entered into transactions and subcontracts with a prohibited source. Based on the following, Mr. Rodriguez violated La. R.S. 42:1111(A), La. R.S. 42:1111(C)(2)(d), La. R.S. 42:1112, and La. R.S. 42:1113(A)(1). Mr. Rodriguez is penalized **\$111,371.32** for the violations.

**JURISDICTIONAL AUTHORITY**

Jurisdiction is granted to the Ethics Adjudicatory Board by the Code of Governmental Ethics, La. R.S. 42:1141.2 and La. R.S. 42:1141.5, and La. R.S. 49:992.1 of Title 49 of the Louisiana Revised Statutes. In accordance with La. R.S. 49:992.1, all adjudications involving alleged violations of any provision of law under the jurisdiction of the Board of Ethics shall be resolved as required by the provisions of Chapter 13-B of Title 49 of the Louisiana Revised

Statutes, La. R.S. 49:991, *et seq.*, and the Administrative Procedure Act, La. R.S. 49:950, *et seq.* This adjudication is also governed by the provisions of the Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*

### **APPEARANCES**

A hearing was held September 27, 2019, in Baton Rouge, before Panel A of the Ethics Adjudicatory Board (EAB).<sup>1</sup> Tracy Barker, counsel for the Board of Ethics, appeared for the hearing. Mr. Rodriguez did not appear for the hearing, and no one appeared on his behalf.

### **STATEMENT OF THE CASE**

David Rodriguez was employed by Louisiana State University (LSU) from October of 2000 to May of 2015. Mr. Rodriguez was employed full-time as the director of the LSU College of Music and Dramatic Arts. Mr. Rodriguez was also the sole proprietor of a business called At Your Service Staffing, which provided staffing services. At Your Service Staffing provided staffing services to Abigail's Catering, which catered events for the LSU College of Music and Dramatic Arts.

The Board of Ethics (BOE) charged David Rodriguez and David Rodriguez doing business as At Your Service Staffing (Respondent)<sup>2</sup> with the following four violations. First, the BOE alleged that between November 10, 2009, and February 9, 2015, Respondent misappropriated \$82,132.60 from the LSU Theatre Department, in violation of La. R.S. 42:1111(A).<sup>3</sup> Second, the BOE alleged that Respondent received \$15,172.50 from Abigail's

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<sup>1</sup> Before administrative law judges Romaine L. White, William Joseph Cleveland, and Charles Perrault.

<sup>2</sup> David Rodriguez and David Rodriguez as the sole proprietor of, and doing business as, At Your Service Staffing are the same. Therefore, David Rodriguez and David Rodriguez as the sole proprietor of At Your Service Staffing are referred to as "Respondent" throughout this decision.

<sup>3</sup> BOE is not attempting to penalize Respondent for the entire \$82,132.60 that he took from the LSU Theatre Department because Respondent took some of the money from the LSU Theatre Department more than four years before the BOE issued its charges against Respondent. BOE cannot enforce any provision of the Code of Governmental Ethics more than four years after the occurrence of a violation. *See* La. R.S. 42:1163. BOE issued charges against Respondent on January 15, 2016. Therefore, BOE is only seeking to recover and penalize

Catering, a prohibited source, in violation of La. R.S. 42:1111(C)(2)(d).<sup>4</sup> Third, the BOE alleged that Respondent, in his capacity as the director of the LSU College of Music and Dramatic Arts, approved and paid invoices in the amount of \$2,350.00 to himself, and \$3,689.51 to Abigail's Catering, for catering services provided to the LSU College of Music and Dramatic Arts, in violation of La. R.S. 42:1112. Finally, the BOE alleged that Respondent, while he was the director of the LSU College of Music and Dramatic Arts, entered into transactions with the LSU College of Music and Dramatic Arts and Abigail's Catering to provide staffing services for events held by the LSU College of Music and Dramatic Arts, in violation of La. R.S. 42:1113(A)(1).

### **PROCEDURAL HISTORY**

The BOE issued charges against Respondent on January 15, 2016, for four violations of the Code of Governmental Ethics. On September 15, 2016, the BOE had an officer perform domiciliary service of its charges at Respondent's last known address.<sup>5</sup>

On April 13, 2018, the BOE propounded interrogatories, requests for production of documents, and requests for admissions to Respondent.<sup>6</sup> Respondent did not respond to any of the BOE's discovery requests. On June 15, 2018, the BOE filed a Motion to Compel Respondent to respond to its discovery requests. On August 23, 2018, after proper notice to both parties, the EAB conducted a hearing on the motion. Respondent did not appear for the motion hearing. On August 24, 2018, the EAB granted the motion and ordered Respondent to comply

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Respondent for money taken from the LSU Theatre Department after January 15, 2012, which totals \$47,580.88.

<sup>4</sup> BOE's Exhibit 14 shows that Respondent actually received \$19,315.00 from Abigail's Catering between January 29, 2012, and May 1, 2015. The BOE claimed in its charge that Respondent received only \$15,172.50 from Abigail's Catering for staffing services he provided to Abigail's Catering. Therefore, EAB will not penalize Respondent for an amount greater than the amount listed in BOE's charge.

<sup>5</sup> BOE Exhibit 2, page 15 of 172.

<sup>6</sup> BOE Exhibit 4, pages 18-30 of 172.

with the BOE's discovery requests.<sup>7</sup> The EAB also deemed that the BOE's requests for admissions were admitted because Respondent did not respond to the requests within 30 days from service.<sup>8</sup>

On July 9, 2019, the EAB sent a hearing notice to Respondent at 15356 Springwood Avenue, Baton Rouge, Louisiana, 70817.<sup>9</sup> A hearing on the merits was held September 27, 2019. Respondent failed to appear for the hearing. The BOE offered 18 exhibits into evidence.<sup>10</sup> All exhibits were admitted without objection.

### **REQUESTS FOR ADMISSIONS DEEMED ADMITTED**

These are the 15 Requests for Admissions that were deemed admitted by Respondent.<sup>11</sup>

#### Request for Admission No. 1:

Please admit or deny that you were employed full-time as an Administrator IV as the director of the College of Music and Dramatic Arts with the Louisiana State University from October 16, 2000, until your termination on May 25, 2015.

#### Request for Admission No. 2:

Admit or deny that the LSU Theatre Department and Swine Palace Productions is within the LSU College of Music and Dramatic Arts.

#### Request for Admission No. 3:

Admit or deny that your compensation package did not include profits and/or funds from any productions hosted by the LSU Theatre Department or Swine Palace Productions.

#### Request for Admission No. 4:

Admit or deny that as the director of the LSU College of Music and Dramatic Arts, your responsibilities included collecting and handling all funds from productions hosted by the LSU Theatre Department and Swine Palace Productions.

#### Request for Admission No. 5:

Please admit or deny that as the director of the LSU College of Music and Dramatic Arts you had the sole responsibility of collecting and depositing all funds collected into the Campus Federal Credit Union bank account maintained by LSU for the LSU Theatre Department.

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<sup>7</sup> BOE Exhibit 3.

<sup>8</sup> BOE Exhibit 3, page 17 of 172.

<sup>9</sup> BOE Exhibit 1. This was the last known address of Respondent, as provided by the BOE.

<sup>10</sup> BOE offered Exhibit A and Exhibits 1 – 7, 8A and B, 9A and B, 10, 11A and B, and 12-17.

<sup>11</sup> BOE Exhibit 3 and Exhibit 4, page 22 – 24 of 172.

Request for Admission No. 6:

Please admit or deny that during an internal audit by LSU, it was discovered that \$82,132.60 was missing from the Campus Federal Credit Union bank account that was opened solely for depositing funds collected by the LSU Theatre Department.

Request for Admission No. 7:

Admit or deny that you made a deposit of \$14,970.00 in the Campus Federal Credit Union bank account maintained for the LSU Theatre Department after being questioned about missing funds from the LSU Theatre Department.

Request for Admission No. 8:

Admit or deny that Abigail's Catering was a vendor of and provided catering services for events and parties for the LSU College of Music and Dramatic Arts while you served as the director of the LSU College of Music and Dramatic Arts.

Request for Admission No. 9:

Please admit or deny that you provided staffing services doing business as At Your Service Staffing.

Request for Admission No. 10:

Please admit or deny that David Rodriguez d/b/a At Your Service Staffing provided staffing to Abigail's catering.

Request for Admission No. 11:

Admit or deny that you provided staffing services to Abigail's Catering doing business as At Your Services Staffing, which staffing was used at events and/or parties for the LSU College of Music and Dramatic Arts while you served as the director of the LSU College of Music and Dramatic Arts.

Request for Admission No. 12:

Please admit or deny that David Rodriguez d/b/a At Your Service Staffing received \$15,172.50 between December 2011 through May 2015 from Abigail's Catering for staffing services provided to Abigail's Catering while you served as the director of the LSU College of Music and Dramatic Arts.

Request for Admission No. 13:

Please admit or deny that, as the director of the LSU College of Music and Dramatic Arts, you received and approved invoices submitted by Abigail's Catering to the LSU College of Music and Dramatic Arts for payment.

Request for Admission No. 14:

Please admit or deny that as the director of the LSU College of Music and Dramatic Arts, you issued checks for payment to David Rodriguez d/b/a At Your Service Staffing for staffing provided to Abigail's Catering on events catered for the LSU College of Music and Dramatic Arts.

Request for Admission No. 15:

Please admit or deny that as the director of the LSU College of Music and Dramatic Arts, you received and approved invoices submitted by Abigail's Catering and made payments to Abigail's Catering at a time when you, d/b/a At Your Services Staffing, were providing services to Abigail's catering.

**FINDINGS OF FACT**

Respondent was employed as the full-time director of the LSU College of Music and Dramatic Arts, a governmental entity, from October 16, 2000, until he was terminated on May 25, 2015.<sup>12</sup> He earned an annual salary of \$41,635.00 from LSU.<sup>13</sup>

LSU's Office of Internal Audit performed an audit of the checking account records of the LSU Theatre Department for the period of June 2010 through May 25, 2015, the day Respondent was terminated.<sup>14</sup> The BOE's charge, which is based on the auditor's report, demonstrates Respondent improperly withheld \$64,432.88 from the LSU Theatre Department between February 2, 2012, and February 9, 2015.<sup>15</sup>

On March 5, 2015, Respondent deposited the amount of the ticket sales for the *Carrie* play into the Theatre Department's Campus Federal Credit Union bank account.<sup>16</sup> He deposited \$4.00 too much with this deposit.<sup>17</sup> On March 17, 2015, Respondent deposited \$16,848.00 into the Theatre Department's Campus Federal Credit Union bank account after he was questioned about missing funds from the Theatre Department.<sup>18</sup> Respondent could not recall where he

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<sup>12</sup> BOE Exhibit 5.

<sup>13</sup> BOE Exhibit 5, page 38 of 172.

<sup>14</sup> BOE Exhibit 5, page 40 of 172.

<sup>15</sup> BOE Exhibit 8A, pages 56 – 59 of 172, Exhibit 11A, page 75 of 172, and Exhibit 2, pages 5 – 7 of 172.

<sup>16</sup> BOE Exhibit 2, page 7 of 172. \$64,432.88 (Amount misappropriated between January 2012 and February 9, 2015) – \$16,848 (Amount Respondent deposited) - \$4 (Amount Respondent deposited) = \$47,580.88 (Amount of Respondent's improper gain through misappropriation).

<sup>17</sup> BOE Exhibit 2, page 7 of 172.

<sup>18</sup> BOE Exhibit 10, page 65 of 172, and Exhibit 11A, page 76 of 172, third paragraph. There is a difference in the amount Respondent admitted he deposited and the amount stated in the Campus Federal Transaction Detail Report and the audit. The bank report and the audit list \$16,848.00 as the amount of the March 17, 2015, deposit. Therefore, \$16,848.00 is used in this decision as the more reliable amount Respondent deposited on March 17, 2015.

obtained the \$16,848.00 he deposited into the LSU checking account on March 17, 2015.<sup>19</sup> \$14,660.00 of the \$16,848.00 consisted of twenty dollar bills, one ten dollar bill, and one check made out to Theater Productions in the amount of \$805.00.<sup>20</sup>

During the same time Respondent was employed full-time by LSU, he also operated a sole proprietorship called At Your Service Staffing.<sup>21</sup> In the Procurement Vendor Enrollment Application Respondent filed with LSU, Respondent listed his “Business Type” as “INDV”.<sup>22</sup> Respondent provided staffing services for catered events.<sup>23</sup>

Between January 29, 2012, and May 1, 2015, Respondent received \$19,315.00<sup>24</sup> from Abigail’s Catering for staffing services he provided through his sole proprietorship to Abigail’s while he was the director of the LSU College of Music and Dramatic Arts.<sup>25</sup>

On June 20, 2012, Respondent signed a check in the amount of \$850.00 from LSU Theatre Productions made payable to At Your Service Staffing.<sup>26</sup> On December 16, 2013, Respondent signed another check in the amount of \$92.00 from LSU Theatre Productions made payable to At Your Service Staffing.<sup>27</sup> Respondent endorsed both checks totaling \$942.00.<sup>28</sup> The checks were signed while Respondent was the director of the LSU College of Music and Dramatic Arts and the sole proprietor of At Your Service Staffing.<sup>29</sup>

Respondent received and approved invoices submitted by Abigail’s Catering while he

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> BOE Exhibit 16.

<sup>22</sup> *Id.*

<sup>23</sup> Respondent’s admission #9.

<sup>24</sup> The BOE listed in its charge that Respondent received \$15,172.50 from Abigail’s rather than \$19,315.00.

<sup>25</sup> BOE Exhibit 14, pages 102 and 103 of 172. The May 26, 2015, payment of \$1,000.00 was not added to the amount Respondent received because he was terminated the day before May 26, 2015, and therefore, no longer the director of the LSU College of Music and Dramatic Arts when he received this payment. The evidence does not show when the services for the \$1,000.00 check were performed.

<sup>26</sup> BOE Exhibit 15, page 153 of 172.

<sup>27</sup> BOE Exhibit 15, page 153 of 172.

<sup>28</sup> BOE Exhibit 15, pages 156 and 157 of 172. The BOE charged Respondent for writing checks to himself from LSU in the amount of \$2,350.00, but that amount also includes payments made before January 15, 2012.

<sup>29</sup> Admission #14.

was the director of the LSU College of Music and Dramatic Arts.<sup>30</sup> On February 17, 2012, and December 12, 2012, Respondent signed checks from the LSU Theatre Productions' checking account made payable to Abigail's Catering totaling \$2,843.10.<sup>31</sup> During this time Respondent was providing staffing services to Abigail's Catering while he was employed as the director of the LSU College of Music and Dramatic Arts.<sup>32</sup>

### **STANDARD OF PROOF**

The EAB Panel assigned to conduct the public hearing of this matter is charged with determining whether a violation of the Code of Governmental Ethics has occurred, and if so, what penalties or sanctions, if any, should be imposed.<sup>33</sup> In accordance with La. R.S. 42:1141.5(C), the standard of proof for this proceeding is the charges must be supported by clear and convincing evidence. Clear and convincing evidence is an intermediate standard of persuasion which requires more than a preponderance of the evidence, but less than proof beyond reasonable doubt. The existence of the disputed fact must be much more probable than its nonexistence.<sup>34</sup>

### **CONCLUSIONS OF LAW**

#### **Violations**

The BOE proved Respondent committed four violations of the Code of Governmental Ethics. The violations are as follows.

#### *First Violation - Misappropriated Money*

Respondent violated La. R.S. 42:1111(A)(1)(a) by misappropriating \$64,432.88 in

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<sup>30</sup> Admission #15.

<sup>31</sup> BOE Exhibit 15, pages 153, 162, and 163 of 172. The BOE charged Respondent for writing checks to Abigail's Catering from LSU in the amount of \$3,689.51, but that amount also includes payments made before January 15, 2012.

<sup>32</sup> BOE Exhibit 15 and Admission #15.

<sup>33</sup> La. R.S. 42:1141.5(B).

<sup>34</sup> *La. State Bar Ass'n. v. Edwins*, 329 So. 2d 437 (La. 1976).



receipts from the LSU Theatre Department between February 2, 2012, and February 9, 2015. Respondent returned \$4.00 on March 5, 2015. Respondent also returned \$16,848.00 on March 17, 2015, when he discovered he was being investigated by LSU for theft. Respondent returned some of the money by depositing a lump sum into LSU's account at the Campus Federal Credit Union. As a result, Respondent's improper gain or economic advantage from LSU's Theatre Department is \$47,580.88.

La. R.S. 42:1111(A)(1)(a) provides:

No public servant shall receive anything of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position.

"Public servant" means a public employee or an elected official.<sup>35</sup> The term "public employee" includes anyone, whether compensated or not, who is engaged in the performance of a governmental function.<sup>36</sup> Respondent's position as director of the LSU College of Music and Dramatic Arts, a governmental entity, made him a "public servant."

During the time Respondent was a public servant, he was prohibited from receiving anything of economic value, other than compensation and benefits, for the performance of his job duties and responsibilities of his position.<sup>37</sup> Therefore, Respondent violated La. R.S. 42:1111(A)(1)(a) when he improperly withheld \$47,580.88<sup>38</sup> from the LSU Theatre Department between February 2, 2012, and February 9, 2015.

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<sup>35</sup> La. R.S. 42:1102(19).

<sup>36</sup> La. R.S. 42:1102(18)(a).

<sup>37</sup> La. R.S. 42:1111(A)(1)(a).

<sup>38</sup> \$64,432.88 (Amount taken between January 2012 and February 9, 2015) – \$16,848 (Amount Respondent deposited) - \$4 (Amount Respondent deposited) = \$47,580.88 (Amount of Respondent's improper gain through misappropriation).

*Second Violation – Income from a Prohibited Source*

Respondent violated La. R.S. 42:1111(C)(2)(d), which states:

No public servant and no legal entity in which the public servant exercises control..., shall receive anything of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are: (d) [n]either performed for nor compensated by any person from whom such public servant would be prohibited by R.S. 42:1115(A)(1) or (B) from receiving a gift.

La. R.S. 42:1115(A) and (B) provides with respect to gifts:

(A) No public servant shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person: (1) [h]as or is seeking to obtain contractual or other business or financial relationships with the public servant's agency.

(B) No public employee shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person: (1) [c]onducts operations or activities which are regulated by the public employee's agency; (2) [h]as substantial economic interests which may be substantially affected by the performance or nonperformance of the public employee's official duty.

Respondent violated La. R.S. 42:1111(C)(2)(d), and by extension La. R.S. 42:1115, because in his capacity as the director of the LSU College of Music and Dramatic Arts, Respondent received \$19,315.00, a thing of economic value, for providing staffing services as At Your Service Staffing to Abigail's Catering at a time when Abigail's Catering had a contractual, financial, and/or business relationship with the LSU College of Music and Dramatic Arts. Respondent received \$19,315.00 for staffing services from Abigail's Catering between January 29, 2012, and May 1, 2015. Respondent was the director of the LSU College of Music and Dramatic Arts from October 16, 2000, until he was terminated on May 25, 2015.

### *Third Violation – Prohibited Transactions*

Respondent violated La. R.S. 42:1112, which states in part:

(A) No public servant...shall participate in a transaction in which he has a personal substantial economic interest of which he may be reasonably expected to know involving the governmental entity.

Respondent violated La. R.S. 42:1112 because in his capacity as the director of the LSU College of Music and Dramatic Arts, Respondent received, reviewed, approved, and paid invoices for himself in the amount of \$942.00, and Abigail's Catering in the amount of \$2,843.00, at a time when he was providing staffing services to Abigail's Catering through his sole proprietorship, At Your Service Staffing.

The transactions involved work that Respondent's sole proprietorship and Abigail's Catering performed for his agency, and Respondent wrote the checks himself to his sole proprietorship and to Abigail's Catering on behalf of his agency. Respondent had a personal and substantial economic interest in the transactions that involved his agency, himself, and Abigail's Catering, and he knew the transactions involved his agency.

### *Fourth Violation – Prohibited Transactions*

Finally, Respondent violated La. R.S. 42:1113(A)(1), which states:

No public servant, or member of such public servant's immediate family, or a legal entity in which he has a controlling interest, shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.

Respondent violated La. R.S. 42:1113(A)(1) by entering into transactions with the LSU College of Music and Dramatic Arts and Abigail's Catering by providing staffing services through his sole proprietorship for events and parties for the LSU College of Music and Dramatic Arts while he served as the director of the LSU College of Music and Dramatic Arts.

Since Respondent and Abigail's Catering were paid by the LSU College of Music and Dramatic Arts for services each rendered to the College of Music and Dramatic Arts, the transactions were under the supervision and jurisdiction of Respondent's agency, the LSU College of Music and Dramatic Arts.

### **Penalties**

The BOE argued that Respondent should be penalized under La. R.S. 42:1153 and 42:1155(A). The EAB finds that Respondent should be penalized under both statutes for the following reasons.

#### *La. R.S. 42:1153(B) Penalty*

La. R.S. 42:1153(B) provides with respect to penalties:

Upon finding that any public employee or other person has violated any provision of any law within the jurisdiction of the Board of Ethics, the board by a majority vote of the membership, may remove, suspend, or order a reduction in pay, or demotion of the public employee or other person, or impose a fine of not more than ten thousand dollars, or both.

The evidence presented supports a finding that Respondent violated four laws within the jurisdiction of the BOE. The violations were numerous and substantial and amounted to an abuse of the public office Respondent had been entrusted to direct. Between February 2, 2012, and February 9, 2015, Respondent misappropriated \$47,580.88 from the LSU College of Music and Dramatic Arts' Theatre Department.

Respondent also improperly received \$19,315.00 from Abigail's Catering while Abigail's Catering had a contractual relationship with the LSU College of Music and Dramatic Arts for catering services. Respondent received the \$19,315.00 from Abigail's Catering while he was the director of the LSU College of Music and Dramatic Arts.

Respondent approved invoices and wrote checks to himself and Abigail's Catering from the LSU Theatre Department's checking account for services they provided to the LSU College of Music and Dramatic Arts, Respondent's agency. Respondent's transactions with Abigail's Catering and the LSU College of Music and Dramatic Arts were prohibited because the transactions were under the jurisdiction of his agency. Respondent offered no evidence in mitigation. Therefore, in accordance with La. R.S. 42:1153(B), Respondent shall pay a fine in the amount of \$10,000.00 for each violation, for a total of \$40,000.00 for four violations of the Code of Governmental Ethics. Based on the evidence presented, the maximum fine allowed under La. R.S. 42:1153(B) is commensurate with Respondent's misconduct.<sup>39</sup>

*La. R.S. 42:1155(A) Penalty*

La. R.S. 42:1155(A) provides in part:

If an investigation conducted pursuant to this Part reveals that any public servant or other person has violated any law within the jurisdiction of the Board of Ethics to his economic advantage, and after an adjudicatory hearing on the matter, the Ethics Adjudicatory Board may order the payment of penalties. Recovery may include, in addition to an amount equal to such economic advantage, penalties not to exceed one half of the amount of the economic advantage.

The evidence presented supports a finding that Respondent violated four laws within the jurisdiction of the BOE. The violations resulted in an improper economic advantage to Respondent in the amount of \$47,580.88.

The BOE requested that Respondent only be penalized for the money he improperly received or appropriated between January 2012, and his termination on May 25, 2015, because under the terms of La. R.S. 42:1163, the BOE cannot commence the enforcement of

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<sup>39</sup> *Villanueva v. Commission on Ethics for Public Employees and East Jefferson Levee District*, 98 CA 0980 (La. App. 1 Cir. 5/18/99), 812 So. 2d 1.

any provision of the Code of Governmental Ethics more than four years after the occurrence of a violation.

The BOE issued its charges against Respondent on January 15, 2016. Therefore, in accordance with La. R.S. 42:1163, BOE cannot penalize Respondent for a violation of the Code that took place more than four years before it issued charges. In this case, the BOE cannot enforce provisions of the Code of Governmental Ethics or penalize Respondent for any violation that took place before January 15, 2012, which is four years before the commencement of this action.

The evidence shows Respondent withheld \$64,432.88 from the LSU Theatre Department between February 2, 2012, and March 5, 2015. Respondent returned \$16,848.00 by bank deposit on March 17, 2015. He also returned \$4.00 by bank deposit on March 5, 2015. Therefore, the total amount Respondent misappropriated from the LSU Theatre Department between February 2, 2012, and March 5, 2015, is \$47,580.88. The BOE is entitled to recover the \$47,580.88 in economic gains Respondent improperly received by misappropriating money from the LSU Theatre Department.

In accordance with La. R.S. 42:1155(A), Respondent shall relinquish the entirety of his economic advantage derived from the misappropriation of funds from the LSU Theatre Department to the BOE in the amount of \$47,580.88. Respondent offered no evidence in mitigation. Consequently, in accordance with La. R.S. 42:1155(A), Respondent shall also pay an additional penalty of \$23,790.44, which is one-half of the improper economic advantage he received from the LSU Theatre Department.

The BOE will not be allowed to recover the \$19,315.00 Respondent received from Abigail's Catering between January 29, 2012, and May 1, 2015, even though Abigail's

Catering was a prohibited source of income; and the BOE will not be allowed to recover the \$942.00 Respondent paid to his sole proprietorship, and whatever the amount he earned from the \$2,843.00 he paid to Abigail's Catering, from the LSU Theatre Department's checking account for the staffing services and catering he and Abigail's provided to the LSU College of Music and Dramatic Arts. The EAB declines to order the recovery of these improper gains for three reasons. First, the amounts in the BOE's charge differ from the evidence. Second, these amounts are based on business transactions, and the evidence does not demonstrate Respondent's direct business expenses. As a result, his actual monetary gains or actual economic advantage concerning these improper transactions are unknown.<sup>40</sup> Finally, the recovery of Respondent's economic gain of \$47,580.88 resulting from the misappropriation of money from the LSU Theatre Department, plus the imposition of the \$23,790.44 penalty for the misappropriation, plus the imposition of the \$40,000.00 penalty imposed for four violations of the Code, are sufficiently commensurate with Respondent's misconduct without adding the improper transaction amounts to the recovery and penalty amounts.

Respondent's entire penalty under La. R.S. 42:1153(B) and La. R.S. 42:1155(A) totals \$111,371.32.<sup>41</sup> Respondent (David Rodriguez) is the sole proprietor of At Your Services Staffing. Therefore, in accordance with the Louisiana Civil Code, articles 1794 and 1796, David Rodriguez and David Rodriguez doing business as At Your Services Staffing shall be solidarily obligated to pay the above penalties.<sup>42</sup>

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<sup>40</sup> *Board of Ethics in the matter of the Cartesian Company, Inc. and Greg Gachassin*, 2016 CA 1556 (La. App. 1 Cir. 10/12/17), 233 So. 3d 9.

<sup>41</sup> \$47,580.88 (Respondent's economic advantage) + \$23,790.44 (One half of Respondent's economic advantage) + \$40,000.00 (penalty for four violations) = \$111,371.32 (Respondent's total penalty).

<sup>42</sup> *La. Bd. Of Ethics, In Re Dumas*, 17-0313 (La. App. 1 Cir. 11/16/17), 236 So. 3d 593.

## ORDER

**IT IS ORDERED** that David Rodriguez and David Rodriguez doing business as At Your Services Staffing violated La. R.S. 42:1111(A), La. R.S. 42:1111(C)(2)(d), La. R.S. 42:1112, and La. R.S. 42:1113(A)(1) of the Code of Governmental Ethics.

**IT IS ORDERED** that in accordance with La. R.S. 42:1153, David Rodriguez and David Rodriguez doing business as At Your Services Staffing shall pay a penalty of **\$40,000.00** to the Board of Ethics for four violations of the Code of Governmental Ethics.

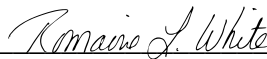
**IT IS ORDERED** that in accordance with La. R.S. 42:1155(A), David Rodriguez and David Rodriguez doing business as At Your Services Staffing shall pay a penalty of **\$71,371.32** to the Board of Ethics for the recovery of the economic advantage that was improperly gained, plus one-half of the economic advantage.

**IT IS ORDERED** that in accordance with the Louisiana Civil Code, articles 1794 and 1796, David Rodriguez and David Rodriguez doing business as At Your Services Staffing shall be solidarily obligated to pay the above penalties.


Rendered and signed November 27, 2019, Baton Rouge, Louisiana.



Charles Perrault  
Presiding Administrative Law Judge



Romaine L. White  
Administrative Law Judge



William Joseph Cleveland  
Administrative Law Judge

### NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Tuesday, December 03, 2019, I have sent a copy of this decision/order to all parties of this matter.



### **REVIEW RIGHTS**

Please be advised that you may be entitled to a rehearing or reconsideration of this decision if you can establish that one of the legal grounds listed in La. R.S. 49:959 is applicable to your case. Requests for rehearing or reconsideration must be received by the Ethics Adjudicatory Board within 10 days (exclusive of legal holidays and weekends) of the date of this transmission. You may fax your request to (225)342-1812 or email it to [EABprocessing@adminlaw.state.la.us](mailto:EABprocessing@adminlaw.state.la.us). You may also be entitled to judicial review of this decision within the time limits in La. R.S. 49:964. To determine your rights to review, you should act promptly and seek legal advice.