

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

PENSION BOARD FOR THE)
CONSOLIDATED RETIREMENT)
PLAN FOR EMPLOYEES OF THE)
CITY OF MARIETTA, GEORGIA,)

Petitioner,)

v.)

SHANTEL BOWENS,)

Respondent.)



DOCKET NO: 1833444

1833444-OSAH-PRS-GMEBS-33-

Kennedy

FINAL DECISION

ON PETITION TO DETERMINE

ECONOMIC IMPACT OF PUBLIC EMPLOYMENT-RELATED CRIME

In accordance with O.C.G.A. §§ 47-1-25, 50-13-41(c) and 50-13-17(b), the Office of State Administrative Hearings (OSAH), by and through the undersigned Administrative Law Judge, hereby issues this Final Decision on the Pension Board for the Consolidated Retirement Plan for Employees of the City of Marietta, Georgia's (Pension Board) Petition to Determine the Economic Impact of Public Employment-Related Crime (Petition) against Respondent Shantel Bowens.

I. PROCEDURAL HISTORY

The following procedural history is relevant to the findings of fact, conclusions of law, and disposition of the Pension Board's Petition.

1.

The Pension Board commenced this administrative proceeding on March 16, 2018 pursuant to O.C.G.A. § 47-1-25. By its Petition, the Pension Board seeks a determination of the economic impact of public employment-related crimes committed by Respondent during her employment with the City of Marietta (City), for purposes of reducing the retirement benefits to which she would otherwise be entitled under the Consolidated Retirement Plan for Employees of the City of Marietta, Georgia (Plan).¹

2.

The Pension Board's statutory legal representative for purposes of these proceedings is the Attorney General's Office. See O.C.G.A. § 47-1-25 ("The Department of Law shall represent the board of trustees in such proceedings.").

3.

By Notice issued March 23, 2018, a hearing on the Pension Board's Petition was set for May 10, 2018; the hearing was later continued to May 25, 2018.

4.

On May 15, 2018, the Attorney General's Office filed an Expedited Motion to Request a Pre-Hearing Conference and Stay of the May 25, 2018 Hearing. This Motion was granted on May 21, 2018 and a pre-hearing conference was conducted on July 16, 2018.

5.

The purpose of the July 16, 2018 pre-hearing conference was to address a dispute that had developed between the Attorney General's Office and the Pension Board, acting through its appointed Pension Board Counsel, as to whether Respondent's crimes constituted "public employment-related crimes" within the meaning of

¹ The Pension Board subsequently filed amended petitions on May 14, 2018, December 27, 2019, and February 28, 2020.

O.C.G.A. § 47-1-20(6). It was the position of the Attorney General's Office that Respondent's crimes did not meet the statutory definition.

6.

During the July 16, 2018 prehearing conference, the Office of the Attorney General and the Pension Board's appointed Pension Board Counsel presented their respective positions on the issue of whether Respondent's crimes constitute "public employment-related crimes." During the conference, Pension Board Counsel made explicitly clear the Pension Board's rejection of the interpretation of "public employment-related crimes" advanced by the Attorney General's Office and took the contrary position that Respondent's crimes satisfied the statutory definition. Briefs further addressing these competing positions were submitted on July 26, 2018 by the Office of the Attorney General and on August 14, 2018 by Pension Board Counsel.

7.

On January 3, 2019, an Order Regarding the Proper Interpretation of "Public Employment Related Crime" Defined in O.C.G.A. § 47-1-20(6) was issued. In that Order, the position advanced by the Attorney General's Office was sustained, and Respondent's crimes were held not to constitute "public employment-related crimes" within the meaning of O.C.G.A. § 47-1-20(6). As such, in a contemporaneously issued Final Decision, the Pension Board's Petition was dismissed.

8.

On February 4, 2019, the Pension Board filed a timely Petition for Judicial Review of the January 3, 2019 Final Decision in the Superior Court of Cobb County, pursuant to O.C.G.A. § 50-13-19. By Order entered October 1, 2019, the Superior Court held that Respondent's crimes constituted "public employment-related crimes" within the meaning of O.C.G.A. § 47-1-20(6). Accordingly, the Court

granted the Pension Board's Petition for Judicial Review, reversed the January 3, 2019 Final Decision, and remanded the matter for a determination of the economic impact of Respondent's public employment-related crimes.

9.

An evidentiary hearing on the Pension Board's Petition was conducted on March 9, 2020.² In addition to documentary evidence, Petitioner presented testimony from Shannon Barrett (the City's former Assistant to the City Manager and Interim Director of Human Resources), James Curtis (the City's former Internal Auditor), Daphne Bradwell (Respondent's former Section 8 Program Manager),³ Davy Godfrey (the City's current Director of Human Resources), and Read Gignilliat (the City's labor counsel and Pension Board Counsel).⁴ Respondent failed to appear for the hearing, whereas Debbie Bailey, Respondent in the companion case, appeared and offered testimony. The hearing record closed on June 17, 2020, with the filing of Petitioner's reply to Debbie Bailey's proposed Final Decision.

II. FINDINGS OF FACT

The following findings of fact are derived from the undisputed allegations of the Petition against Respondent, and the evidence presented at the March 9, 2020 hearing, including the testimony of the above-named witnesses.

1.

The United States Department of Housing and Urban Development (HUD) funds a Housing Choice Voucher Program, alternatively known as the Section 8 Program,

² For purposes of the evidentiary hearing, Pension Board for the Consolidated Retirement Plan for Employees of the City of Marietta, Georgia v. Bowens, Docket No. 1833444-OSAH-PRS-GMEBS-33-Kennedy and Pension Board for the Consolidated Retirement Plan for Employees of the City of Marietta, Georgia v. Bailey, Docket No. 1833447-OSAH-PRS-GMEBS-33-Kennedy were consolidated.

³ By Order entered December 30, 2019, Ms. Barrett (presently residing in North Carolina) and Mr. Curtis (presently residing in Tennessee) were permitted to participate in the hearing telephonically.

⁴ Mr. Gignilliat testified that, while he has served as the City's labor counsel for many years, he was not appointed Pension Board Counsel until late 2017.

which pays rental subsidies or Housing Assistance Payments (HAP) to landlords for the purpose of financially assisting low-income tenants. HUD utilizes state and local public housing agencies to administer the Section 8 Program.

2.

At all times relevant to these proceedings, the City's Section 8 Office administered a HAP program for the benefit of eligible residents in the City. As such, prior to the City's discontinuation of the program following discovery of the criminal activity underlying these proceedings, its Section 8 Office received and processed millions of dollars in HUD funding for its HAP program.

3.

Respondent was employed as a Housing Assistance Officer. As such, she was entrusted with managing HAP payments and related disbursements to participating landlords and servicing the housing-related needs of her assigned program participants/tenants. At all times relevant to these proceedings, Ms. Bradwell was the City's Section 8 Program Manager and Respondent's direct supervisor.

4.

Ms. Barrett, the City's former Interim Director of Human Resources, testified that on or about April 22, 2013, she received a grievance from Respondent accusing Ms. Bradwell of creating a hostile work environment, among other things. In the days immediately following her grievance, Respondent made additional allegations against Ms. Bradwell, as well as several references to the possibility of retaining legal counsel and pursuing claims against the City. As a result, Ms. Barrett engaged Mr. Gignilliat, the City's labor counsel, to provide legal advice and consultation in connection with the City's dealings with Respondent going forward. Ultimately, Mr. Gignilliat's firm billed the City a total of \$164,258.75 related to legal services related to Respondent. The City paid a total of \$65,254 in legal fees for services rendered from April 2013 through April 2014, and another \$99,004.75 for legal

services related to initiating and pursuing these administrative proceedings. (See Exhibit 10.)

5.

HUD regulations require that all participating housing choice voucher programs conduct periodic audits of HAP payments and related disbursements. To this end, on April 26, 2013, Ms. Bradwell notified the Housing Assistance Officers in the City's Section 8 Office, including Respondent, that she would be conducting an audit over the next few weeks. Program participant/tenant files assigned to each Housing Assistance Officer were randomly selected for this purpose and were to be delivered to Ms. Bradwell by May 2, 2013.

6.

One of Respondent's files that Ms. Bradwell randomly selected for her audit was for a program participant/tenant referred to herein by the initials "TL." Shortly after learning that TL's file had been selected for the audit, Respondent went into the Section 8 Office database and deactivated the file. In addition, the physical file associated with TL's participation in the program went missing and has never been located.

7.

In the meantime, the City's investigation into Respondent's grievance was ongoing, and began to focus on program participant/tenant matters underlying the various conflicts between Respondent and Ms. Bradwell. Ms. Barrett testified that Respondent repeatedly questioned and expressed her objection to what she viewed as an unwarranted expansion of the investigation. Thereafter, Respondent began supplementing her initial grievance by raising additional, more serious allegations and accusations against Ms. Bradwell, including that she was mismanaging the City's Section 8 Office and had similarly mismanaged similar programs prior to

becoming employed by the City. In addition, Respondent continued to make references to retaining legal counsel and pursuing claims against the City.

8.

As result of Respondent's allegations of misconduct against Ms. Bradwell in connection with her management of the City's Section 8 Office, Ms. Barrett arranged for Mr. Curtis, the City's Internal Auditor at the time, to conduct a full compliance review of the HAP program. Mr. Curtis commenced his review on May 23, 2013. He subsequently devoted one hundred percent of his time to matters related to Respondent's public-employment related crimes from May 16, 2013 through July 2013.

9.

On May 2, 2013 – the same day she was to turn over the specified tenant files for Ms. Bradwell's audit – Respondent met with Ms. Barrett to propose terms for her voluntary resignation, claiming irreconcilable conflicts with Ms. Bradwell that were adversely affecting her health. Because it was apparent that Respondent's relationship with Ms. Bradwell could not be salvaged, and in the hopes of avoiding litigation, Ms. Barrett agreed that in exchange for Respondent's voluntary resignation, the City would maintain Respondent on its payroll (on administrative leave) through May 16, 2013 and the City would not contest Respondent's claim for unemployment benefits.

10.

Shortly thereafter, Respondent resigned her position as a Housing Assistance Officer for the City's Section 8 Office effective May 16, 2013 and filed a claim for unemployment benefits with the Georgia Department of Labor (DOL). As agreed, the City did not contest the claim. On May 23, 2013, however, a DOL Claims Examiner denied Respondent's claim for unemployment benefits, finding that she failed to make the requisite showing of good cause for her resignation.

11.

Respondent appealed the denial of her claim for unemployment benefits on May 31, 2013 and an evidentiary hearing was held before an Administrative Hearing Officer on June 19, 2013. Once again, the City did not contest Respondent's claim during the appeal. On June 21, 2013, the Administrative Hearing Officer issued a decision reversing the Claims Examiner and awarding unemployment benefits to Respondent.

12.

On June 11, 2013, Mr. Curtis completed the initial phase of his compliance review of the City's Section 8 Office. In addition to clearing Ms. Bradwell of wrongdoing, the compliance review revealed that the aforementioned TL – a program participant/tenant assigned to Respondent whose file had been randomly selected by Ms. Bradwell for her audit – continued to have HAP payments made on her behalf despite having left the program more than a year earlier. Mr. Curtis specifically determined that TL's file had been reactivated, causing more than \$13,000 in HAP funds to be distributed to the designated landlord. (See Exhibit 1.)

13.

After reporting his findings to Ms. Barrett, Mr. Curtis, along with Ms. Barrett, met with the City Manager to make him aware of the situation. According to Ms. Barrett, at the City Manager's direction, she thereafter contacted the City's Chief of Police to inquire into whether a criminal investigation should be opened. A police detective subsequently contacted and met with Mr. Curtis and Ms. Bradwell, which the record reflects resulted in a division of tasks between the three individuals in furtherance of the criminal investigation. Regarding Ms. Bradwell's involvement in the investigation, she devoted forty percent of her time to this matter between May 1, 2013, and August 2013.

14.

On June 21, 2013, Mr. Curtis submitted a Follow-up Narrative to his Compliance Review of the Section 8 Office, in which he concluded that “the circumstances which allowed this to happen [i.e., continued payment of HAP funds to landlords despite the absence of active program participants/tenants] were deliberately set up within the Section 8 Office by the assigned Housing Assistance Officer, Shantel Bowens.” (See Exhibit 2.) Mr. Curtis further reported in his Follow-up Narrative that \$236,215 in HAP funds were fraudulently paid to two landlords pursuant to this scheme and that the Housing Assistance Officers assigned to the fraudulent files were Respondent and Debbie Bailey.⁵

15.

Based on Mr. Curtis’s findings, the City determined that Respondent’s grievance and post-grievance accusations against Ms. Bradwell had been fabricated to deflect attention from – or to at least forestall discovery of – her own wrongdoing. For this reason, the City concluded that its agreement not to oppose Respondent’s claim for unemployment benefits had been fraudulently procured and would no longer be honored. Accordingly, on July 3, 2013, the City directed Mr. Gignilliat to petition the DOL to reopen Respondent’s claim for unemployment benefits.

16.

On August 2, 2013, the DOL’s Board of Review granted the City’s petition, vacated the award of unemployment benefits to Respondent, and remanded the matter to the Administrative Hearing Officer for a new hearing. At the hearing, which Respondent chose not to attend, the City presented evidence regarding Respondent’s fraudulent activities through the testimony of Ms. Barrett, Mr. Curtis, Ms. Bradwell, and the police detective overseeing the criminal investigation. On September 3, 2013, the

⁵ See footnote 2.

Administrative Hearing Officer issued a decision setting aside Respondent's award of unemployment benefits. Respondent did not appeal this decision to the Board of Review.

17.

The City's criminal investigation was eventually taken over by federal law enforcement authorities and submitted to the United States Attorney for the Northern District of Georgia for prosecution. To this end, the case was presented to a federal Grand Jury which, on March 25, 2014, returned multiple indictments against Respondent for theft of government funds, conspiracy to commit theft of government funds, receiving stolen government funds, and conversion of government funds. In so doing, the Grand Jury found that Respondent and her accomplice, Ms. Bailey,⁶ fraudulently reactivated numerous program participants/tenants who were no longer active in the HAP program, recruited and conspired with two participating landlords, caused HAP funds to be disbursed to the landlords on behalf of these inactive program participants/tenants, and divided more than \$230,000 in HAP payments among themselves. The Grand Jury further found that the criminal scheme began no later than January 1, 2010. (See Exhibit 5.)

18.

On July 17, 2014, Respondent pled guilty to all counts in the Indictment and, on September 29, 2014, was sentenced to twenty-six (26) months' incarceration to be followed by three (3) years' supervised release. In addition, Respondent was required to pay an \$800 special assessment and make restitution to HUD in the amount of \$275,871 (of which \$234,977 was to be paid jointly and severally with her co-defendants). Respondent did not appeal her conviction, which therefore became a final conviction at that time.⁷ (See Exhibit 5.)

⁶ See footnote 2.

⁷ Petitioner received notice of Respondent's conviction on February 14, 2018.

III. CONCLUSIONS OF LAW

The following conclusions of law are based on the application of O.C.G.A. § 47-1-20, et seq., relevant legal precedents, and the Cobb County Superior Court’s Order of October 1, 2019 to the above-stated factual findings.

1.

Pursuant to O.C.G.A. § 47-1-22(b), “if a public employee commits a public employment-related crime in the capacity of a public employee and is convicted for the commission of such crime, upon final conviction such person’s benefits under a public retirement or pension system, including any survivor’s benefits if applicable, shall be reduced by an amount equal to three times the economic impact of the crime.”

2.

The City is a municipality, duly chartered under Georgia law and, as such, constitutes a “public entity” and a “political subdivision” within the meaning of O.C.G.A. §§ 47-1-20(1.2) and 47-1-20(4). Therefore, as a former employee of the City’s Section 8 Office, Respondent was a “public employee” within the meaning of O.C.G.A. § 47-1-22(b). See O.C.G.A. § 47-1-20(5).

3.

The Plan is a “public retirement or pension system” established by the City for its employees, including Respondent, within the meaning of O.C.G.A. § 47-1-22(b). See O.C.G.A. § 47-1-20(7). Respondent is a vested participant in the Plan within the meaning of O.C.G.A. §§ 47-1-20(8) and 47-1-25.

4.

Respondent committed crimes in her capacity as a public employee, each constituting a “public employment-related crime,” within the meaning of O.C.G.A. § 47-1-25. See 47-1-20(6). See also Pension Board for the Consolidated Retirement Plan for Employees of the City of Marietta v. Bowens, Case No. 19100848 (Sup. Ct.

Cobb Cty. Oct. 1, 2019). Respondent was convicted for said public employment-related crimes, and said conviction is a final conviction, within the meaning of O.C.G.A. § 47-1-25. See O.C.G.A. §§ 47-1-20(1) & (3).

5.

In view of the foregoing, Respondent’s future pension benefits under the Plan must be reduced by an amount equal to three (3) times the economic impact of her crimes. See O.C.G.A. § 47-1-22(b) (upon final conviction of a public employment-related crime, “benefits under a public retirement or pension system ... shall be reduced by an amount equal to three times the economic impact of the crime.” [Emphasis added.]).

6.

The “economic impact” of a public employment-related crime is statutorily defined as comprising both the economic gain to the perpetrator of the crime and the economic loss to the public entity. See O.C.G.A. § 47-1-20(1.2). “Economic impact” is a broader concept than causation in the traditional legal sense, particularly in the context of criminal activity.⁸ As such, it is highly relevant that the Legislature established the administrative process set forth in O.C.G.A. § 47-1-20, et seq., to determine economic impact, rather than creating a damages-based cause of action to be pursued in the court system.

7.

When construing statutes, the Georgia courts are compelled to presume that the Legislature “meant what it said and said what it meant.” Deal v. Coleman, 294 Ga. 170, 172 (2013). Therefore, courts must “afford the statutory text its plain and

⁸ See, e.g., McCollister Kathryn E., The Cost of Crime to Society, Drug Alcohol Depend. (Apr. 1, 2010) (economic impact of criminal activity extends beyond the value of stolen property or funds, property damage, medical costs, or lost earnings, to include such categories of costs as those associated with legal fees, investigation, law enforcement, prosecution, adjudication, and incarceration, and the opportunity costs associated with the criminal’s choice to engage in illegal rather than legal and productive activities).

ordinary meaning, consider the text contextually, read the text in its most natural and reasonable way, ... and seek to avoid a construction that makes some language mere surplusage.” (Internal citations and quotations omitted.) Southwestern Emergency Physicians, P.C. v. Quinney, 347 Ga. App. 410, 420 (2018). Consistent with this rule of statutory construction, “[i]n the absence of any limiting language in the statute or legislative history, [there is] no reason to conclude that [the Legislature] intended [any] exception to a statutory provision purposefully drafted in broadest terms.” International Longshoremen’s Ass’n, AFL-CIO v. Allied International, Inc., 456 U.S. 212, 225 (1982).

8.

Also highly relevant is the manner in which the Legislature designed the statute, so as to simultaneously address and mitigate the economic impact of a plan participant’s criminal act on a public entity while restricting the participant’s entitlement to pension benefits funded by the very public entity impacted by his/her crime. So designed, the statute is both equitable and remedial in nature and, as such, should be liberally construed to accomplish its objectives. See, e.g., Huddleston Concrete Co. v. Safeco Ins. Co. of America, 186 Ga. App. 531, 533 (1988) (“To put a finer point on it, this ‘liberal construction’ has also been interpreted to mean that in construing a remedial statute, limitations which would take away the right from one to whom the statute gave it, must be express and not subject to varying interpretations.”).

9.

In crafting the statutory language of O.C.G.A. § 47-1-20, et seq., the Legislature broadly focused the remedy to be derived through the administrative process on “economic impact” without any limiting language.⁹ To read or infer any limiting

⁹ The statute is not without other limitations, however. For instance, economic loss to those other than the public entity and economic gain to those other than the plan participant are not included in the calculus of economic impact. See

language into the statutory definition beyond its plain terms would both violate the central tenants of statutory interpretation and frustrate the statute's equitable and remedial purposes. See International Longshoremen's Ass'n, 456 U.S. at 225. Accordingly, the economic impact of Respondent's public employment-related crime necessarily includes all reasonably measurable economic loss to the City and economic gain to Respondent from said crime. See O.C.G.A. § 47-1-22(b).

10.

In the present case, the Pension Board asserts that the economic impact of Respondent's crimes includes (a) the salary she was paid by the City for the period of time during which she was engaged in the criminal activity; (b) a portion of the salaries paid to Mr. Curtis and Ms. Bradwell for the periods of time during which they were required to handle tasks relating to Respondent's criminal activity; (c) the legal fees incurred by the City for legal services associated with Respondent's criminal activity and the instant proceedings; and (d) the monetary gain to Respondent as a result of her criminal activity. Each will be addressed in turn.

11.

Respondent's Salary. The City established, and it stands to reason, that it would not have continued to employ and pay Respondent's salary had it known that she was engaged in criminal activity. Due to Respondent's ongoing efforts to conceal her actions, the City unknowingly paid Respondent to steal the HAP funds with which it was entrusted, and which were intended for the neediest of the City's residents. The evidence further shows that – in contrast to, for example, simple theft of funds from a cash drawer – the fraudulent scheme designed and implemented by

O.C.G.A. § 4-1-20(1.2). Thus, the economic loss to those employees whose jobs were eliminated when the City closed its Section 8 Office and to the otherwise eligible residents who were not able to secure housing benefits due to the stolen funds is not included in the calculation of economic impact. Likewise, the plan participant's obligation to satisfy his/her liability for such economic impact is limited to the benefits to which he/she would otherwise be entitled under the pension plan sponsored by the public entity. See O.C.G.A. § 47-1-22(b). Thus, the City will not receive a traditional judgment that can be executed against Respondent through a legal enforcement proceeding.

Respondent was multi-faceted and dynamic, necessitating continuous maintenance for both its profitability and concealment, and, therefore, likely required a substantial amount of her working time.¹⁰ Accordingly, the salary paid to Respondent for the period of time during which she was engaged in the criminal activity constitutes a reasonably measurable economic loss to the City within the meaning of O.C.G.A. § 47-1-20(1.2) and, as such, is properly included in the economic impact of Respondent's public employment-related crime.

12.

The record reflects that Respondent's criminal activity began no later than January 2010 and continued through her eventual separation from the City in May 2013.¹¹ According to the City's payroll records, Respondent was paid \$143,610.72 in salary during this period of time. Accordingly, this amount shall be included in the calculation of the economic impact of Respondent's public employment-related crimes.

13.

Curtis and Bradwell Salaries. The City established that Mr. Curtis and Ms. Bradwell were required to devote all or a portion of their working time reviewing, investigating, and handling tasks associated with Respondent's public employment-related crime. Specifically, Mr. Curtis devoted one hundred percent of his time to this matter from May 16, 2013 (when he first met with Ms. Barrett about conducting the compliance review and began familiarizing himself with HUD regulations) through July 2013, whereas Ms. Bradwell devoted forty percent of her time to this matter between May 1, 2013 (when she was having to address Respondent's

¹⁰ See footnote 9 (referencing "the opportunity costs associated with the criminal's choice to engage in illegal rather than legal and productive activities" as a component of the economic impact of criminal activity).

¹¹ Specifically, Count Eight of the Indictment provides that beginning no later than January 2010, Respondent aided and abetted in the embezzlement of public funds by falsifying City records to which she only had access through her position as a Housing Assistance Officer for the City. (See Exhibit 5.)

grievance and subsequent accusations and was preparing for her audit) and August 2013. Clearly, had it not been for Respondent's criminal activity and associated misconduct, the City would not have been required to pay Mr. Curtis and Ms. Bradwell to perform these tasks to the exclusion of their regular duties and responsibilities. Accordingly, these amounts also constitute a reasonably measurable economic loss to the City within the meaning of O.C.G.A. § 47-1-20(1.2) and, as such, are properly included in the economic impact of Respondent's public employment-related crime.

14.

According to the City's payroll records, Mr. Curtis and Ms. Bradwell were paid \$11,712.00 and \$22,079.60 in salary, respectively, during the above-stated periods of time. (See Exhibits 6-7.) As noted, with regard to what portion of their time related to Respondent's criminal activity and associated misconduct, Mr. Curtis testified that he devoted one hundred percent while Ms. Bradwell testified that she devoted forty percent. Accordingly, these salaries represent economic losses to the City of \$11,712.00 and \$8,831.84, respectively. Evenly dividing this amount between Respondent and her co-conspirator, Ms. Bailey,¹² \$5,856.00 of Mr. Curtis's salary and \$4,415.92 of Ms. Bradwell's salary shall be included in the calculation of the economic impact of Respondent's public employment-related crimes.

15.

Legal Fees. Based on the evidence presented, the Court concludes that commencing in April 2013, Respondent began engaging in a pattern of conduct designed to divert attention away from, or at least forestall discovery of, her criminal activity. As part of this pattern, Respondent fabricated a grievance against Ms. Bradwell alleging a hostile work environment, supplemented these allegations by falsely accusing Ms.

¹² See footnote 2.

Bradwell of serious acts of mismanagement of the City's Section 8 Office, repeatedly asserted her intention to retain legal counsel to sue the City, and fraudulently induced the City into placing her on paid leave and agreeing not to contest her application for unemployment benefits. Each of these actions caused the City to incur legal fees from Mr. Gignilliat and his law firm. Respondent's criminal activity also resulted in legal fees associated with the commencement and prosecution of these administrative proceedings.¹³ These fees, totaling \$164,258.75 as set forth in the Findings of Facts, above, constitute a reasonably measurable economic loss to the City within the meaning of O.C.G.A. § 47-1-20(1.2) and, as such, are properly included in the economic impact of Respondent's public employment-related crime.¹⁴

16.

Economic Gain to Respondent/Loss to City. Pursuant to O.C.G.A. § 47-1-20, "economic impact" includes any economic gain to Respondent. Petitioner argues that the entire restitution amount of \$275,871 (of which \$234,977 is to be paid jointly and severally with Respondent's three co-defendants) should be wholly attributable

¹³ It is particularly appropriate that legal fees associated with these proceedings be included in the calculation of economic impact. It would clearly frustrate the remedial purpose of O.C.G.A. § 47-1-20, et seq., to exclude the legal expenses associated with pursuing such relief, particularly given the fiduciary responsibility of a public pension plan's trustees to maintain the plan's fiscal soundness.

¹⁴ The hearing on the Pension Board's Petition was set to be conducted on May 25, 2018, when the Attorney General's Office set in motion a series of events leading to the dismissal of the Petition, the Pension Board's initiation of judicial review proceedings in the Superior Court, and the eventual reinstatement of the Petition and remand of the case. While agency principles apply to the attorney-client relationship, such that the client/principal (here, the Pension Board) is generally held responsible for the acts of the attorney/agent (here, the Attorney General's Office), this principle has no application to the present case. As previously noted, in advocating for the dismissal of the Petition, the Attorney General's Office – while acting in good faith – was obviously not acting in a representative capacity for the Pension Board; indeed, the Pension Board's objections to the Attorney General Office's position were clearly and strongly stated. For this reason, and because O.C.G.A. § 47-1-20, et seq. mandates the attorney-client relationship between the Attorney General's Office and the Petitioner in these proceedings, the Pension Board cannot be penalized by excluding from the economic impact calculation the legal fees it was forced to incur in opposing and procuring the reversal of the dismissal of its Petition. Cf. Link v. Wabash R. Co., 370 U.S. 626, 633-34 (1962) (holding that client-principal who voluntarily chooses its lawyer-agent is deemed bound by acts or omissions of lawyer-agent committed on its behalf).

to Respondent as economic gain to her because she had access to these funds for several years before the fraudulent scheme was discovered. However, there is little evidence in the record as to what portion of the fraudulently diverted funds Respondent had access to. There is no evidence as to how the funds paid to two landlords were distributed among the four conspirators. Despite the lack of evidence regarding the distribution of the funds fraudulently diverted to the two landlords, the portion of Respondent's sentence holding Respondent individually liable for \$40,894 is a fair measure of the economic gain Respondent derived from the fraudulent scheme. Accordingly, \$40,894 in economic gain to Respondent has been included in the economic impact calculation. The remaining restitution amount of \$234,977 that Respondent was held severally and jointly liable to repay in restitution is a quantifiable loss to the City. Accordingly, it has been included in the economic impact calculation as well.

IV. DISPOSITION

1.

In sum, the record establishes that the economic impact of Respondent's public employment-related crimes is the sum total of:

- (a) \$143,610.72, representing the salary she received from the City during the period of time she was engaged in criminal activity;
- (b) \$5,856.00, representing one-half of the salary Mr. Curtis received from the City during the period of time he was required to handle tasks relating to Respondent's criminal activity;
- (c) \$4,415.92, representing one-half of the portion (forty percent) of the salary Ms. Bradwell received from the City during the period of time she was required to handle tasks relating to Respondent's criminal activity;
- (d) \$164,258.75, representing the legal fees incurred by the City in connection with Respondent's criminal activity; and

(e) \$275,871, representing economic gain to Respondent and overall loss to the City.

2.

Accordingly, the economic impact of Respondent's public employment-related crime is \$594,012.39. As such, Respondent's benefits under the Consolidated Retirement Plan for Employees of the City of Marietta, Georgia, including any survivor's benefits if applicable, shall be reduced by an amount equal to three times the economic impact of the crime, or \$1,782,037.17, in accordance with O.C.G.A. § 47-1-22(b), said reduction to commence at the time such benefits would normally begin to be paid.

IT IS SO ORDERED, this 6th day of August, 2020.



Ana Kennedy
Administrative Law Judge





NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(4). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Kevin Westray - 404-656-3508; Email: kwestray@osah.ga.gov; Fax: 404-656-3508; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.

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