

STATE OF NEW YORK  
JOINT COMMISSION ON PUBLIC ETHICS

540 Broadway  
Albany, NY 12207

In the Matter of ROBIN KORHERR, a Former  
Disaster Preparedness Program Representative  
for the Office of Homeland Security, a  
predecessor agency to the Division of  
Homeland Security and Emergency Services,

DECISION AND  
NOTICE OF CIVIL ASSESSMENT

Respondent

Alleged Violations of Public Officers Law  
§§74(3)(d), (f) and (h)

The New York State Joint Commission on Public Ethics (“Commission”), at its January 11, 2012 meeting, considered the Hearing Officer’s Findings of Fact and Recommendation (“Hearing Officer’s Recommendation” or “HO Recommendation,” which is attached as Exhibit A) in the Matter of Robin Korherr, a Former Disaster Preparedness Program Representative for the Office of Homeland Security (“Ms. Korherr” or “Respondent”), a predecessor agency to the Division of Homeland Security and Emergency Services.

In accordance with 19 NYCRR Part 941.15(c), the Hearing Officer’s Recommendation is incorporated herein by reference and made part of this Decision and Notice of Civil Assessment. The Commission adopts the Hearing Officer’s Findings of Fact and Recommendation in this matter.

The Commission determines that Respondent knowingly and intentionally violated Public Officers Law §74(3)(d). The Commission further determines that Respondent violated Public Officers Law §74(3)(h). Finally, the Commission adopts the Hearing Officer’s

Recommendation with respect to the civil penalty assessment and assesses a civil penalty in the amount of \$4,000.

## **I. PROCEDURAL BACKGROUND**

On February 15, 2011, the Commission on Public Integrity (“CPI”) issued a Notice of Reasonable Cause (“NORC”) pursuant to and in accordance with Executive Law §94(12)(b) and 19 NYCRR Part 941.3, alleging that Korherr violated three provisions of the State Code of Ethics, Public Officers Law §§74(3)(d), (f) and (h). (HO Recommendation at 1).<sup>1</sup>

An evidentiary hearing was conducted on June 28 and July 26, 2011 pursuant to and in accordance with 19 NYCRR Part 941.6 *et seq.*

On November 9, 2011, after providing both parties with an opportunity to submit post-hearing memoranda, the Hearing Officer’s Recommendation was issued pursuant to 19 NYCRR Part 941.15(a). The parties were provided with an opportunity to respond in writing to the Hearing Officer’s Recommendation by submitting briefs directed to CPI within 10 days of the Hearing Officer’s transmittal of the Hearing Officer’s Recommendation, limiting the briefs to the record evidence. 19 NYCRR Parts 941.15(b); 941.17 (“Record of Hearing”). Both Respondent and CPI staff timely submitted such briefs, which have been provided to the Commission’s members.

The Commission has “60 days from receipt of the briefs, or as soon thereafter as possible, in which to issue a final decision. The commission may adopt the findings of fact and

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<sup>1</sup> Unless otherwise indicated, statutory references are to the versions of the cited statutes before the August 15, 2011 effective date of the Public Integrity Reform Act (L. 2011, ch. 399) (“Act”). CPI’s regulations continue to be effective as previously promulgated. The NORC is part of the Hearing Record, 19 NYCRR Part 941.17(a), and is publicly available on the Commission’s website.

recommendation of the hearing officer in whole or in part, or it may reverse, remand and/or dismiss the hearing officer's finding of fact and recommendation based upon the record produced at the hearing." 19 NYCRR Part 941.15(c). In other words, the Commission must now determine this matter *de novo*.

On August 15, 2011, Governor Cuomo signed the Public Integrity Reform Act (L. 2011, ch. 399) ("Act"). Pursuant to section 22(1) of the Act, as of August 15, 2011 ("effective date"), CPI was not authorized to "investigate" or "discipline." On or before December 12, 2011, the Commission replaced CPI and, under Act §16, the Commission is authorized to assess a civil penalty and, further, to complete any business or matter undertaken by the CPI that remained unfinished "in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by [CPI]," as follows:

Any business or other matter undertaken or commenced by the state commission on public integrity or the legislative ethics commission pertaining to or connected with the functions, powers, obligations and duties hereby transferred and assigned to the joint commission on public ethics, and pending on the effective date of this act may be conducted and completed by the joint commission on public ethics in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the former state commission on public integrity or the legislative ethics commission.

## II. COMMISSION'S JURISDICTION

After receiving the Hearing Officer's Recommendation, Ms. Korherr submitted a *pro se* brief to CPI within the time limit set forth in the pertinent CPI regulation, 19 NYCRR Part 941.15(b), of which CPI staff had informed her. The day after Ms. Korherr submitted her *pro se* brief, David Grandeau delivered a letter to CPI's Executive Director and General Counsel informing CPI that he represented Ms. Korherr.

In substance, Mr. Grandeau's letter maintained that the Hearing Officer should not have issued the Hearing Officer's Recommendation after the effective date. He asked CPI's Executive Director to direct the Hearing Officer to withdraw the Hearing Officer's Recommendation, which CPI's Executive Director did not do. Mr. Grandeau also requested that the Commission conduct a new investigation.<sup>2</sup>

CPI staff timely transmitted to the Commission a brief directed to the Hearing Officer's Recommendation, serving a copy on Mr. Grandeau, Ms. Korherr's counsel, Ms. Korherr's *pro se* brief and Mr. Grandeau's letter in accordance with 19 NYCRR Part 941.15(b).<sup>3</sup>

### III. FINDINGS OF FACT

The Hearing Officers Findings of Fact are incorporated by reference herein. A brief overview of the facts are as follows:

Ms. Korherr served as a Disaster Preparedness Program Representative for the Office of Homeland Security ("OHS"), and more specifically, as the fiduciary agent ("FA") for the Port of Buffalo Security Working Group ("PSWG") (HO Finding of Fact at 2). In March and early April 2010, OHS commenced internal discussions as to whether it should remain the FA for the Port of Buffalo. PSWG was similarly frustrated with the State's complex requirements for

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<sup>2</sup> Following a lengthy discussion and analysis as to the merits of the argument, the Commission by a majority vote rejected the position that the Act foreclosed the authority of the Hearing Officer to render her Findings of Fact and Recommendation in this matter. The Commission went on to adopt in full, by unanimous vote, the Hearing Officers Findings of Fact and Recommendation in this Decision.

<sup>3</sup> There was one other similarly postured CPI enforcement proceeding, in which a hearing had been conducted before the Act's effective date but in which the hearing officer had not issued a recommendation by the effective date. The respondent in that proceeding was represented by counsel throughout the proceeding. That respondent has not contested the Hearing Officer's authority to issue the Hearing Officer's Recommendation after the effective date. That respondent and CPI both timely submitted briefs to the Commission in accordance with 19 NYCRR Part 941.15(b).

paying vendors and was considering an FA other than OHS (HO Finding of Fact at 2-3). Ms. Korherr was aware of the concerns by both parties and their interest in seeking a new FA.

At about this same time, while still serving as the FA for the PSWG on behalf of OHS, Ms. Korherr had conversations with a Coast Guard employee about becoming the FA for the PSWG (HO Finding of Fact at 2). By the end of April, 2010, Ms. Korherr had started her own company, Fiscal Maritime Solutions. In a May 4, 2010 e-mail to a Coast Guard official, she announces her plans to resign from the OHS and provided information regarding the status of her new company and explaining “[a]ll the steps I took to possibly become the new FA or an FA.” (HO Finding of Fact at 2). During this time and immediately after her separation from State service on May 14, 2010, Ms. Korherr failed to inform her supervisors and the OHS that she was engaged in employment discussions with an entity she continued to provide services to as a State employee (HO Finding of Fact at 2-3).

#### **IV. PUBLIC OFFICERS LAW VIOLATIONS**

The State Code of Ethics, set forth in Public Officers Law §74, provides, in pertinent part, as follows:

**2. Rule with respect to conflicts of interest.** No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

**3. Standards.**

\* \* \*

**d.** No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other

resources of the state for private business or other compensated non-governmental purposes.

\* \* \*

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or her or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

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h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

## V. ARGUMENT

### A. Standard Of Proof

Pursuant to the State Administrative Procedure Act ("SAPA") §306(1), 19 NYCRR Part 941.6(d), and reported judicial decisions (*e.g.*, Miller v. DeBuono, 90 N.Y.2d 783 (1997)(Levine, J.), in making its findings of fact after a hearing, CPI applied the "substantial evidence" standard of proof. *See Generally* New York Jurisprudence, Administrative Law §275 (2d Ed. 2009).<sup>4</sup> Substantial evidence "is less than a preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt." 300 Gramatan Avenue, Assoc. v. State Division of Human Rights, 45 NY2d 176, 180-181 (1978) (citations omitted).

Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact (New York State Labor Relations Bd. v. Shattuck, Co., 260 App. Div. 315, 317). Essential attributes are relevance and a probative character [citations omitted]; marked by its substance – its solid nature and ability to inspire confidence, substantial evidence does not rise from surmise, conjecture, speculation or rumor. *Id.* at 180 (citations omitted).

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<sup>4</sup> Pursuant to Act, §16, the Commission must determine this matter as if it were CPI.

## **B. Authorized Penalties**

Executive Law §94(13) and Public Officers Law §74(4) authorize assessment of a civil penalty of up to \$10,000 against a State officer or employee found to have knowingly and intentionally violated Public Officers Law §74(3)(d). No civil penalty is authorized or may be assessed against a State officer or employee found to have violated Public Officers Law §74(3)(f) or (h). Thus, proof of a knowing and intentional violation of §74(3)(f) or (h) is not required. Accordingly, the Commission must now determine whether substantial record evidence shows that Korherr knowingly and intentionally violated Public Officers Law §74(3)(d) and whether Ms. Korherr additionally violated Public Officers Law §74(3)(f) and (h).

## **C. Korherr Knowingly and Intentionally Violated §74(3)(d) and Violated §74(3)(h)**

The Hearing Officer's Recommendation is incorporated by reference herein and the Commission adopts the Hearing Officer's Recommendation that Korherr knowingly and intentionally violated Public Officers Law §74(3)(d) and violated Public Officers Law §74(3)(h).

With respect to Korherr's contention that she did not receive adequate ethics training, as the Hearing Officer correctly determined, even if Korherr "may not have had access to the full range of ethics training available to employees, that cannot serve to excuse her behavior." (HO Recommendation at 4.) In part, this is because, as the Hearing Officer correctly stated, "the Commission need not prove that a state employee knew his actions were prohibited but only that he was aware of the nature or circumstances regarding the unlawful conduct." (HO Recommendation at 4-5, *citing* Matter of Gormley v. New York State Ethics Commission, 11

N.Y.2d 423 (2008).)<sup>5</sup> For the reasons stated in the Hearing Officer's Recommendation, substantial record evidence establishes that Korherr's violation of Public Officers Law §74(3)(d) was knowing and intentional because substantial record evidence establishes that Korherr was aware of the nature and circumstances regarding her unlawful conduct.

To this point, the Commission carefully considered the evidence presented at the hearing in rendering its Decision. Of particular relevance were Ms. Korherr's own e-mails sent on May 4, 2010 announcing to a Coast Guard official the formation of her company and to the PSWG noting she "will be changing jobs soon (hush hush) and working closer with the Port" (CPI Exhibit 16). The Commission finds that Ms. Korherr's own words demonstrate an awareness of the nature of her actions and a clear attempt to use her official position to secure an unwarranted privilege, in a violation of her public trust under Public Officers Law §§74(3)(d) and (h).

Based on the Commission's *de novo* review of this case, we find there is insufficient evidence to support a violation of Public Officers Law §74(3)(f).

## VI. CONCLUSION

Since substantial record evidence demonstrates that Respondent Robin Korherr knowingly and intentionally violated Public Officer Law §74(3)(d), the Commission hereby assesses a civil penalty in the amount of \$4,000. In addition, substantial record evidence establishes that Korherr violated Public Officers Law §74(3)(h).

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<sup>5</sup> In her brief at 1-2, Korherr seeks to rely on her purported communications with CPI staff. The hearing record establishes that the communications with CPI staff to which Korherr refers in her brief occurred after Korherr resigned from and stopped working at the Office of Homeland Security ("OHS") and, thus, after the events that gave rise to the allegations that were the subject of the hearing. (Hearing Transcript at 189 – 190, 231, 238.) Consequently, regardless of their content, such communications are irrelevant and immaterial to the factual issues the Hearing Officer was required to or did resolve, or that the Commission may or should consider. Korherr does not cite and the Commission has not found any record evidence regarding the content of Ms. Korherr's communications with CPI staff related to the allegations that were the subject of the hearing.

Hon. Janet DiFiore, Chair  
Ravi Batra  
Patrick J. Bulgaro  
Hon. Joseph Covello  
Hon. Vincent A. DeLorio  
Daniel J. Horwitz  
Seymour Knox, IV  
Gary J. Lavine  
David A. Renzi  
George H. Weissman  
Members

Dated: January 11, 2012

Attachment: Exhibit A - Hearing Officer Findings of Fact and Recommendations

# Exhibit A

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In the Matter of Robin Korherr, a former Disaster Preparedness Program Representative for the Office of Homeland Security, a predecessor agency to the Division of Homeland Security and Emergency Services

Respondent

Alleged Violations of Public Officers Law sections 74(3) (d), (f) and (h)

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A Notice of Reasonable Cause in this Matter was issued on February 15, 2011 alleging that Robin Korherr, a former Disaster Preparedness program representative 3 (DPPR3) for the Office of Homeland Security (OHS) knowingly and intentionally violated Public Officers Law sections 74(3)(d), (f) and (h). On June 28 and July 26, 2011 a hearing was held and at the conclusion of the July 26 hearing the parties (the respondent was not represented by counsel) agreed to a post-hearing memoranda schedule. Pursuant to that schedule, the Commission submitted its Brief on August 26, 2011. The Respondent's Brief was due on September 16, 2011. When, as of September 19, 2011, no brief had been received Respondent was contacted by the Commission. Her reply to that email was since new ethics legislation had been signed in August (prior to the submission of the Commission's Brief), she was waiting to be contacted by OIG to be told what to do. In response, the Commission informed respondent that the CPI had commenced this proceeding and would be concluding it according to the previously agreed upon schedule, except that respondent was given an extension until September 30, 2011 (later extended to October 10) to submit her brief and the Commission likewise was given an additional two weeks to submit its reply brief, if any (October 14, 2011).

The specific allegation against Ms Korherr was that there was reasonable cause to believe that she used her position with the Office of Homeland Security in an attempt to obtain the position of Fiduciary Agent (FA) for the Western New York region of the Eastern Great Lakes Area Maritime Security Committee (otherwise referred to as the "Port Security Working group, PSWG, the AMSC or the Port of Buffalo), to perform the same duties she had been performing on behalf of OHS. She was charged with violating section 74(3)(d),(h) and (f). Paragraph (d) prohibits an officer or employee of a state agency, among others, from using or attempting to use her official position to secure unwarranted privileges or exemptions for herself or others, while paragraph (f) states that such an employee should not by her conduct give reasonable basis for the impression that any person can improperly influence her or unduly enjoy her favor in the performance of her public duties, or that she is affected by the kinship, rank, position, or influence, of any party or person. Finally, paragraph (h) states that such employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that she is likely to be engaged in acts that are in violation of her public trust.

## FINDINGS OF FACT

1. Respondent's position as a Disaster Preparedness Program representative, which she commenced on or about September 20, 2007, involved serving as the point of contact, liaison, and grant application reviewer for various grant matters throughout New York State (Commission's exhibit 31). She held this position until May 14, 2010 after she tendered her resignation on May 7, 2010 (Commission's exhibit 22).

2. One of her specific responsibilities was serving as the single point of contact for the Port of Buffalo Port Security Working Group in the role of Fiduciary Agent, or FA. Generally speaking this meant that in order for the governmental entities which comprised the PSWG for the Port of Buffalo to receive federal monies for port security projects, the PSWG was required to designate a fiduciary agent who would be responsible for the financial integrity of grant funds and for ensuring that the necessary reporting requirements for federal funds were met. Ms. Korherr became the FA in March 2008 when OHS entered into a Memorandum of Understanding with the PSWG and thereby agreed to serve as the FA and assigned Ms. Korherr to assume the FA duties on behalf of OHS ( Commission's Exhibit 2; Transcript, pp.2-3,7-10).

3. The relationship between PSWG and OHS was complicated. Aside from the respondent, Tim Balunis of the Coast Guard, was a primary point of contact between the PSWG and OHS (Transcript, pp. 105-109). By March 2009, the PSWG often was frustrated by the State's complex requirements for paying vendors, while by February, 2010, it was OHS that became frustrated because of what it saw as unreasonable demands made by the Port of Buffalo on Ms. Korherr's time to the detriment of her other duties at OHS ( Commission's Exhibit 5; Transcript, pp. 46-47,79-82).

4. In March and early April 2010, OHS was having internal discussions about whether it should remain as the FA for the Port of Buffalo-largely because it was consuming so much of Ms. Korherr's time that she was unavailable for her other duties- but in April, 2010 OHS's new Director (James Sherry), decided that OHS would remain FA as long as the PSWG requested that it do so and as a result OHS remained the FA through fiscal year 2010 (Commission's Exhibit 3; Transcript pp. 55-56,90-91).

5. In March, 2010 Respondent received a job offer from IPRO, a company that audited public health programs, which she accepted (Transcript, pp. 199-200).

6 During this spring 2010, while she was still serving as the PSWG's FA on behalf of OHS and thereby regularly considering issues raised by the PSWG, Ms. Korherr had conversations with Tim Balunis from the Coast guard about becoming the FA for the PSWG(Transcript, pp. 201,209-213).By the end of April, 2010 she had started her own company FM Solutions (Fiscal Maritime Solutions) and had informed Captain Steven Wischmann at the Coast Guard, in a May 4, 2010 email, "As this moment I plan to resign Friday from OHS, and have obtained Federal DUNS #, email, website structure, and DBA. Not unexpected, we may have to steer the FA-change ship as we did with waiver language....I am excited to begin the process of developing contracts and building new FEMA contacts (new PSGP Chief in June-hired outside) and this new venture " (Commission's Exhibit 19). Thus, she explained "All the steps I took to possibly become the new FA or an FA", while failing to inform her supervisors that she was engaged in discussing post-employment opportunities with individuals she was still working with as a State employee ( Transcript, pp.213-216).

7. In further preparation for this possible change in the FA, Ms. Korherr investigated-through contact with the contracts manager at OHS and directly with FEMA- whether federal funds already awarded to the Port of Buffalo could flow through a new FA and whether such funds could be "re-awarded" to a new FA and also told a contact at FEMA "I will be changing jobs soon (hush hush) and working closer with the Port. All good" (Commission's Exhibits 10, 12, 16).

8. Indeed, Ms. Korherr was fully aware that OHS was concerned that she was spending too much time serving as the FA (Commission's exhibit 5) and that the PSWG was potentially interested in finding someone else-possibly Ms. Korherr herself- to replace OHS in that position, although ultimately the PSWG retained OHS as the FA through 2010, even after Ms. Korherr's departure (Transcript, pp. 141-148; 152-154).

9. As she was preparing to leave her state job and immediately thereafter, Ms. Korherr failed to inform OHS, her State employer, that she was seeking the FA position (Commission's Exhibit 23; Transcript pp.216-218).

#### CONCLUSIONS OF LAW

Ms. Korherr is charged with knowingly and intentionally using her position with the NYS Office of Homeland Security to obtain a private position as the fiduciary agent for the Port of Buffalo's Port Security Working Group after she terminated her State employment. Initially, Ms. Korherr served as the FA as part of her duties with OHS (Transcript, pp.8-15) By all accounts she did a fine job for OHS and the PSWG (Commission's Exhibit 5). Indeed, she spent so much time on that aspect of her job that OHS felt she was neglecting her other duties and sought to reduce her commitment to the PSWG. Due to this fact (Commission's Exhibit 3, Transcript, pp. 55-56, 90-91) as well as the PSWG's dissatisfaction with the cumbersome mechanism required for a State agency to release funds (Transcript, pp. 46-47, 79) in March and April 2010 OHS had conversations about whether it should remain as the FA (Commission's Exhibit 3; Transcript, pp.55-56,90-91) and Ms. Korherr was well aware of these discussions (Commission's exhibit 5, Transcript, pp. 141-154).

Consequently, Ms. Korherr took steps to determine if the federal funds previously released to OHS could be transferred or re-awarded to a new FA. She claims to have done so as to make a transition easier should OHS locate another agency willing to take on the role of FA for the PSWG. Indeed, Ms. Korherr regularly was involved in discussions held by the PSWG and by OHS about the complexities caused by having a State agency as an FA as well as the difficulties in finding some other entity or person to serve as FA (Transcript, pp.217-230) and while she may have begun generally investigating how to transfer the duties and responsibilities of the FA, it is uncontroverted that she took affirmative steps to place herself in a position to assume these duties and responsibilities should OHS ultimately decide to get out of the FA business (6, above).

In Advisory Opinion No. 06-01, the Commission concluded that State employees "may not solicit a post-government opportunity with any entity or individual that has a specific matter pending before the State employee; and only may, 30 days from the time the matter is closed or the employee has no further involvement because of recusal or reassignment, solicit an opportunity" ... and "State employees must promptly notify their supervisors and ethics officers of such employment related communications whether or not they intend to pursue the employment opportunity." In April 2010 Ms. Korherr had conversations with Tim Balunis of the Coast Guard about becoming the new FA for the PSWG

(Transcript; pp. 201,209-213). During this time, Ms. Korherr was employed by OHS, as she did not resign until May 7, 2010 (Commission's Exhibit 22). Also during this time, Ms. Korherr did not discuss her possible PSWG employment with any of her supervisors at OHS (Transcript, pp.216-219). Hence, Mr. Korherr failed to adhere to the requirements with which State employees must comply when considering post-employment opportunities with entities that have matters under consideration by that state employee (Advisory opinion No.06-01).

Consequently Ms. Korherr knowingly and intentionally violated section 74(3)(d) of the Public Officers Law by using her official position, as an employee of NYS Department of Homeland Security, to "secure unwarranted privileges or exemptions for herself" by working to secure, as a private party, the position of fiduciary agent for the Port Security Working Group, while she was serving in that very position as a State employee. In addition, she violated subdivision (h), in that such behavior fails to meet the standard that a state employee "should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his public trust". Ms. Korherr's actions were highly likely to raise such suspicion that she used her position as a government employee to obtain a job for herself as a private citizen.

Ms. Korherr raises a number of defenses to her actions including: OHS was possibly considering abandoning its role of FA, so there was no conflict with her seeking that job; her initial actions to determine whether grants could be transferred from one FA to a new FA were designed to assist the PSWG; the fact that in the Commission's preliminary investigation focus was placed on two different post-employment opportunities Ms. Korherr was pursuing, which she did not solicit while at OHS; and her allegation that OHS did not have an ethics officer and that she was denied access to ethics training.

While Ms. Korherr is correct in noting that the Commission pursued multiple avenues of inquiry in its preliminary investigation, the charges ultimately brought did not involve Ms. Korherr's possible post-employment with entities other than the PSWG. Despite Ms. Korherr's regular insistence that she never solicited jobs with these entities the simple fact is that her contact with any other potential employers, whatever that may have been, is immaterial as it was never a subject of this hearing. Likewise, her arguments concerning her actions relative to exploring how a new FA might be appointed as well as the possibility that OHS might have been preparing to leave its position as FA are not germane to the issues raised here. Even if OHS had abandoned the FA role and even if Ms. Korherr explored how a new FA could be appointed in order to assist OHS and the PSWG, her actions in working behind the scenes without informing her state employer that she was soliciting possible post-government employment with the very entity she served in her government position, who regularly and consistently had fiscal matters pending before that government agency, violated the Public Officers Law.

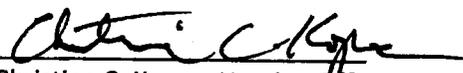
Finally, while it is troubling that Ms. Korherr may not have had access to the full range of ethics training available to employees, that cannot serve to excuse her behavior. She did receive the Public Officers Law pamphlet as a new employee at OHS, which served to put her own notice that she had many ethical obligations as a state employee. And, while she is not incorrect in stating that the "legal verbiage" may not be easily understood by the "average state employees," (Respondent's Brief, p.5) the burden is at least equally upon the employee to seek out information she believe she may need in order to comply with her ethical obligations, particularly because Ms. Korherr regularly dealt with government regulations in her role as FA and so was no stranger to wading through legal verbiage. Ultimately, ignorance of the law is no defense to liability. Indeed, with respect to matters before the Commission it has been held that the Commission need not prove that a state employee knew that his actions were prohibited but only that he was aware of the nature or circumstances regarding the unlawful conduct

(see, *Matter of Gromley v. New York State Ethics Commission*, 11 NY. 3<sup>rd</sup> 423 [2008]). Here, the Commission has satisfied its burden in proving that Ms. Korherr knowingly and intentionally violated Public Officer's Law section 74(3)(d) and (h). However, the alleged violation of subdivision (f), which relates to a state employee giving "the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his public duties, or that he is affected by the kinship, rank, position or influence of any party or person" is unfounded here, where there is no proof that Ms. Korherr was so influenced or affected.

#### RECOMMENDED PENALTY

The Commission sought a penalty of \$6,000 for the three alleged violations. As one allegation was not sustained, the recommended penalty is \$4,000.

Respectfully submitted:

  
Christine C. Kopec, Hearing Officer