

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING, AND IF FILED, DETERMINED

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

HARRY HARVEY, et al.,
Petitioners,

v.

Ref. No. 19-000042AP-88B
UCN: 522019AP000042XXXXCI

CITY OF ST. PETERSBURG, FLORIDA,
Respondents.

_____ /

ORDER AND OPINION

Petitioners challenge the decision of the St. Petersburg City Council (“the Council”) to remove Commissioners Harry Harvey, Delphinia Davis, and Ann Sherman-White from their positions with the St. Petersburg Housing Authority (“SPHA”). Based on the Court’s conclusion that the Commissioners’ terminations comported with constitutional due process standards, the Court denies the Petition for Writ of Certiorari.

Facts and Procedural History

On April 29, 2019, Mayor Rick Kriseman drafted cover letters to each of the three Commissioners informing them of his intent to remove them from their positions subject to the concurrence of the Council, pursuant to section 421.07, Florida Statutes. The Mayor provided the Commissioners with the hearing date, May 16, 2019, the opportunity to file a written response by May 10, 2019, and the opportunity to resign before the hearing. His cover letter indicates that he attached a copy of the charges and a binder of related documents to each. Thereafter, sometime between April 29, 2019 and May 6, 2019, envelopes containing those cover letters, the charging documents, and related evidentiary documents supporting the charges were delivered to each Commissioner at the SPHA office and also to each Commissioner’s official SPHA email address.

Commissioner Delphinia Davis sent a read receipt to the email correspondence on May 6, 2019, the same day it was sent, but the other two Commissioners did not. The City, however, has provided receipts of delivery for each email. On May 6, 2019, Petitioners were also provided notice by email and hand delivery that a newspaper notice regarding the removal hearing ran in the Tampa Bay Times on May 5, 2019, and were also provided a copy of the procedures for the removal hearing.¹

On May 15, 2019, the day before the scheduled hearing before the Council, Petitioners' counsel, Mr. Nabatoff, sent a letter to the Executive Assistant City Attorney, Joseph Patner, requesting a continuance of thirty days. Mr. Nabatoff stated that he had only been retained one day prior, on May 14, and had not had time to review the voluminous materials related to these charges nor to prepare adequate defenses to such, and additionally, that his clients had not properly been given a copy of the charges against them. Mr. Nabatoff argued that delivery of the charges to the Commissioners at SPHA and through their official SPHA email addresses was not sufficient and that no attempt had been made to serve the charges on the Commissioners at their personal emails or addresses. Mr. Patner responded on the same day indicating that Petitioners had been noticed and provided a copy of the charges and supporting documentation several times through email and delivery of physical copies of the documents in question on April 29, 2019. Mr. Patner also referenced the publication in the Tampa Bay Times and the notice of such to Petitioners. Accordingly, Mr. Patner declined to grant a continuance.

The hearing before the Council was held on May 16, 2019, at which time, after a lengthy deliberation, the Council voted to remove the three Commissioners. None of the three

¹ The City also provided notice of the removal to the counsel for SPHA, Jacqueline Kovilaritch; however, Ms. Kovilaritch responded that she would not provide this notice to the Commissioners because she did not and could not represent them in their individual capacity.

Commissioners nor their counsel attended the hearing. City Council members called for Petitioners or Petitioners' representative several times throughout the hearing and even sounded the halls for them. Additionally, the Petitioners did not submit any written responses to the charges.

Discussion

Petitioners assert that the Council violated their due process when the Council failed to provide a copy of the charges against the Petitioners prior to the removal hearing. Petitioners maintain that a copy of the charges should have been served against each of them at either their home address, personal email address, or place of business.

The Court finds that section 421.07, Florida Statutes, dictates the following regarding removal of Commissioners:

For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the mayor with the concurrence of the governing body, but ***a commissioner shall be removed only after he or she shall have been given a copy of the charges at least 10 days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.*** In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk.

The Court finds the statute provides no indication of and leaves open for interpretation the proper way to provide the Commissioners with the charges.

“The extent of procedural due process afforded to a party in a quasi-judicial hearing is not as great as that afforded to a party in a full judicial hearing. Consequently, such hearings are not controlled by strict rules of evidence and procedure. Nevertheless, a party to a quasi-judicial hearing, by virtue of its direct interest that will be affected by official action, ‘must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts.’ *Carillon Cmty. Residential v. Seminole Cty.*, 45 So. 3d 7 (Fla. 5th DCA 2010)

(internal citations omitted). “A quasi-judicial hearing generally meets basic due process requirements if the parties have provided notice of the hearing and an opportunity to be heard.” *Id.*

First, the Court finds, Petitioners never argue that they failed to receive actual notice of the charges. In fact, it appears that their counsel had voluminous materials to review and that was part of the reason for the request for a continuance. The Court finds there is no indication in their Petition or Reply that they failed to open the emails sent to their SPHA email addresses or failed to receive the documents delivered by courier to the SPHA offices.

Further, the notice required under due process

must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.”

Gamez v. First Union Nat. Bank of Fla., 31 So. 3d 220, 224 (Fla. 4th DCA 2010). Given that the statute does not provide further instruction on how the charges are to be given to the Commissioners, the Court finds that the steps the City took to provide this information to the Commissioners was at least reasonably calculated to apprise them of the charges, the hearing, and the evidence supporting the charges.

Additionally, the Commissioners’ decision to not attend the hearing or send their attorney to the hearing cannot now be used as evidence that they were not afforded an opportunity to be heard. *See Hous. Auth. Of City of Tampa v. Robinson*, 464 So. 2d 158, 164 (Fla. 2d DCA 1985) (holding that Appellee’s failure to take advantage of the opportunities made available to him to have a post-termination hearing cannot then support a finding that he was constitutionally deprived of his procedural due process rights). “Thus, where a government entity provides notice and a meaningful opportunity to be heard, satisfying the requirements of procedural due process, a

defendant's voluntary failure to meaningfully participate in those proceedings will not vitiate the protections accorded.” *A & S Entm't, LLC v. Florida Dep't of Revenue*, 282 So. 3d 905, 909 (Fla. 3d DCA 2019).

Furthermore, the Court declines to address Petitioners’ additional arguments as “in order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved.” *Sunset Harbour Condo. Ass'n v. Robbins*, 914 So. 2d 925, 928 (Fla. 2005). As Petitioners’ did not attend the hearing nor send legal representation to the hearing, their additional arguments concerning the essential requirements of law and whether the Council’s findings were supported by competent, substantial evidence have not properly been preserved for review by this Court.

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Conclusion

Because the City complied with the fundamental requirements of due process by providing reasonable notice and an opportunity to be heard to Commissioners Harry Harvey, Delphinia Davis, and Ann Sherman-White before terminating them, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is **DENIED**.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, on this ____ day of _____, 2020.

Original Order entered on May 20, 2020, by Circuit Judges Pamela A.M. Campbell, Thomas M. Ramsberger, and Amy M. Williams.

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