

2017 IL App (1st) 170159-U  
No. 1-17-0159  
September 19, 2017

SECOND DIVISION

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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RICHARD COVELIERS,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 16 CH 07179
	)	
LABORERS' AND RETIREMENT BOARD	)	The Honorable
EMPLOYEES' ANNUITY & BENEFIT FUND)	)	Sophia H. Hall,
OF CHICAGO and TRUSTEES,	)	Judge Presiding.
	)	
Defendants-Appellants.	)	

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PRESIDING JUSTICE NEVILLE delivered the judgment of the court.  
Justices Hyman and Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* When a schemer with political clout invites a city employee to join a conspiracy to defraud the city, and the city employee knows that he would likely lose his job if he tried not to join the conspiracy or if he tried to reveal the conspiracy, the employee's participation in the conspiracy arose out of or related to his employment in a way that supports the retirement board's decision not to award the employee a pension.

¶ 2 Richard Coveliers (Coveliers) applied for a pension after he retired from the City of Chicago's Department of Water (Department). The Laborers' and Retirement Board

Employees' Annuity & Benefit Fund of Chicago (LABF) denied the application because in 2005, in response to a charge that he conspired with others to defraud the City, Coveliers pled guilty to mail fraud. LABF's Board affirmed the denial of the application. Coveliers filed a complaint for administrative review of the Board's decision and the circuit court reversed the Board. We find that the evidence supports a finding that the conspirators invited Coveliers to participate in their plan to defraud the City because Coveliers worked for the Department. Therefore, we reverse the circuit court and we affirm the Board's judgment.

¶ 3

### BACKGROUND

¶ 4

In 2005, a federal grand jury returned an indictment against Donald Tomczak, Gerald Wesolowski, Charles Romano, and Coveliers and his wife, Debra Coveliers (Debra), along with other persons, charging them with conspiring to defraud the City. Tomczak, Wesolowski, Romano, Debra, and Coveliers all pled guilty to some of the charges in exchange for specified sentences and dismissal of other charges. Coveliers pled guilty to one count of mail fraud and one count of making a false statement to an investigator from the United States Department of Labor.

¶ 5

According to the plea agreement Coveliers signed, Tomczak, the Department's First Deputy Commissioner, had authority to choose the trucking companies the Department would use under the City's Hired Truck Program. Michael Harjung, a former Department employee, asked Coveliers to set up a trucking company so that Tomczak could authorize Coveliers's trucking company to provide trucks for the Department. Coveliers and Harjung formed Cayla Trucking Company in 1998. Because Coveliers worked for the Department and could not do business with the City, Coveliers arranged to have his sister, Christine

Garber, named as owner of record for Cayla. Harjung and Coveliers secretly owned and operated Cayla. Harjung told Coveliers that Cayla would need to pay Tomczak \$75 per truck per week for any business that the Department directed to Cayla.

¶ 6 According to the plea agreement, from 1998 through early 2004, Cayla received more than \$1.4 million from the Department under the Hired Truck Program. A Department of Labor investigator questioned Coveliers about Cayla and the Hired Truck Program in 2005. Coveliers told the investigator, falsely, that Coveliers had no involvement in Cayla, and Coveliers did not know about any payments to Tomczak in exchange for directing work to Cayla.

¶ 7 In April 2015, Coveliers applied to LABF for a pension. LABF denied the application "pursuant to Section 5/11-230 of the Illinois Pension Code, which provides \*\*\* [']None of the benefits provided in this Article shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his service as employee.[ ' 40 ILCS 5/11-230 (West 2014)]." Coveliers appealed. The Board held a hearing on the contested issue of whether Coveliers's felony conviction related to, arose out of, or had a connection with his employment with the Department.

¶ 8 LABF staff presented the indictment, Coveliers's plea agreement, and the plea agreements of Tomczak, Wesolowski, Romano, and Debra. Coveliers alone testified at the hearing. Coveliers said that Harjung approached Coveliers and asked Coveliers to invest \$15,000 to set up Cayla so that Tomczak could direct Department business to Cayla. The transcript of the hearing includes the following testimony:

"Q. And you knew that [Harjung] was very close to the Mayor?

A. Well, yes \*\*\*.

Q. So when he asked you to give him \$15,000 and a name, you knew better than to refuse him; didn't you?

A. Well, yeah, I didn't want to get transferred or lose my job."

A trustee sought clarification:

"TRUSTEE LOVERDE: \*\*\* Under your attorney's questioning, you responded that when he approached you requesting money for the trucking company –

THE WITNESS: Yes, sir.

TRUSTEE LOVERDE: You were afraid to say no?

THE WITNESS: Yes, sir.

TRUSTEE LOVERDE: That is because you thought you would lose your job or be transferred to another department?

THE WITNESS: Transferred somewhere.

TRUSTEE LOVERDE: You were afraid of the repercussions?

THE WITNESS: Yes, sir.

TRUSTEE LOVERDE: So would those repercussions have existed if you were not a City employee?

THE WITNESS: If I wasn't a City employee? Well, no, there would have been no repercussions \*\*\*.

\*\*\*

He couldn't hang anything over my head."

¶ 9 Coveliers admitted that he did not tell attorneys working for the City about the bribery, because he probably would have lost his job. Coveliers's testimony on other issues contradicted many of the statements he made in the plea agreement.

¶ 10 The Board found Coveliers not credible insofar as he testified that he lied in the plea agreement, but credible on the issue of how he came to participate in the conspiracy. The Board said:

"[T]he evidence establishes that Mr. Coveliers' status as a City employee was the key reason Harjung recruited Mr. Coveliers: Harjung's alleged political clout gave Harjung leverage over Mr. Coveliers, as a City employee, in terms of both forming and operating Cayla, because Mr. Coveliers feared a lack of cooperation with Harjung threatened him with being transferred or his losing his job. \*\*\*

\*\*\* Once Mr. Coveliers and Mr. Harjung formed and operated Cayla, Mr. Coveliers could not disclose his participation to anyone at the City, because he risked losing his job for violating the City ethics ordinance. \*\*\* These circumstances added to Harjung's leverage over a City employee such as Mr. Coveliers. Had Harjung recruited non-City employees, Harjung would not have had the same leverage in terms of concealing the conspiracy. In that regard, it is noteworthy that the only individuals that Harjung recruited to participate in owning hired truck vendors that paid bribes to Wesolowski and Tomczak were both City employees."

¶ 11 The Board denied Coveliers's appeal, finding that Coveliers's felony "related to, arose out of and was in connection with his service as a City employee."

¶ 12 Coveliers filed a complaint for administrative review of the Board's decision. Both Coveliers and LABF filed motions for summary judgment. The circuit court granted Coveliers's motion and directed LABF to award Coveliers a pension. LABF now appeals.

¶ 13 ANALYSIS

¶ 14 We review the decision of the Board, not the circuit court's decision. *Hanks v. Illinois Department of Healthcare & Family Services*, 2015 IL App (1st) 132847, ¶ 19. Courts must treat the Board's factual findings and credibility determinations as *prima facie* true and correct. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 204 (1998). We will not disturb the Board's factual findings unless they are contrary to the manifest weight of the evidence. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). Courts review an agency's legal rulings *de novo*. *Belvidere*, 181 Ill. 2d at 205. We use a clearly erroneous standard of review to examine the agency's determinations on mixed questions of law and fact. *Hanks*, 2015 IL App (1st) 132847, ¶ 19.

¶ 15 In cases somewhat similar to the case before us, the Illinois Appellate Court in *Bauer v. State Employees' Retirement System*, 366 Ill. App. 3d 1007, 1013 (2006), and *Katalinic v. Board of Trustees of the Municipal Employees', Officers', & Officials' Annuity & Benefit Fund*, 386 Ill. App. 3d 922, 926 (2008), treated the issue of whether an administrative agency correctly found that a felony arose out of the claimant's employment as a question of statutory interpretation, subject to *de novo* review. However, the court in *Romano v. Municipal Employees Annuity & Benefit Fund*, 402 Ill. App. 3d 857, 860 (2010) (*Romano II*), focused on the Board's specific factual finding that conspirators asked the claimant to

participate in the felony because of his position as a City employee, and reviewed that finding under the manifest weight of the evidence standard. We find that *Romano II* correctly states the standard of review applicable here to the Board's finding that Harjung recruited Coveliers to participate in the scheme to defraud the City because Coveliers worked for the Department. We will not reverse that finding unless it is contrary to the manifest weight of the evidence.

¶ 16 *Romano II* involved the same conspiracy and much of the same evidence as that involved in the case now before us. Romano worked for the Department when Harjung approached him and asked him to form a trucking company so that Tomczak could direct business to that company in exchange for bribes of \$75 per truck per week. *Romano v. Municipal Employees Annuity and Benefit Fund of Chicago*, 384 Ill. App. 3d 501, 501-503 (2008) (*Romano I*). Romano invested in a truck and set up Garfield Trucking, which then provided trucking services to the Department. When the grand jury indicted Romano and Coveliers in 2005, Romano, like Coveliers, entered into a plea agreement. Romano, like Coveliers, later applied for a pension, and LABF denied his application. Romano appealed to the Board. The Board granted LABF's motion for summary judgment based on the Board's finding that "[b]ecause of \*\*\* [Romano's] position as a City employee, he was selected to participate in Garfield, a company that was formed to obtain HTP business." *Romano I*, 384 Ill. App. 3d at 504. The Board held that Romano's felony arose out of his employment with the City.

¶ 17 Romano appealed the Board's decision. The appellate court, with one judge dissenting, reversed the Board's decision and remanded to the Board for further proceedings on Romano's complaint. The *Romano I* court said:

"The most that can be said based upon the facts set forth in the Plea Agreement is that, while employed in the City's Water Department, the plaintiff participated in a felonious scheme with Harjung, a former employee of the Water Department, pursuant to which Tomczak, the First Deputy Commissioner of the Water Department, was paid bribes for directing HTP business to Garfield. None of the admissions in the Plea Agreement support the conclusion that the scheme was the product of the plaintiff's status as a City employee or that he used his position as a City employee to facilitate the scheme. Even assuming that the relationship between the plaintiff and Harjung had its origin when both men were Water Department employees, that circumstance standing alone could never satisfy the nexus requirement \*\*\*. The fact that both men worked at the Water Department explains how they came to know each other, it does not explain why the plaintiff was asked by Harjung to participate in a scheme to bribe Tomczak or that his status as a City employee was in any way relevant to his participation." *Romano I*, 384 Ill. App. 3d at 504-05.

¶ 18 The dissenting Justice observed:

"The plaintiff, a water department employee, was solicited by a former employee of the water department to participate in a scheme to bribe another employee of the same department. There is no evidence that Mr. Harjung involved the plaintiff in the bribery scheme for any reason other th[a]n his employment in the water department. \*\*\*

Moreover, the undisputed evidence established that there was a 'substantial connection' between the plaintiff's employment and his felony conviction. As a municipal employee, the plaintiff was not permitted to do business with the City. The plaintiff's participation in a scheme to bribe a fellow employee who could secure City business for the trucking company the plaintiff invested in provided the substantial connection between his employment and his subsequent felony conviction based on that scheme. That he knew from Mr. Harjung that Mr. Tomczak was responsible for awarding the truck business does not negate the connection to his employment." *Romano I*, 384 Ill. App. 3d at 506, Hall, J., dissenting.

¶ 19 On remand, the Board held a hearing at which Romano alone testified. The Board specifically found that "[b]ecause of \*\*\* [Romano's] position as a City employee, he was asked by Harjung to participate with him in Garfield, a company that they formed to obtain HTP business." *Romano II*, 402 Ill. App. 3d at 861. The appellate court again rejected the Board's finding of fact, as the *Romano II* court said:

"Nothing in that Plea Agreement speaks to the reason why the plaintiff was asked by Harjung to participate in Garfield. Nor are there any facts in the Plea Agreement which would support an inference that the relationship between the plaintiff and Harjung or any of the other co-conspirators was cultivated because the plaintiff was an employee of the City \*\*\*.

\*\*\*

In this case, it is certainly possible that Harjung invited the plaintiff to participate in the felonious scheme because of the plaintiff's City employment, but it is not probable. Before inviting the plaintiff to participate in the scheme which led to his conviction, Harjung already had an ongoing payment arrangement with Tomczak for another trucking company involved in the HTP. More importantly, there is no evidence in this record that the plaintiff ever used his position with the City to further the scheme. The plaintiff invested money, picked up Garfield's mail, and maintained the truck; nothing more.

In the absence of sufficient circumstantial evidence to support an inference that the plaintiff was chosen to participate in the scheme giving rise to his conviction because of his position as a City employee \*\*\*, the Board's conclusion that the plaintiff's felony conviction is 'related to, arose out of, or was in connection with his employment with the City of Chicago,' is against the manifest weight of the evidence." *Romano II*, 402 Ill. App. 3d at 861, 865.

¶ 20

We find the dissent in *Romano I* is supported by section 3-110 of the Administrative Review Law. (See 735 ILCS 5/3-110 (West 2014) ("The finding and conclusions of the administrative agency on questions of fact shall be held to be *prima facie* true and correct.)) We find the evidence here distinguishable from the evidence presented in *Romano II*. Coveliers testified that when Harjung approached him, he agreed to set up the trucking company because he "didn't want to get transferred or lose [his] job." He admitted that if he had not held a City job, Harjung "couldn't hang anything over [Coveliers's] head." The testimony supplies the connection missing in *Romano II*. Before Harjung approached

Coveliers, Harjung knew Coveliers worked for the City, and Coveliers knew he could lose his job if he did not participate in the scheme. Coveliers also knew he could lose his job if he reported the bribery. The felonious plan Harjung presented to Coveliers had greater protection from discovery as long as all persons asked to participate thought their jobs depended on participation in the conspiracy, and they could lose their jobs if they disclosed the conspiracy to federal law enforcement officers. We find that Coveliers's testimony supports the inference that, very probably, Harjung invited Coveliers to participate in the conspiracy because of Coveliers's employment with the Department. The Board made the factual finding that "Mr. Coveliers' status as a City employee was the key reason Harjung recruited Mr. Coveliers: Harjung's alleged political clout gave Harjung leverage over Mr. Coveliers, as a City employee, in terms of both forming and operating Cayla, because Mr. Coveliers feared a lack of cooperation with Harjung threatened him with being transferred or his losing his job." We cannot say that Board's finding is contrary to the manifest weight of the evidence.

¶ 21 We review *de novo* the Board's legal conclusion that the factual finding shows that Coveliers's felony arose out of, related to, or had a connection with his employment. See *Katalinic*, 386 Ill. App. 3d at 926. Our supreme court has held that participation in a felonious conspiracy arises out of a conspirator's employment if the employee "would not have been in a position or selected to participate in" the conspiracy but for his City employment. *Devoney v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 199 Ill. 2d 414, 423 (2002). The Board's finding here supports the finding that Coveliers's felony arose out of his service as a City employee.

¶ 22 Finally, Coveliers argues that the Board erred when it admitted into evidence the plea agreements of Tomczak, Wesolowski, Romano, and Debra, because the federal court that accepted the pleas had not certified the documents presented to the Board. Section 10.7 of the Board's Procedural Rules Governing Hearings permits the Board to accept in evidence "material, relevant evidence, which would be relied upon by a reasonably prudent person in the conduct of serious affairs, which is reasonably reliable and reasonably necessary to resolution of the issue for which it is offered." Coveliers does not claim that the documents bearing the federal court's file stamps do not accurately present the plea agreements filed in federal court. We cannot say that the lack of certification from the federal court would prevent reasonable persons from relying on the documents. Coveliers cites no authority holding that an administrative agency errs if it admits into evidence a document file-stamped by a court but not certified as filed by the clerk of that court. See *City of Highland v. Pollution Control Board*, 66 Ill. App. 3d 143, 145 (1978). We find no error in the admission of the documents into evidence.

¶ 23 Moreover, "where there is sufficient competent evidence to support an administrative decision, the improper admission of hearsay testimony in the administrative proceeding is not prejudicial error." *Goranson v. Department of Registration & Education*, 92 Ill. App. 3d 496, 501 (1980). Coveliers's plea agreement and his testimony adequately support the Board's ruling, and therefore any error in admitting other plea agreements into evidence does not warrant reversal of the Board's decision.

¶ 24

CONCLUSION

¶ 25

The Board found that Harjung asked Coveliers to participate in the conspiracy to defraud the City at least in part because Coveliers worked for the Department, and Coveliers knew Harjung could use his influence to have Coveliers fired if Coveliers refused to participate in the plan or if he revealed it. We cannot say that the Board's finding is contrary to the manifest weight of the evidence. The factual finding supports the Board's legal conclusion that Coveliers's felony arose out of his employment with the Department. Accordingly, we reverse the circuit court's judgment and reinstate the Board's decision denying Coveliers's application for a pension.

¶ 26

Circuit court's judgment reversed; Board's order affirmed.