

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2429

September Term, 2015

YOLANDA COLLINS

v.

DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES ET AL.

Eyler, Deborah S.,
Leahy,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: February 9, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In the present case we are called upon to review a decision to terminate the employment of Yolanda Collins, Appellant, by the Maryland Military Department,¹ one of the Appellees herein,² pursuant to Section 11-104(6)(ii) of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.),³ which was affirmed by an administrative law judge (ALJ). Ms. Collins filed a complaint for judicial review in the Circuit Court for Baltimore City, after which the ALJ's decision was affirmed. Before us, Ms. Collins raises numerous issues encompassed by the one question presented:

Whether the ALJ erred in failing to recognize that the Agency had failed to provide substantial, credible evidence such as to justify the instant termination, and whether the termination was effected by error of law such as to require reversal?

¹ The Maryland Military Department oversees the State's military agencies, including the Maryland Air National Guard, the Maryland Army National Guard, the Maryland Defense Force, and the Maryland Emergency Management Agency, and reports to the Office of the Adjutant General.

² The Department of Public Safety and Correctional Services is identified as the other appellee.

³ Section 11-104 of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.) provides:

An appointing authority may take the following disciplinary actions against any employee:

- (1) give the employee a written reprimand;
- (2) direct the forfeiture of up to 15 work days of the employee's accrued annual leave;
- (3) suspend the employee without pay;
- (4) deny the employee an annual pay increase;
- (5) demote the employee to a lower pay grade; or
- (6) with prior approval of the head of the principal unit:
 - (i) terminate the employee's employment, without prejudice; or
 - (ii) if the appointing authority finds that the employee's actions are egregious to the extent that the employee does not merit employment in any capacity with the State, terminate the employee's employment, with prejudice.

In December of 2014, the Maryland Military Department issued a Notice of Termination to Ms. Collins, pursuant to Section 11-106(a) of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.),⁴ which alleged the following under “Cause(s) For Termination”:

On November 7, 2014, the appointing authority received a request for formal disciplinary action based on an internal report of questionable purchases using Ms. Collins’ state-issued credit card. The investigation revealed that Ms. Collins placed an order with Uline above the \$1,000 threshold that qualified for a free gift (Smokey Joe grill) with a retail value of about \$50. Inclusion of the gift with an order is not automatic. The purchaser must request the gift through Uline’s website. In addition, many of the items on the invoice were covered by other statewide purchasing contracts, and Ms. Collins’ purchase not only violated the terms of the contracts but resulted in an additional charge of \$108.24 for freight and handling that would not be charged if purchased through the authorized vendors. Ms. Collins also submitted an invoice with her credit card receipts that was altered to hide the free gift.

The investigation also revealed that Ms. Collins permitted another employee to make multiple online purchases using Ms. Collins’ state-issued credit card. Those orders also involved ordering goods above certain levels in order to qualify for and request free gifts, ranging in retail value from \$17 to \$65.

The Notice of Termination charged Ms. Collins with violating numerous state laws and policies:

By her actions, Ms. Collins committed multiple violations of state law and policies, and her misconduct warrants termination in accordance with:

⁴ Section 11-106(a) of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.) requires the following:

- (a) *Procedure.* — Before taking any disciplinary action related to employee misconduct, an appointing authority shall:
- (1) investigate the alleged misconduct;
 - (2) meet with the employee;
 - (3) consider any mitigating circumstances
 - (4) determine the appropriate disciplinary action, if any, to be imposed; and
 - (5) give the employee written notice of the disciplinary action to be taken and the employee’s appeal rights.

Md. Code, State Personnel and Pensions § 11-104(6)(ii) if the Appointing Authority finds the employee's actions are egregious to the extent that the employee does not merit employment in any capacity with the State, terminate the employee's employment, with prejudice; and

Md. Code, General Provisions § 5-505, Gifts or honoraria (a) Gift solicitation prohibited. -- (1) An official or employee may not solicit any gift.

(b) Gift acceptance prohibited. -- (2) Except as provided in subsection (c) of this section, an official or employee may not knowingly accept a gift, directly or indirectly, from an entity that the official or employee knows or has reason to know:

(i) does or seeks to do any business of any kind, regardless of amount, with the official's or employee's governmental unit;

(e) Gifts prohibited under State Finance and Procurement Article. -- An official or employee may not accept a gift that is prohibited under § 13-211 of the State Finance and Procurement Article.

Md. Code, State Finance and Procurement § 13-211 Unlawful conduct and promises (b) Prohibited conduct. -- During the conduct of a procurement, a competing contractor, or any officer, employee, representative, agent, or consultant of any competing contractor, may not knowingly: (2) offer, give, or promise to offer or give any money, gratuity, or other thing of value to any procurement official of the agency conducting the procurement;

Code of Maryland Regulations 17.04.05.04B, Disciplinary Actions Relating to Employee Misconduct as follows:

(1) Being negligent in the performance of duties;

(3) Being guilty of conduct that has brought or, if publicized, would bring the State into disrepute;

(8) Engaging in conduct involving dishonesty, fraud, deceit, misrepresentation, or illegality;

(10) Willfully making a false official statement or report;

(11) Knowingly assisting another in conduct that is a violation of State Personnel and Pensions Article, Annotated Code of Maryland, the regulations in this chapter, or any other lawful agency policy;

(15) Committing another act, not previously specified, when there is a connection between the employee's activities and an identifiable detriment to the State.

COMAR 21.09.01.12 Gifts, Contributions, and Donations. A gift, contribution, and donation is property transferred to another person without the other person providing return consideration of equivalent value. Gifts, contributions, and donations are unallowable.

Corporate Purchasing Card Program Policy and Procedures. Section 9, Paragraph .06. Sharing a card or account number is prohibited. a. Cardholders having a CPC are personally liable for the purchases of the other party.

EXECUTIVE ORDER 01.01.2007.01 Standards of Conduct for Executive Branch Employees (Rescinds Executive Orders 01.01.2003.01 and 01.01.2003.13)

A. An employee shall not, except as permitted by applicable law or regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

B. Employees shall exhibit exemplary conduct and use honest efforts in the performance of their duties.

D. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

F. Employees shall act impartially and not give preferential treatment to any private organization or individual.

L. Employees shall endeavor to avoid any actions creating the appearance that they are violating applicable law or the ethical standards in applicable regulations.

Q. Consistent with all applicable substantive and procedural laws, violations of this Executive Order are grounds for employee disciplinary action, including termination from State employment.

Ms. Collins filed an appeal, pursuant to Section 11-109 of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.),⁵ to challenge the

⁵ The appeal procedures under Section 11-109 of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.) provide:

(a) *Scope of section.* — (1) Except as provided in paragraph (2) of this subsection, this section applies only to employees in the skilled service or the professional service.

(2) This section does not apply to an employee under a special appointment described in § 6-405 of this article.

(b) *Limitations* — (1) Except as provided in paragraph (3) of this subsection, an employee in the skilled service or the professional service may appeal a

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Military Department's action, which was denied without a conference by the Adjutant General. Ms. Collins then appealed to the Secretary of Budget and Management, and her case was referred to the Office of Administrative Hearings (OAH), pursuant to Section 11-110(a)–(c) of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.).⁶

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disciplinary action taken while the employee is on probation only on the basis that the action was illegal or unconstitutional.

(2) The employee has the burden of proof in an appeal under this subsection.

(3) The limitations in paragraphs (1) and (2) of this subsection do not apply to an employee in the skilled service or the professional service who is on probation following a promotion or reinstatement.

(c) *Appeal to head of principal unit — Procedure.* — (1) An employee or an employee's representative may file with the head of the principal unit a written appeal of a disciplinary action that states, to the extent possible, the issues of fact and law that the employee believes would warrant rescinding the disciplinary action.

(2) An appeal under this subtitle must be filed within 15 days after the employee receives notice of the appointing authority's action.

(d) *Appeal to head of principal unit — Conference.* — The head of the principal unit may confer with the employee before making a decision.

(e) *Appeal to head of principal unit — Disposition.* — (1) The head of the principal unit may:

(i) uphold the disciplinary action; or

(ii) rescind or modify the disciplinary action taken and restore to the employee any lost time, compensation, status, or benefits.

(2) Within 15 days after receiving an appeal, the head of the principal unit shall issue to the employee a written decision that addresses each point raised in the appeal.

(f) *Expungement of personnel records.* — Within 15 days after issuance of a decision to rescind a disciplinary action, the disciplinary action shall be expunged from the employee's personnel records.

⁶ Section 11-110(a)–(c) of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.) provides:

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The ALJ held a hearing during which he heard from eight witnesses, including Ms. Collins. He also admitted into evidence exhibits offered by both the Military Department and Ms. Collins, including the agency's policy booklet on corporate purchase credit cards, invoices from the transactions in question, and documents relating to the Military Department's investigation into Ms. Collins.

After considering the testimony and exhibits, the ALJ issued a written opinion and order. In his Findings of Fact, the ALJ identified Ms. Collins's role with the Military Department:

1. At all times relevant to this proceeding, the Employee was employed with the Agency as an Administrative Officer III. As such, she performed fiscal and budgetary review functions. Included in those fiscal functions were purchasing and procurement duties as well as reconciling with original receipts a corporate

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(a) *Procedure.* — (1) Within 10 days after receiving a decision under § 11-109 of this subtitle, an employee or an employee's representative may appeal the decision in writing to the Secretary.

(2) An appeal shall state, to the extent possible, the issues of fact and law that are the basis for the appeal.

(b) *Action required by Secretary after receiving appeal.* — Within 30 days after receiving an appeal, the Secretary or designee shall:

(1)(i) mediate a settlement between the employee and the unit; or

(ii) refer the appeal to the Office of Administrative Hearings; and

(2) advise the employee in writing of the Secretary's action.

(c) *Actions required by Office of Administrative Hearings after receiving appeal.* — (1) Within 30 days after receiving the appeal, the Office of Administrative Hearings shall schedule a hearing and notify the parties of the hearing date.

(2) The Office of Administrative Hearings shall dispose of the appeal or conduct a hearing on each appeal in accordance with Title 10, Subtitle 2 of the State Government Article. The Office is bound by any regulation, declaratory ruling, prior adjudication, or other settled, preexisting policy, to the same extent as the Department is or would have been bound if it were hearing the case.

purchase credit card statement. She would also prepare and submit purchase reconciliation report packets for review by a fiscal technician.

The ALJ also made the following findings of fact with respect to the creation of Ms. Collins's account with Uline, a vendor of the Military Department, as well as the corporate purchase card, Ms. Collins's training, and the Military Department's policies regarding her purchasing duties:

2. On May 8, 2014, the Employee began purchasing supplies through a company called Uline. The Employee established an account using the Agency's customer number with her password and user name; the account was eventually linked to her corporate purchase credit card number.
3. On May 22, 2014, the Employee was issued a corporate purchase Visa® credit card with the last four digits of 0521. The card was intended for miscellaneous purchases under a certain threshold amount. The Employee was not authorized to allow others to use the credit card or the credit card number. The Agency has a corporate purchasing card policy by which sharing a card or card account number is prohibited. (Agency Ex. 17.)
4. In June or July 2014, the Employee participated in an eight-hour training session for employees who were authorized to make purchase[s] for the Agency, during which improper gifts were discussed as well as a recent scandal involving the improper purchase of gift cards.
5. For miscellaneous purchases, the Employee was authorized by her supervisor to use certain companies, including Grainger, Blind Industries, MSC, Fastenal, SUI (MCE), Graybar, and Uline, among others.
6. With regard to the Employee's purchasing duties, personnel from certain Agency facilities around the state would telephone or personally visit the Employee at the Fifth Regiment Armory in Baltimore City to request supplies. The Employee would then purchase supplies online from the authorized companies. The Employee would pay with her corporate purchase credit card, or if the transaction cost more than the threshold amount, she would have the vendor directly bill the Agency with an invoice.

The ALJ also found that Ms. Collins placed two online orders on the Uline website using her corporate purchase credit card, which qualified her for free, purchase incentive gifts:

7. On October 1, 2014, the Employee placed two corporate credit card orders online with Uline.
8. The first order had her name on it as the person ordering items. That order met a threshold dollar amount such that the purchase qualified for a free, purchase incentive gift. She reviewed the gift choices and decided to order a table-top size Weber® grill. The Employee chose to include that grill in the order and she pressed seven buttons on the Uline website to do so. The Employee had that order shipped to the Agency's warehouse in Pikesville.
9. The second order had "CFMR" as the person or entity ordering the items. That order also met a threshold dollar amount such that the purchaser qualified for a free, purchase incentive gift. The Employee reviewed the gift choices and decided to order a "table-top LED lamp." The Employee pressed the necessary buttons on the website and included the lamp in a shipment to the Camp Fretterd Military Reservation near Reisterstown.
10. The Employee's husband worked at Camp Fretterd.
11. The first order, including the Weber® grill, was received at the warehouse in Pikesville.
12. The second order, including the LED lamp, was received at Camp Fretterd.

According to the ALJ's opinion, Ms. Collins also shared her Uline account information with a maintenance mechanic who later placed two online orders with Uline that also qualified for free, purchase incentive gifts:

13. Sometime before October 24, 2014, the Employee and a maintenance mechanic assigned to the Agency's warehouse in Pikesville discussed the maintenance mechanic's requisition requests for supplies. The Employee decided that the maintenance mechanic was capable and trustworthy enough to make her own purchases without having to ask the Employee.
14. The Employee showed the maintenance mechanic how to go onto the Uline website and how to set up an account that would be billed to the Agency. The Employee also gave the maintenance mechanic the Employee's

password and user name and the Agency's customer number which was linked to the corporate purchase credit card number. The Employee did not give the maintenance mechanic the credit card number directly.

15. The Employee knew that the maintenance mechanic was not an approved person for procurement. The Employee believed, at the time, that the maintenance mechanic had a criminal history.
16. On October 24, 2014, the maintenance mechanic ordered about \$1,000 worth of supplies from Uline, and with that order, she qualified for a free, purchase incentive gift. She chose an [sic] NFL Ravens jacket for herself.
17. The maintenance mechanic did not use the corporate credit card account for the order but instead had an invoice sent directly to the Agency.
18. On October 29, 2014, the maintenance mechanic ordered more than \$500 worth of supplies from Uline, and with that order, she qualified for some free, purchase incentive gifts. She chose a Realtree® duffle bag for herself and a fish knife.
19. The maintenance mechanic did not use the corporate credit card account for that order but instead had an invoice sent directly to the Agency.

The ALJ, finally, found that investigations into the maintenance mechanic's and, later, Ms. Collins's purchases were initiated as a result of a review of the maintenance mechanic's purchases:

20. On November 5, 2014, a fiscal technician, who reviews invoices and bills for the Agency, reviewed the maintenance mechanic's direct-bill invoices. The fiscal technician recognized that the maintenance mechanic was not authorized to purchase anything for the Agency. In addition, the free, purchase incentive gifts listed on the invoices caused the fiscal technician to notify her supervisor of "items on the invoices that are questionable." (Agency Ex. 5.)
21. The Agency began an investigation.
22. On November 6, 2014, Agency staff interviewed the maintenance mechanic at the warehouse in Pikesville. The maintenance mechanic explained what she knew, turned in to the Agency the free, purchase incentive gifts she chose for herself, and wrote a statement about the disposition of the Weber® grill and some other items.

23. The maintenance mechanic was formally counseled and placed on probation for a year.
24. On November 6, 2014, once Agency staff had interviewed the maintenance mechanic, staff immediately reviewed and scrutinized the Employee's purchase reconciliation packets for October 2014. The fiscal technician who originally reviewed and questioned the maintenance mechanic's purchases and free, purchase incentive gifts, noticed that invoices that the Employee had submitted from Uline, dated October 1, 2014, were photocopies. Those photocopies did not contain lines reflecting any free, purchase incentive gifts. The fiscal technician then obtained directly from Uline duplicate invoices for those purchases. The duplicate invoices from Uline contained a line reflecting the free, purchase incentive gifts.
25. On November 7, 2014, a State Facility Management Officer with the Agency wrote a memorandum to the Chief of Staff -- the Employee's appointing authority -- and requested that the Employee be terminated for "fiscal malfeasance and fraud while using her State-issued Visa credit card." (Agency Ex. 15.) The six-paragraph report contained some false or inaccurate statements, such as: 1) in an e-mail message dated November 5, 2014, the fiscal technician alerted the Chief of Procurement "to questionable purchases on [the Employee's] credit card" and 2) a maintenance mechanic "had also made purchases with [the Employee's] State credit card and received gifts." (Agency Ex. 15.)
26. At that time, the Employee was placed on administrative leave pending the outcome of the investigation.
27. Agency staff and the Employee met several times thereafter regarding the fiscal irregularities.
28. On or about December 2, 2014, the parties held a mitigation conference. The Employee said that she had intended to give the free, purchase incentive gifts to fellow employees who were friends, or who she believed were deserving of the gifts. The Employee denied altering the invoices to eliminate lines showing the free, purchase incentive gifts before photocopying them for submission to the fiscal technician.

In his determination, the ALJ sustained two of the Military Department's three charges against Ms. Collins. He first found that Ms. Collins had "allow[ed] an unauthorized party to make purchase[s] for the Agency" in his analysis and summary of the evidence:

The Agency charges the Employee with violating a COMAR regulation and an Agency policy by allowing an unauthorized party to make purchase[s] for the Agency. COMAR 17.07.05.04B(11)^[7] provides that an agency of the executive branch of state government can impose discipline on an employee for “[k]nowingly assisting another in conduct that is a violation of . . . any other lawful agency policy.” The Agency had a lawful agency policy against sharing corporate credit card numbers.^[8] (Finding of Fact 3.) The Agency also had a policy limiting purchase authorization to certain, trusted employees. (Finding of Fact 4.) The Employee showed the maintenance mechanic how to set up a purchasing account at Uline and disclosed the Employee’s password and user name. That account was already electronically linked to the corporate credit card number. Thus, the Employee indirectly disclosed and shared the corporate credit card number, in violation of policy. Likewise, the Employee violated the authorized purchaser policy. The Employee freely admits that she assisted the maintenance mechanic to violate the authorized purchaser policy. The Agency has met its burdens on this administrative charge.

The ALJ also sustained another charge against Ms. Collins for ordering and accepting free, purchase incentive gifts from a vendor:

The Agency charges the Employee with violating Executive Order 01.01.2007.01, paragraphs A, F, and L,^[9] by ordering and accepting free, purchase incentive gifts

⁷ COMAR 17.07.05.04B(11) provides, “An employee may be disciplined for engaging in . . . [k]nowingly assisting another in conduct that is a violation of State Personnel and Pensions Article, Annotated Code of Maryland, the regulations in this chapter, or any other lawful agency policy.”

⁸ Section 9.06 of the Comptroller of Maryland’s Corporate Purchasing Card Program Policy and Procedures (2014) states, in relevant part, “Sharing a card or account number is prohibited.”

⁹ Executive Order 01.01.2007.01, paragraphs A, F, and L provide:

A. An employee shall not, except as permitted by applicable law or regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee’s agency, or whose interests may be substantially affected by the performance or nonperformance of the employee’s duties.

* * *

F. Employees shall act impartially and not give preferential treatment to any private organization or individual.

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from a vendor. Such a gift “kick-back scheme” manifests a conflict of interest. A person in a trusted position to purchase for the Agency must not decide which vendor to use, or how much to buy, depending upon whether the person can receive or dispense a gift from the vendor. Such a decision would be impartial [sic] treatment of the vendor. The mere appearance of such a conflict is also improper. (See Executive Order 01.01.2007.01, paragraphs A, F, and L.) As further set forth below, the Agency has met its burdens to show that the Employee violated the Executive Order. (Findings of Fact 8, 9, 10, 11, and 12.)

Although the statute, Md. Code Ann., Gen’l Prov. §5-505(a) (2014),^[10] touches on the impropriety of state officials making purchase decisions based upon gifts, the statute requires a showing that the Employee “solicited” a purchase incentive gift. Md. Code Ann., Gen’l Prov. §5-505 (a) (2014). The Employee did not solicit any gift. The Agency has demonstrated, however, that the Employee accepted a gift, directly or indirectly, from Uline who sought to do business with the Agency. Md. Code Ann., Gen’l Prov. §5-505 (b) (2014).^[11] (Findings of Fact 8, 9, 10, 11, and 12.) The Employee admits to ordering the purchase incentive gifts and to determining their disposition. It was improper for the Employee to have any power of disposition over such a purchase incentive gift. The Agency has met its burdens on this administrative charge.

The Agency charges Employee with violating COMAR 17.04.05.04B(3)^[12] when she doled out purchase incentive gifts from Uline. That regulation provides that an employee can be disciplined when an employee is found to be “guilty of conduct that ... if publicized, would bring the State into disrepute.” Under the facts and circumstances of this case, if the Employee’s procurement practices with Uline -- including giving purchase incentive gifts to friends or family -- were publicized,

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L. Employees shall endeavor to avoid any actions creating the appearance that they are violating applicable law or the ethical standards in applicable regulations.

¹⁰ Section 5-505(a)(1) of the General Provisions Article of the Maryland Code (2014), in relevant part, provides, “An official or employee may not solicit any gift.”

¹¹ Section 5-505(b)(2)(i) of the General Provisions Article of the Maryland Code (2014), in relevant part, provides:

Except as provided in subsection (c) of this section, an official or employee may not knowingly accept a gift, directly or indirectly, from an entity that the official or employee knows or has reason to know . . . does or seeks to do any business of any kind, regardless of amount, with the official’s or employee’s governmental unit.

¹² COMAR 17.04.05.04B(3) provides, “An employee may be disciplined for engaging in . . . [b]eing guilty of conduct that has brought or, if publicized, would bring the State into disrepute.”

the State would be brought into disrepute. Whether the Employee's procurement conduct arose out of innocent ignorance of the appearance of taking a procurement bribe, or the sinister intent to gain gifts through the procurement process, such conduct would appear either incompetent or corrupt to the public. The Agency has met its burdens on this administrative charge.

(Internal footnotes omitted.)

The ALJ did not sustain the charge that Ms. Collins had "alter[ed] invoices in her reconciliation report packets to hide the fact that the Employee was retaining or distributing purchase incentive gifts" because he could not "unquestionably rule out the unlikely possibility of a scheme to get rid of the Employee."

Although the ALJ did not sustain all three charges against Ms. Collins, he upheld her termination:

I need not, however, draw inferences from my findings of fact to conclude whether it is more likely than not that the Employee altered the invoices as part of a false report. This false report issue is not dispositive of this case. *See Phillip Morris, Inc. v. Angeletti*, 358 Md. 689, 711 fn. 7, [sic] (2000) (by analogy, because the Court found sufficient basis to exercise authority under one theory, it did not need to decide other possible bases for exercise of authority). Even if the evidence is in equipoise on this issue, the Agency still prevails on the others.

The ALJ ultimately determined that the Military Department did not abuse its discretion and was reasonable in terminating Ms. Collins, pursuant to Section 11-110(d) of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.)¹³ and

¹³ Section 11-110(d) of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.) provides:

(d) *Additional action by Office of Administrative Hearings; final administrative decision.* — (1) Except as otherwise provided by this subtitle, the Office of Administrative Hearings may:

- (i) uphold the disciplinary action;
- (ii) rescind or modify the disciplinary action taken and restore to the employee any lost time, compensation, status, or benefits; or

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COMAR 17.04.05.02C¹⁴:

In the instant case, termination is one of the lawful sanctions that the Agency could choose. Termination in this case does not reflect an abuse of discretion and is not unreasonable under the circumstances. Lack of trust and confidence is a main reason why the Agency decided to terminate the Employee. (Agency Ex. 17.) Not only did the Agency have a strong suspicion that the Employee filed false invoices in her fiscal reports, but also, with regard to treating one vender [sic] favorably in order to receive purchase incentive gifts, the Agency decided that it could not trust the Employee. Certainly, there was an appearance of impropriety manifested by the Employee's irregular procurement conduct. Otherwise, even if the Employee's procurement practices were merely borne out of ignorance, the Agency has shown that the Employee is not competent to hold the position. Either way, under the facts and circumstances of this case, the sanction of termination is reasonable and not an abuse of discretion.

Ms. Collins petitioned for judicial review of the ALJ's decision, and the Circuit Court for Baltimore City affirmed, finding that the ALJ's decision was supported by substantial evidence, free from error of law, and not unreasonable.

Ms. Collins, before us, initially argues that the ALJ's decision to sustain two of the charges against her was not supported by substantial evidence.

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(iii) order:

1. reinstatement to the position that the employee held at dismissal;
2. full back pay and benefits; or
3. both 1 and 2.

(2) Within 45 days after the close of the hearing record, the Office of Administrative Hearings shall issue to the parties a written decision.

(3) The decision of the Office of Administrative Hearings is the final administrative decision.

(4) The principal unit that employs the employee shall pay all costs related to the appeal that are incurred by the Office of Administrative hearings.

¹⁴ COMAR 17.04.05.02C provides, "The Office of Administrative Hearings may not change the discipline imposed by the appointing authority, as modified by the head of the principal unit or Secretary, unless the discipline imposed was clearly an abuse of discretion and clearly unreasonable under the circumstances."

Section 10-222(h) of the State Government Article of the Maryland Code (1984, 2014 Repl. Vol.) sets forth the scope of judicial review of the final order of an agency:

- (h) *Decision*. — In a proceeding under this section, the court may:
- (1) remand the case for further proceedings;
 - (2) affirm the final decision; or
 - (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision:
 - (i) is unconstitutional;
 - (ii) exceeds the statutory authority or jurisdiction of the final decision maker;
 - (iii) results from an unlawful procedure;
 - (iv) is affected by any other error of law;
 - (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - (vi) is arbitrary or capricious.

The Court of Appeals in *Maryland Aviation Administration v. Noland*, 386 Md. 556, 571–72 (2005) (quoting *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67–69 (1999)) (internal citations omitted), discussed at length the role of a court on judicial review of an adjudicatory decision of an administrative agency:

A court’s role in reviewing an administrative agency adjudicatory decision is narrow; it “is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.”

In applying the substantial evidence test, a reviewing court decides “whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” A reviewing court should defer to the agency’s fact-finding and drawing of inferences if they are supported by the record. A reviewing court “‘must review the agency’s decision in the light most favorable to it . . . the agency’s decision is prima facie correct and presumed valid, and . . . it is the agency’s province to resolve conflicting evidence’ and to draw inferences from that evidence.”

Despite some unfortunate language that has crept into a few of our opinions, a court’s task on review is *not* to “substitute its judgment for the expertise of those persons who constitute the administrative agency.” Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency’s interpretation and

application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts. Furthermore, the expertise of the agency in its own field should be respected.

With respect to the ALJ's finding that she allowed an unauthorized person to make purchases for the Military Department, Ms. Collins asserts that the ALJ concluded, without substantial evidence, that she gave an unauthorized person the ability to make purchases for the Department, in violation of COMAR 17.04.05.04B(11) and Department policy against the sharing of corporate purchase credit cards. COMAR 17.04.05.04B(11) provides, "An employee may be disciplined for engaging in . . . [k]nowingly assisting another in conduct that is a violation of . . . lawful agency policy." The corporate purchasing card program policy utilized by the Military Department states, "Sharing a card or account number is prohibited." Comptroller of Maryland, Corporate Purchasing Card Program Policy and Procedures § 9.6 (2014).

Ms. Collins was charged with "permitt[ing] another employee to make multiple online purchases using Ms. Collins'[s] state-issued credit card." The ALJ found that Ms. Collins violated COMAR 17.04.05.04B(11) and Military Department policy by allowing the maintenance mechanic to make purchases on its behalf, although the mechanic was not authorized to do so. Ms. Collins, in response, argues that the Military Department did not prove the maintenance mechanic used her state-issued credit card.¹⁵

¹⁵ Ms. Collins also raises the issue of whether she received sufficient notice of the charges that were sustained against her by the ALJ in her Notice of Termination. She contends that the Military Department only charged her with permitting the maintenance mechanic to make specific purchases using her state-issued credit card, rather than having charged her with permitting an unauthorized person to make purchases. The Military
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Department counters that all of the violations found by the ALJ had been included in Ms. Collins’s Notice of Termination. Section 11-106(a) of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.) provides the procedural requirements governing disciplinary actions related to employee misconduct, but where Section 11-106 is silent, Section 10-207 of the State Government Article of the Maryland Code (1984, 2014 Repl. Vol.) provides the protocol. Section 10-207(a)(1)–(3), in pertinent part, requires the following in a notice of agency action:

(a) *Contents of notice.* — The notice shall:

(1) state concisely and simply:

(i) the facts that are asserted; or

(ii) if the facts cannot be stated in detail when the notice is given, the issues that are involved;

(2) state the pertinent authority and regulatory sections under which the agency is taking its action;

(3) state the sanction proposed or the potential penalty, if any, as a result of the agency’s action.

See also Reed v. Baltimore, 323 Md. 175, 184 (1991) (“The obvious purpose of the notice requirement . . . is to apprise the [party] of the charges warranting disciplinary action in sufficient detail to enable the [party] to marshal evidence and arguments in defense of the assertions.”).

In *Regan v. Board of Chiropractic Examiners*, 120 Md. App. 494 (1998), we considered whether notice was sufficient with respect to charges in an agency action sanctioning Dr. Regan with suspension of his chiropractic license, probation, and a fine. In challenging his sanction by the Board of Chiropractic Examiners on judicial review, Dr. Regan argued that the charging document “did not allege all the facts contained in the Board’s findings” because the improper delegation of duties relative to physical therapy was not averred; unauthorized delegation of chiropractic had been. *Id.* at 515. We concluded that the issues embodied in the charges required notice. The issue, like the present one, was determined to be unauthorized delegation: “the allegations in the charging document gave Dr. Regan adequate notice that it intended to prove that he improperly delegated duties to employees not authorized to perform them.” *Id.* at 518.

Just as we determine that there was substantial evidence in support of Ms. Collins’s giving unauthorized access to State purchasing power, we also determine that she was given sufficient notice that she was being charged with the same.

The ALJ found that Ms. Collins indirectly gave use of the credit card to the mechanic. Although there was substantial evidence to support that finding in the record,¹⁶ the true gravamen of the charge was that Ms. Collins gave unauthorized access to state purchasing power to the maintenance mechanic, and there was overwhelming evidence that she did so. Ms. Collins admitted before the ALJ that she shared her Uline account user name and password with the mechanic, a person who Ms. Collins knew was not authorized to procure, who, nevertheless, then had the ability to charge items from Uline, who would then invoice the Military Department; the mechanic also testified to the same process, while documents collected supported the claim.

Ms. Collins also argues that substantial evidence was lacking to support the ALJ's finding that she accepted free, purchase incentive gifts in violation of Section 5-505(b)(2)(i) of the General Provisions Article of the Maryland Code (2014); Executive Order 01.01.2007.01, paragraphs A, F, and L; and COMAR 17.04.05.04B(3). Section 5-505(b)(2)(i) of the General Provisions Article of the Maryland Code (2014) prohibits the

¹⁶ The evidence to support that Ms. Collins indirectly gave use of the credit card to the mechanic includes her own testimony:

Q. Would this [Uline] account be linked to your credit card?

[Ms. Collins]. My account would. My user log in and I believe it was.

Q. So when you were the one that made purchases on the Uline account, did you always, did it automatically default to paying your credit card or did you have an option of whether to pay the credit card invoice of Maryland Military Department?

[Ms. Collins]. You have an option.

direct or indirect acceptance of a gift from an entity that does business with an employing agency:

Except as provided in subsection (c) of this section, an official or employee may not knowingly accept a gift, directly or indirectly, from an entity that the official or employee knows or has reason to know . . . does or seeks to do any business of any kind, regardless of amount, with the official's or employee's governmental unit.

Paragraph A of Executive Order 01.01.2007.01 also provides:

A. An employee shall not, except as permitted by applicable law or regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

Ms. Collins was charged with "plac[ing] an order with Uline above the \$1,000 threshold that qualified for a free gift (Smokey Joe Grill) with a retail value of about \$50" where "[i]nclusion of the gift with an order [was] not automatic" and the "purchaser must request the gift through Uline's website." The ALJ found that: "The Employee admit[ted] to ordering the purchase incentive gifts and to determining their disposition. It was improper for the Employee to have any power of disposition over such a purchase incentive gift." (Internal footnotes omitted.) There was substantial evidence that Ms. Collins ordered the free gifts and had the power of disposition over them, through Ms. Collins's own testimony and documentary evidence admitted during the hearing.

Ms. Collins demurs to this, however, because she argues that she never personally received or intended to receive the free, purchase incentive gifts, and so, she never accepted the gifts. Personal receipt of a gift, however, is not required for a gifting situation to arise, as exemplified in *Daniels v. Daniels*, 217 Md. App. 406 (2014).

In *Daniels*, Mrs. Daniels had discovered an executed but unrecorded deed for the Daniels' marital home, naming her and her husband as tenants by the entirety, in a file cabinet that she had shared with her recently deceased husband. After Mrs. Daniels had attempted to record the deed following his death, her step-daughter, the personal representative of the Daniels' estate, filed suit for quiet title, maintaining that the deed had not been effectively delivered as a gift to Mrs. Daniels. This Court agreed, finding that Mrs. Daniels had failed to prove actual or constructive delivery that would qualify the deed as a gift:

Delivery requires that the grantor be divested of all dominion and control over the deed. *Fike [v. Harshbarger]*, 20 Md. App. [661,] 665 [(1974), *aff'd*, 273 Md. 586 (1975)].

* * *

Delivery may be to a third party, for the benefit of a grantee, as long as the grantor relinquishes all control over the deed. *See, e.g., Houlton v. Houlton*, 119 Md. 180, 184, 86 A. 514 (1913) (Where deed delivered to third party for the grantee, who accepted it, conveyance held complete); *Clark v. Creswell*, 112 Md. 339, 342, 76 A. 579 (1910) (After grantor executed, acknowledged and delivered deed to third party, the conveyance is complete and title has passed even though grantee unaware of delivery). The ultimate test of a valid delivery is the grantor's relinquishment of all custody and control over the deed, which would give the grantor any power to revoke or to "take the deed back and destroy it[.]" *Meise v. Tayman*, 222 Md. 426, 431, 160 A.2d 916 (1960).

Daniels, 217 Md. App. at 413–14. This Court held that Mr. Daniels "retained dominion and control over the file cabinet where the unrecorded deed remained throughout his lifetime; thus, he had not completely relinquished control over the deed." *Id.* at 417. *See also* H.F.S., *Delivery in Gifts of Personal Property*, 20 Colum. L. Rev. 196 (1920).

Here, acceptance was completed when Ms. Collins exercised dominion over the free, purchase incentive gifts by affirmatively ordering them and controlling their

delivery to a third party, thereby “determining their disposition.” We conclude that there was substantial evidence on the record to support the charge that Ms. Collins accepted gifts from Uline, a state vendor.

Ms. Collins also argues that she did not act to bring the State into disrepute when she accepted free, purchase incentive gifts, and there was no evidence of such. COMAR 17.04.05.04B(3) provides, “An employee may be disciplined for engaging in . . . [b]eing guilty of conduct that has brought or, if publicized, would bring the State into disrepute.” The ALJ made specific findings relative to the conflicts of interest created by Ms.

Collins’s ordering free, purchase incentive gifts from Uline:

Such a gift “kick-back scheme” manifests a conflict of interest. A person in a trusted position to purchase for the Agency must not decide which vendor to use, or how much to buy, depending upon whether the person can receive or dispense a gift from the vendor. Such a decision would be impartial [sic] treatment of the vendor. The mere appearance of such a conflict is also improper.

With respect to the violation of COMAR 17.04.05.04B(3) relative to bringing the State into disrepute, the ALJ determined that:

Under the facts and circumstances of this case, if the Employee’s procurement practices with Uline -- including giving purchase incentive gifts to friends or family -- were publicized, the State would be brought into disrepute. Whether the Employee’s procurement conduct arose out of innocent ignorance of the appearance of taking a procurement bribe, or the sinister intent to gain gifts through the procurement process, such conduct would appear either incompetent or corrupt to the public.

Although “bringing the State into disrepute” is undefined in the regulation, dictionary definitions have aided our inquiry when we have been called upon to define

terminology.¹⁷ The phrase “bring someone or something into disrepute” has been defined as “to dishonor or discredit someone or something.” Richard A. Spears, McGraw-Hill’s Dictionary of American Idioms and Phrasal Verbs 64 (2005).

We agree with the ALJ that the actions of Ms. Collins relative to the free gifts created a conflict of interest on her part with respect to her procurement authority. That conflict would bring the State into disrepute by discrediting the State’s procurement policies.

Finally, Ms. Collins contends that the ALJ erred by failing to remand her case back to the Military Department when he did not sustain all of the charges. The Military Department counters that the ALJ was not required to sustain all of the charges included in the Notice and could not alter the sanction, in any event, as indicated in COMAR 17.04.05.02.¹⁸ The issue involves whether the ALJ, then, can affirm the sanction, when

¹⁷ This Court has noted with respect to defining statutory terms, “When the Legislature fails to define a particular statutory term, we first look to the plain meaning of the term, and give that language its ‘ordinary and natural meaning [without] resort to subtle or forced interpretations.’ In deciding the plain meaning of a statutory term or phrase, however, we may consult the dictionary.” *Bennett v. State Department of Assessments and Taxation*, 143 Md. App. 356, 368 (2001) (internal citations omitted).

¹⁸ COMAR 17.04.05.02 provides:

- A. Scope. This regulation applies to an employee in the skilled and professional services. It does not apply to an employee under special appointment or an employee on initial probation.
- B. Consideration of Mitigating Evidence. Except for automatic terminations under State Personnel and Pensions Article, §11-105, Annotated Code of Maryland, the appointing authority, head of the principal unit, the Secretary, and the Office of Administrative Hearings shall consider mitigating circumstances when determining the appropriate discipline.
- C. The Office of Administrative Hearings may not change the discipline imposed by the appointing authority, as modified by the head of the principal unit or

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he has not upheld all of its bases, or whether he must remand the matter to the agency for reconsideration of the sanction.

Section 11-110(c)–(d) of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.) provides the responsibilities and decision-making framework of the ALJ in cases, like Ms. Collins’s, referred to the OAH by the Secretary of Budget and Management:

(c) Action required by Office of Administrative Hearings after receiving appeal.

— (1) Within 30 days after receiving the appeal, the Office of Administrative Hearings shall schedule a hearing and notify the parties of the hearing date.

(2) The Office of Administrative Hearings shall dispose of the appeal or conduct a hearing on each appeal in accordance with Title 10, Subtitle 2 of the State Government Article. The Office is bound by any regulation, declaratory ruling, prior adjudication, or other settled, preexisting policy, to the same extent as the Department is or would have been bound if it were hearing the case.

(d) Additional action by Office of Administrative Hearings; final administrative decision. — (1) Except as otherwise provided by this subtitle, the Office of Administrative Hearings may:

- (i) uphold the disciplinary action;
- (ii) rescind or modify the disciplinary action taken and restore to the employee any lost time, compensation, status, or benefits; or
- (iii) order:
 - 1. reinstatement to the position that the employee held at dismissal;
 - 2. full back pay and benefits; or
 - 3. both 1 and 2.

(2) Within 45 days after the close of the hearing record, the Office of Administrative Hearings shall issue to the parties a written decision.

(3) The decision of the Office of Administrative Hearings is the final administrative decision.

(. . . continued)

Secretary, unless the discipline imposed was clearly an abuse of discretion and clearly unreasonable under the circumstances.

(4) The principal unit that employs the employee shall pay all costs related to the appeal that are incurred by the Office of Administrative hearings.

COMAR 17.04.05.02 further requires that the ALJ not disturb the sanction chosen by the agency, unless it was “clearly an abuse of discretion and clearly unreasonable under the circumstances.”

The effect of the action by a reviewing body not sustaining all of the charges underlying a sanction was discussed by this Court in *Warner v. Town of Ocean City*, 81 Md. App. 176 (1989). In *Warner*, a police officer’s demotion, on judicial review, was affirmed by the circuit court, despite the judge’s determination that three of the five charges had not been supported by substantial evidence. Warner appealed. One of Warner’s questions before this Court was whether remand to the agency was necessary once all of the charges had not been sustained. While we found that the trial court’s rationale for not remanding was persuasive because the sanction “was not imposed because of the number of infractions . . . but rather because of the seriousness of the deed itself,” *id.* at 199, we determined that in the absence of separate sanctions for separate charges, remand to the agency was necessary, because the sanction decision-making was for the Board to exercise, and the Board had relied on all of the charges in its demotion:

While the Board might well impose the same sanctions for two violations as it did for five violations, that decision belongs to the Board, not to us, and not to the trial court. The Board’s wording in imposing the sanctions indicates that it based the decision on the nature of all of the charges. Since the trial court reversed the Board’s findings as to a substantial portion of the charges, the sanction imposed must be reconsidered. Accordingly, we shall remand to the trial court with instructions to that court to remand it to the Board for reconsideration of the sanctions. In so ordering, we make no suggestion with respect to the sanctions which the Board should impose. We hold only that, where a trial judge has

reversed one or more of an agency's findings of guilt, it is the agency that must determine whether the reversal merits a different sanction.

Id.

In the present case, utilizing the *Warner* tenets, we determine that the sanction of termination must be the subject of remand to the Military Department for consideration in light of the fact that one charge upon which it had relied was not sustained by the ALJ, but only the sanction. The charges were collectively considered by the Military Department in its sanction to terminate rather than individually assessed for termination. Further, the Military Department also considered all of the circumstances embodied in the charges when it identified termination as its sanction. As a result, *Warner* points to the necessity of a remand for sanction determination only.¹⁹

¹⁹ The decision of this Court in *Department of Public Safety and Correctional Services v. Neal*, 160 Md. App. 496 (2004), further supports this conclusion. In *Neal*, Ms. Neal was automatically terminated from her employment as a correctional officer with the Department of Public Safety and Correctional Services after an incident in which Ms. Neal allegedly placed her hands around the throat of an inmate at a state correctional facility. In addition to other less serious violations, the Department charged her with “intentional conduct . . . that . . . seriously threatens the safety of the workplace” and “unwarrantable excessive force in the treatment or care of an individual who is a . . . prisoner . . . of this State,” which qualified her for automatic termination under Section 11-105 of the State Personnel and Pensions Article of the Maryland Code (1993, 1997 Repl. Vol.). *Id.* at 503. Under the Department’s “Standards of Conduct and Internal Administrative Disciplinary Process” (“Standards”), she also was charged with First and Third Category Infractions, the latter of which would “result in termination from State service.” *Id.* at 504. Ms. Neal’s appeal of her termination was eventually referred to the OAH. The ALJ found that Ms. Neal did not use force against or intend to use force against the inmate and, thus, did not seriously threaten the safety of the workplace or use unwarranted excessive force in the treatment of an inmate to justify termination under Section 11-105. The ALJ further found that Ms. Neal’s conduct did not qualify as a Third Category Infraction justifying termination under the Department’s Standards. Because the evidence was insufficient to support the Department’s automatic termination of Neal, the
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While it is true that the decision of the ALJ is the final administrative decision under Section 11-110(d)(3) of the State Personnel and Pensions Article of the Maryland Code (1993, 2009 Repl. Vol.), that proposition only queues up the case for judicial review under Section 10-222 of the State Government Article of the Maryland Code (1984, 2014 Repl. Vol.). The agency decision regarding sanction remains for it to reconsider in light of the charges sustained, rather than the ALJ substituting his judgment.

In order to affirm the sanction of termination in the present case, however, the ALJ relied on *Philip Morris v. Angeletti*, 358 Md. 689, 710 n.7 (2000), for the proposition that he did not need to sustain the Military Department's third charge in order to uphold the termination, because where "the Court f[inds] sufficient basis to exercise authority under one theory, it d[oes] not need to decide other possible bases for exercise of authority."

Footnote 7 in *Angeletti* states:

Likewise, because we shall hold that the circumstances of the present case comprise a sufficient basis for the invocation of this Court's power to issue a writ

(. . . continued)

ALJ reinstated her and imposed a four-week suspension, without pay, in light of the charges sustained and the Department's Standards and progressive discipline schedule.

In response to the Department's challenge to the ALJ's lesser sanction in *Neal*, we affirmed the decision of the ALJ and determined that automatic termination was not on the table, after the ALJ had not sustained charges warranting automatic termination under Section 11-105 of the State Personnel and Pensions Article of the Maryland Code (1993, 1997 Repl. Vol.) and the applicable regulations. *See also Department of Public Safety and Correctional Services v. Beard*, 142 Md. App. 283, 310–11 (2002) (determining that the ALJ did not exceed his authority in lessening sanctions rather than remanding to the agency because the agency's termination of its employee was "contrary to applicable State regulations and established agency policy" and, thus, "an abuse of discretion").

In the present case, there is no specific sanction articulated in statute or regulation for the offenses committed by Ms. Collins, and termination was determined by the Agency on the basis of all three violations, not for each of them individually.

of mandamus in aid of our appellate jurisdiction, we need not decide the viability of other possible bases for the exercise of such power and once again leave those questions open.

Id.

Footnote 7 in *Angeletti*, however, only dealt with the bases for invocation of appellate jurisdiction in a mandamus case which is decidedly limited. Footnote 7 from *Angeletti* is decidedly inapplicable in the present case also, not only because of its content but because the context of a mandamus action is decidedly different from an appeal from an agency action decided by an ALJ and the attendant judicial review case that may evolve. *See Murrell v. Baltimore*, 376 Md. 170, 184–96 (2003).

As a result, remand of Ms. Collins’s case to the Military Department is required, but only for final determination of sanction.

JUDGMENT AS TO THE TRIAL COURT’S RULINGS ON THE CHARGES AFFIRMED; JUDGMENT AS TO THE TRIAL COURT’S AFFIRMANCE OF SANCTIONS REVERSED; ON OUR REMAND, THE TRIAL COURT IS TO REMAND TO THE AGENCY WITH INSTRUCTIONS TO THE AGENCY TO RECONSIDER SANCTIONS IN LIGHT OF OUR HOLDING. APPELLANT TO PAY 70% OF THE COSTS; APPELLEE TO PAY 30%.