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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

KATTINA HARRIS,

Plaintiff and Appellant,

v.

LOS ANGELES COUNTY CIVIL
SERVICE COMMISSION,

Defendant and Respondent;

COUNTY OF LOS ANGELES,
CHILD SUPPORT SERVICES
DEPARTMENT,

Real Party in Interest.

B271594

(Los Angeles County
Super. Ct. No. BS151481)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Joanne B. O'Donnell, Judge. Reversed and
remanded with directions.

Michael A. Morguess for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Gutierrez, Preciado & House and Calvin House for Real
Party in Interest.

INTRODUCTION

Kattina Harris appeals from the judgment entered after the trial court denied her petition for writ of administrative mandate challenging a decision by the Los Angeles County Civil Service Commission to sustain Harris's discharge by the County of Los Angeles, Child Support Services Department (CSSD). Harris contends the trial court erred in ruling she failed to exhaust her administrative remedies and in finding her discharge was not an abuse of discretion. We disagree with the first contention, but agree with the second. We therefore reverse and remand for the Commission to reconsider Harris's penalty.

FACTUAL AND PROCEDURAL BACKGROUND

A. *CSSD Discharges Harris*

Harris began working for the County of Los Angeles in 1980. She worked for the County for more than 32 years, the last six as an employee of CSSD. During the period relevant to this appeal, Harris was in the Fiscal Management Division and her responsibilities involved procurement and purchasing.

In April 2013 CSSD notified Harris it intended to discharge her for improprieties discovered during a recent investigation by the Office of County Investigations. The investigation revealed that between January 2007 and December 2012 Harris, acting as chief purchasing agent, approved payments on eight purchase orders, totaling \$26,400, awarded to Picture Man Art & Framing, a business owned by her parents. For at least four of those purchase orders, Harris had obtained the bids from Picture Man and the other vendors. Harris did not disclose her relationship

with the owners of Picture Man during the procurement process for any of the eight purchase orders.¹

In its notice of intent to discharge her, CSSD asserted Harris's conduct violated several written personnel policies she acknowledged receiving. For example, CSSD maintained Harris violated its policy on "Nepotism/Relatives," which stated that employees who "deal with money . . . or who otherwise are in positions of significant trust, including but not limited to those assigned to the Fiscal Management Division, . . . must ensure that they avoid any procedure or transaction in which a relative may be a participant or have a special interest." The policy also stated that no employee "may hire . . . a relative who performs contractual services for [CSSD]," and that any violation of the policy was grounds for discipline, including discharge.

CSSD claimed Harris also violated the "Code/Guidelines For Ethical Conduct—Procurement Decision-Making Personnel," which required procurement decision-makers to "[r]efrain from engaging in any procurement activity in which [they had] a personal or indirect financial interest" and to "[a]void activities which would . . . give the perception of compromising the best interest of the County." These guidelines specifically addressed the issue of "Perception" as follows: "In many cases, 'perception' is considered 'reality.' Procurement decision-makers must be extremely conscientious to avoid any appearance of unethical or

¹ During the investigation by the Office of County Investigations, Harris's supervisor stated in an interview that, had Harris disclosed the relationship, he would not have authorized her to work on these procurements and would have assigned them to another employee to avoid the appearance of impropriety.

compromising practices in relationships, actions and communications. Best practices in the area of perception would include: . . . [¶¶] Avoiding any actions which may give an impression of impropriety.”

CSSD also cited Civil Service Rule 18.031 as a basis for the decision to discharge Harris. That rule provides, in part: “Failure of an employee to perform his or her assigned duties so as to meet fully explicitly stated or implied standards of performance may constitute adequate grounds for discharge, reduction or suspension.”

Harris responded to these allegations and the proposed discipline at a “*Skelly* hearing” (see *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194), shortly after which CSSD terminated her employment. In its May 17, 2013 letter of discharge, CSSD repeated the grounds it had previously given for its decision and stated Harris had not presented any information causing CSSD to alter that decision.

B. *The Commission Sustains CSSD’s Decision*

Harris appealed her discharge to the Los Angeles County Civil Service Commission, which set the matter for hearing before a hearing officer. In advance of the hearing, Harris and CSSD stipulated to a number of facts, including that Harris had obtained the bids from and approved the purchase orders for Picture Man as alleged, her parents owned Picture Man, she had not disclosed that relationship, and she had received the written policies CSSD alleged her conduct had violated.

In her opening statement at the hearing, counsel for CSSD stated, “Whether Kattina Harris committed the acts alleged in the Notice of Intent to Discharge or violated County

Departmental policies through those acts is not at issue in this case, as she had admitted doing so; therefore, the only issue is whether the discipline was appropriate. And we intend to prove that it was.”

Counsel for Harris did not dispute that characterization of the case. He began his opening statement as follows: “Let me give you a view of where we’re going with the case so that you have an understanding of why we’re here. The basic facts are not in dispute, and that is why we’re able to arrive at the stipulation.” Under those facts, counsel for Harris continued, “Ms. Harris is prepared to accept a penalty that is commensurate and associated with the level of culpability on her part.” After emphasizing facts he contended made Harris less culpable, counsel for Harris concluded his opening statement: “So then when we examine, trying to determine what the level of discipline should be, one examines what the conduct was. Recognizing that the conduct did not result in any loss of funds for the County; recognizing that the County was satisfied with the business that her parents were providing; and further recognizing that Ms. Harris did not receive any money for the business that her parents were able to develop with the County, one is left with the reality that while there should be some punishment because she should have disclosed that the business was run by her parents, it is hard to fathom that discharge is the only appropriate penalty in this case.”

In presenting its case, CSSD called one witness, its director, Dr. Steven Golightly, who made the decision to terminate Harris’s employment. He explained, among other things, how in his view Harris’s conduct violated the policies identified in the notice of intent to discharge her and why he

decided to discharge Harris rather than impose a lesser punishment. Harris also testified, largely about her employment history and certain details of the transactions with Picture Man. She admitted that by participating in the procurements with Picture Man she engaged in an “apparent conflict of interest.”

In her closing brief before the hearing officer, Harris argued, “There are few, if any, factual issues in dispute. This case will turn entirely upon the appropriate measure of discipline.” Her closing brief presented arguments on that issue only, noting Harris “does not contest the department’s determination that her activities created a perception of a conflict of interest” and “[t]he important point is that she realized as a result of the investigation that her conduct was inappropriate and clearly learned a lesson.” Harris requested her discipline “be converted to a five-day suspension.”

The hearing officer issued a written ruling setting forth her findings of fact, conclusions of law, and recommendation. She noted that Harris “admits her violation but argues it was innocent” and that “[t]he parties stipulated to the facts in this case so the allegations contained in [CSSD’s] letter of discharge . . . are true.” The hearing officer concluded CSSD had met its burden of proof “in proving allegations contained in its [letter of discharge] are true” and “in establishing discipline was appropriate.” The hearing officer’s recommendation: “[CSSD] met its burden in proving [Harris] violated [CSSD] policies and Civil Service Rules. Therefore, it is respectfully recommended that [CSSD’s] . . . discharge of [Harris] be sustained.”

The Commission gave notice of its proposed decision to accept the findings and recommendation of the hearing officer, and it invited the parties to file objections. Harris did so,

objecting only to the hearing officer's finding that discharge was appropriate and her conclusion that CSSD met its burden of proof in establishing discipline was appropriate. Harris did not challenge the hearing officer's conclusion that CSSD had met its burden of proving allegations in the letter of discharge were true or any of the other findings. The Commission overruled Harris's objections and adopted the hearing officer's findings and recommendation.

C. *Harris Files This Action*

Harris filed a petition for writ of administrative mandate (Code Civ. Proc., § 1094.5) asking the court to order the Commission to set aside its decision and reinstate her. As she had in the administrative proceeding, Harris contested the severity of her discipline, arguing the Commission manifestly abused its discretion in discharging her. For the first time, however, she also contested the basis for the decision to discipline her, contending she had not violated any of the policies identified by the Commission as grounds for her discipline. This contention rested principally on her argument that, although CSSD disciplined her for not disclosing her relationship with the owners of Picture Man, none of the policies CSSD cited actually required that disclosure. Nor, she argued, did any other aspect of her alleged misconduct violate the policies as she contended, for the first time, they should be interpreted.²

² For example, according to Harris, the provision in the policy on "Nepotism/Relatives" prohibiting employees who deal with money or who are in positions of "significant trust" from participating in transactions involving a relative did not apply to transactions concerning contract vendors, such as Picture Man,

In opposing the petition, CSSD argued the court should reject Harris’s contention she did not violate any CSSD policy because she had not raised that issue before the Commission. In any event, CSSD argued, it had sufficiently demonstrated that Harris violated the policies in question and that discharge was appropriate.

The trial court denied Harris’s petition. The court ruled Harris had “failed to exhaust her remedies concerning whether her conduct violated the relevant policies” because she did not raise that issue in the administrative hearing, which barred the trial court from considering the issue. The court also upheld the penalty of discharge, citing, among other considerations, the six-year duration of Harris’s misconduct and CSSD’s skepticism that Harris was “as oblivious as she claimed,” given her tenure and supervisory position. Harris timely appealed.

DISCUSSION

A. *Standard of Review*

“An appellate court applies the following standards of review to a trial court’s denial of a petition for a writ of administrative mandamus. First, if the trial court exercised its independent judgment,^[3] we review the record to determine

because other provisions in the policy addressed those transactions separately.

³ Under the independent judgment standard, “[t]he trial court must not only examine the administrative record for errors of law, but must also conduct an independent review of the entire record to determine whether the weight of the evidence supports

whether the court’s factual findings are supported by substantial evidence, resolving all evidentiary conflicts and drawing all legitimate and reasonable inferences in favor of the court’s decision. [Citations.] Second, ‘to the extent pure questions of law (e.g., jurisdiction) were decided at the trial court upon undisputed facts, a de novo standard will apply at the appellate level.’ [Citation.] Third, we review de novo whether the agency’s imposition of a particular penalty on the petitioner constituted an abuse of discretion by the agency. [Citations.] But we will not disturb the agency’s choice of penalty absent “an arbitrary, capricious or patently abusive exercise of discretion” by the administrative agency.” (*Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 627-628, italics and fn. omitted; see *County of Santa Cruz v. Civil Service Commission of Santa Cruz* (2009) 171 Cal.App.4th 1577, 1582 “[w]hile the agency has discretion to act, that discretion is not unfettered”]; *Hankla v. Long Beach Civil Service Com.* (1995) 34 Cal.App.4th 1216, 1222 “[t]he purpose of the writ of mandamus procedure is not to rubber-stamp every administrative decision that is rendered,” because “[i]f that were the case, there would be no point in reviewing administrative decisions at all”).)

the administrative findings.” (*Ogundare v. Department of Industrial Relations* (2013) 214 Cal.App.4th 822, 827; cf. *ibid.* [but if the administrative decision did not involve or substantially affect a fundamental vested right, the trial court reviews the administrative findings for substantial evidence].)

B. *The Trial Court Did Not Err in Ruling Harris Failed To Exhaust Her Administrative Remedies*

“When remedies before an administrative forum are available, a party must in general exhaust them before seeking judicial relief.” (*City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597, 609; accord, *Hagopian v. State of California* (2014) 223 Cal.App.4th 349, 371.) “The rationale for the rule is that an agency is entitled to learn the contentions of interested parties before litigation arises, so it will have an opportunity to address the contentions and perhaps render litigation unnecessary. [Citation.] To advance this purpose an interested party must present the exact issue to the administrative agency that is later asserted during litigation or on appeal. [Citation.] General objections, generalized references or unelaborated comments will not suffice. [Citation.] “[T]he objections must be sufficiently specific so that the agency has the opportunity to evaluate and respond to them.”” (*Hagopian*, at p. 371; see *City of San Jose*, at p. 609 “[e]xhaustion requires ‘a full presentation to the administrative agency upon all issues of the case and at all prescribed stages of the administrative proceedings’”; *Save Our Heritage Organisation v. City of San Diego* (2015) 237 Cal.App.4th 163, 181 [“‘[i]t was never contemplated that a party to an administrative hearing should withhold any defense . . . or make only a perfunctory or ‘skeleton’ showing in the hearing and thereafter obtain an unlimited trial de novo, on expanded issues, in the reviewing court’”]; *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1394-1395 “[t]he ‘exact issue’ must have been presented to the administrative agency to satisfy the exhaustion requirement”].)

Harris argues the trial court erred in ruling she failed to exhaust her administrative remedies regarding her contention she did not violate any CSSD policy. The trial court did not err. At no point in the administrative proceeding did Harris challenge CSSD's allegation that her conduct in connection with the Picture Man purchase orders violated CSSD's policies, let alone present arguments contesting CSSD's interpretation of those policies. Instead, conceding CSSD had grounds to discipline her, Harris agreed with CSSD that the proceeding before the Commission "turn[ed] entirely upon the appropriate measure of discipline." This deprived CSSD of "the opportunity to evaluate and respond to" Harris's contention she did not violate the policies in question. (*Hagopian, supra*, 223 Cal.App.4th at p. 371; see *Grist Creek Aggregates, LLC v. Superior Court* (2017) 12 Cal.App.5th 979, 991 ["the essence of the exhaustion doctrine is the public agency's opportunity to receive and respond to articulated factual issues and legal theories *before* its actions are subjected to judicial review"].)

In addition, after the hearing officer issued her ruling, Harris did not object to the hearing officer's finding that Harris "admit[ted] her violation" or that CSSD met its burden of proving the allegations in its letter of discharge were true. Therefore, Harris did not make a full presentation "at all prescribed stages of the administrative proceedings" of her contention she did not commit any violation of CSSD's policies. (*City of San Jose, supra*, 49 Cal.4th at p. 609.) The trial court correctly ruled Harris's failure to exhaust administrative remedies barred the court from considering that contention.

Harris argues that, because CSSD had the burden to prove its charges, the exhaustion doctrine did not require her to

“affirmatively challenge” the allegation she violated CSSD policies “other than [by] a general denial of the charges through appealing the discipline.” There are two problems with Harris’s argument. First, she cites no authority to support it. In fact, as noted, courts have repeatedly held exhaustion requires a petitioner to make “a full presentation to the administrative agency upon *all issues* of the case.” (*City of San Jose, supra*, 49 Cal.4th at p. 609, *italics added*; accord, *Roberts v. United Healthcare Services, Inc.* (2016) 2 Cal.App.5th 132, 149; *American Indian Model Schools v. Oakland Unified School District* (2014) 227 Cal.App.4th 258, 291-292.) The cases do not distinguish between those issues on which the agency has the burden of proof and those on which the petitioner has the burden.

Second, the rationale for the exhaustion doctrine does not support applying the doctrine differently, at least in the manner Harris suggests, based on whether the agency or the petitioner has the burden of proof on a particular issue. In either case, a petitioner’s failure to raise specific arguments—whether because she relies on a general denial of an agency’s charges or because she fails to raise an affirmative defense on which she has the burden of proof—deprives the agency of the opportunity to address legal and factual issues prior to judicial review. (See *Hagopian, supra*, 223 Cal.App.4th at p. 371; *Mani Brothers, supra*, 153 Cal.App.4th at p. 1396.)

Harris also argues she never stipulated or conceded she committed a policy violation. The record suggests otherwise. Counsel for Harris conceded during argument before the hearing officer that “there should be some punishment because [Harris] should have disclosed that [Picture Man] was run by her parents,” and in her closing brief Harris agreed with CSSD that

the case turned “entirely upon the appropriate measure of discipline.” More important, whether Harris stipulated to or conceded a policy violation is irrelevant. The issue when determining whether a petitioner exhausted her administrative remedies is not whether she affirmatively stipulated to or conceded something, but whether she presented the contentions and arguments in the administrative hearing that she advanced in the trial court. (See *City of San Jose, supra*, 49 Cal.4th at p. 609; *Hagopian, supra*, 223 Cal.App.4th at p. 371.) And Harris didn’t.

C. *The Commission Abused Its Discretion in Sustaining CSSD’s Decision To Discharge Harris*

Although Harris failed to argue in the administrative hearing that she did not violate any CSSD policy (and therefore should not be disciplined at all), she did not concede she had committed every policy violation CSSD alleged. Harris consistently maintained, for example, that any conflict of interest was merely apparent and that she received no financial gain from the Picture Man transactions.

And yet the Commission’s hearing officer appears to have based her finding that discharge was appropriate on the premise Harris had in fact conceded all the alleged policy violations. The hearing officer began her written ruling by stating the parties had stipulated “to all the facts of the case contained in the May 17, 2013 letter of discharge,” which was incorrect—they had stipulated to specific underlying facts, not to all facts alleged in the letter, and not to any policy violation. Nevertheless, the hearing officer concluded Harris violated all the policies CSSD alleged she violated, without stating how Harris violated any

particular policy, instead noting only “[Harris] admits her violation.”⁴ The hearing officer then found discharge was appropriate based on Harris’s violation of all the policies cited in the letter of discharge. Because the finding that discharge was appropriate rested on an admission Harris never made, the Commission abused its discretion in imposing that level of discipline. (See *Cassidy v. California Bd. of Accountancy*, *supra*, 220 Cal.App.4th at p. 628; *Kolender v. San Diego County Civil Service Com.* (2005) 132 Cal.App.4th 716, 721].)

DISPOSITION

The judgment is reversed. The case is remanded to the trial court with directions to grant Harris’s petition for writ of administrative mandate and to direct the Commission (1) to set aside the discipline it imposed on Harris, (2) to reconsider and impose an appropriate level of discipline based on a further evaluation of the evidence, and (3) to allow both sides to present additional evidence on the appropriate level of discipline. The parties are to bear their costs on appeal.

SEGAL, J.

I concur:

PERLUSS, P. J.

⁴ The hearing officer also stated, “The parties stipulated to the facts in this case so the allegations contained in [the] letter of discharge of May 17, 2013 are true.”

MENETREZ, J., Concurring.

I agree that the Los Angeles County Civil Service Commission (Commission) abused its discretion by discharging Kattina Harris, because that decision was based on the hearing officer's misunderstanding of the scope of the parties' factual stipulation. I write separately to highlight some the material factual issues that the stipulation did not resolve and to describe some of the evidence relating to those issues.¹

For purposes of determining the appropriate level of discipline for Harris, the pivotal issue was her role in the selection of Picture Man Art & Framing (Picture Man) as the vendor on the purchase orders that she processed. If she was the one who solicited and collected the bids and selected the winning bidder, then her selection of Picture Man, a business owned by her parents, would presumably constitute a conflict of interest. If someone else solicited and collected the bids and chose the winning bidder, however, and Harris merely reviewed or processed the paperwork for each purchase order after the vendor (i.e., the winning bidder) was already selected, then her conduct might not create even an appearance of impropriety. And there are any number of other possible factual scenarios. For example, even if Harris did not solicit or collect the bids herself, she might have been in a position to share bid information with her parents

¹ I also am not convinced that Harris failed to exhaust her administrative remedies with respect to all of her challenges concerning the alleged policy violations. But given the outcome of this appeal, the issue is of no consequence—after remand, the Commission will have to decide anew exactly which policies Harris violated, and on what basis.

during the bidding process, thereby giving them an unfair advantage.

To explain how this critical factual issue was left unresolved by the parties' stipulation, and how the hearing officer erroneously found to the contrary, requires fairly detailed consideration of the evidence in the administrative record and the course of events leading to Harris's discharge.

Harris's superiors discovered, apparently by accident and on a date not specified in the record, that Harris's parents were the owners of Picture Man, the vendor on a purchase order for \$8,160 that Harris approved on June 27, 2012. That discovery led to an allegation of misconduct against Harris, which was investigated by the Office of County Investigations (OCI). The OCI investigators interviewed Harris's supervisor, Raymond Kwong, on February 8, 2013, and they interviewed Harris on February 20, 2013. Both interviews were recorded, and the administrative record contains the transcripts. The investigation identified a total of eight purchase orders that apparently were approved by Harris and named Picture Man as the vendor. Harris's involvement with those eight purchase orders ultimately led to the termination of her employment with the County of Los Angeles, Child Support Services Department (CSSD).

The interviews of Kwong and Harris are somewhat difficult to follow, because of the frequent and argumentative interruptions by the interviewers. But on the basis of the interviews and other evidence in the administrative record, I have pieced together the following (possibly inaccurate) picture of the procurement process. Kwong explained that for a purchase over \$1,500, three bids must be obtained. For a purchase under \$1,500, no competitive bidding is required; only one price quote is

needed. According to Kwong, the procurement supervisor (Harris) would contact vendors to obtain price quotes if it was a “special project,” such as “a rush project or a big project.” Kwong’s statements thus imply that, apart from such unusual circumstances, the procurement supervisor ordinarily would *not* be the one to contact vendors for quotes. Rather, that would be done by the “end user” (also referred to as the “requestor”), the CSSD employee who initiates a purchase order request in order to buy something for CSSD. Having obtained the necessary quote or quotes and chosen a vendor, the end user/requestor would then submit to procurement a purchase order request that specified the dollar amount, the items to be purchased, and the name of the vendor. That is, ordinarily the vendor would be chosen by the end user *before the request for a purchase order ever got to procurement*, where Harris worked. End users did, however, sometimes contact procurement for names of registered vendors, so that the end users could then contact the vendors for quotes. When this happened, Harris would provide the names of the registered vendors. Picture Man was a registered vendor, and Harris believed she may have given out Picture Man’s name “along with other vendors,” though she could not specifically remember doing so. Harris categorically denied that she was the one who “selected Picture Man” as the vendor on the purchase orders she processed.

Moreover, in her OCI interview, Harris was adamant that she did not communicate with Picture Man in the bidding process at all—“the end users are calling Picture Man,” and “I’m not calling them.” Her parents were “communicating with the end user,” not with her. Picture Man’s “conversations were with the end users,” and Harris “had no part in it.” As an illustration, she

noted that the week before her February 20 interview, she received a request for a purchase order naming Picture Man as the vendor. The attached documentation indicated that “Picture Man and this end user apparently had been communicating since November. I didn’t know anything of it.”

In the same interview, however, in addition to explaining that she would provide end users with names of registered vendors, Harris also admitted that she “did go out and get some bids” for “a couple of” the purchase orders. (This was consistent with Kwong’s statements that in certain circumstances the procurement supervisor would contact vendors for quotes.) The interview explored only one such instance in any detail. In that case, it appears that the requestor (Rick Apostol) obtained the required minimum number of bids himself, including the winning bid from Picture Man. But Harris then got some “[a]dditional bids” herself. Harris never stated, with respect to this purchase order or any other, that she obtained any bids from Picture Man herself.

Somewhat surprisingly, the administrative record does not contain the eight purchase orders (or associated paperwork) that led to Harris’s termination. Rather, it contains the paperwork for only one purchase order (introduced into evidence by Harris), and it conforms to the process described above. The purchase order request was initiated by Armando Garcia, who was the executive secretary to Dr. Steven Golightly, the director of CSSD. Garcia requested a purchase order for \$901.29 to buy frames from Picture Man. Because the amount was under \$1,500, there was no need for multiple bids. Garcia chose the vendor, obtained the quote, and submitted the request to procurement.

In addition to illustrating the process for selecting a vendor, the purchase order request from Garcia is significant for at least one other reason: It appears that Harris did not actually approve it. The list of approvals on the paperwork shows that the request was approved by two individuals on August 28, 2007, by two more on August 29, and by a fifth individual on August 30. The list indicates that on the following day, the request was approved by “Kattina Harris/cssd Procurement Supervisor (by Kathy A. Moore, a designated approver).” In her testimony at the hearing, Harris explained the meaning of that notation as follows: “Apparently, I was not there that day and Kathy could approve in my absence all order requests and approved purchase orders. So she would only do that if I was not available.” Harris provided a similar explanation at her OCI interview—she “probably wasn’t there that day,” and Moore had authority to “act in [Harris’s] absence.”

CSSD’s cross-examination of Harris at the hearing did not attempt to challenge her on any of these points. With respect to Garcia’s \$901.29 purchase order, Harris repeated on cross-examination that she “didn’t select the vendor,” and counsel for CSSD effectively conceded the point in her follow-up questions, stating that “Armando Garcia, who was the executive secretary to the Executive Director, Mr. Golightly, select[ed] Picture Man.” Harris was not cross-examined concerning Moore’s approval of the purchase order in Harris’s absence.

In sum, as regards the only purchase order for which we have any documentation, the evidence shows that Garcia, not Harris, selected Picture Man as the vendor. The record contains no evidence that Harris played any role in that selection. The evidence further shows that Moore approved the purchase order

request in Harris's absence. There is no evidence to the contrary. In short, there is no evidence that Harris had anything to do with that purchase order at any stage of the process.

And yet that is one of the eight purchase orders that formed the basis for Harris's discharge. Moreover, Golightly testified that one reason why he chose to discharge Harris rather than impose a less severe form of discipline was that "the number of purchase orders" made her conduct particularly "egregious," and "[t]here were eight" "instances of Ms. Harris giving the work to her parents" and hence eight "violations" of CSSD policy.

The OCI investigation produced a report dated April 5, 2013. The report concluded that "[t]he allegation that Ms. Harris inappropriately obtained bids and approved a [purchase order] awarded to Picture Man, a business owned by her parents, is substantiated." The report further stated that "between January 2007 and December 2012, Ms. Harris approved a total of eight [purchase orders] awarded to Picture Man, with a combined value of approximately \$26,400. In addition, Ms. Harris obtained bids from Picture Man and other vendors for at least four of the eight [purchase orders] she approved." With respect to the \$8,160 purchase order that had led to the investigation, the report found that "Ms. Harris obtained seven bids, including the winning bid from Picture Man." As for the remaining seven purchase orders, the investigators "determined that Ms. Harris obtained bids for three of these procurements from various vendors, including from Picture Man." And the report stated that "Ms. Harris admitted that she obtained bids from and approved [purchase orders] awarded to her parents' business."

No documentary evidence was attached to the OCI report. As already noted, however, the administrative record contains

some of the relevant documents, and they show that at least some important assertions in the OCI report are false. The report states that Harris admitted obtaining bids from Picture Man, but in her interview she made no such admission and actually stated the opposite—Picture Man communicates with the end users, not with her. The report also states that Garcia’s \$901.29 purchase order was approved by Harris, but the documents and uncontradicted testimony show, to the contrary, that it was approved by Moore in Harris’s absence.

CSSD’s notice of intent to discharge Harris repeats the OCI report’s false claims that Harris approved all eight purchase orders and admitted obtaining bids from Picture Man. The notice of discharge, sent after the *Skelly*² hearing, repeats them as well.

The foregoing factual and evidentiary background reveals that there is considerable ambiguity in some of the factual stipulations that bear most directly on Harris’s culpability. First, the parties stipulated that “Kattina Harris, along with others, approved a total of eight (8) Purchase Orders awarded to ‘Picture Man Art & Framing.’” The evidence shows that at least one of the purchase orders was not approved by Harris but rather was approved by Moore in Harris’s absence. It is possible to interpret the stipulation in a manner that is consistent with that evidence. For example, even though Moore rather than Harris approved the purchase order, it might still be true in some narrow or technical sense that Harris “approved” it because her name is on the list of approvers, followed by the parenthetical “(by Kathy A. Moore, a designated approver).” Or perhaps where the stipulation refers to “Kattina Harris, along with others,” Moore is

² *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194.

one of the “others.” There may be other possibilities as well. The important point is that if the stipulation is interpreted in a manner consistent with the documentary evidence and uncontradicted testimony concerning Garcia’s \$901.29 purchase order, then it leaves open the possibility Harris did not personally approve *any* of the purchase orders in question.

Second, the parties stipulated that “Kattina Harris assisted buyers in obtaining bids from ‘Picture Man Art & Framing’ and other vendors for at least four (4) of the eight (8) Purchase Orders that were approved by Kattina Harris and others.” It is not clear from the stipulation whether Harris “assisted buyers” merely by giving them the names of registered vendors, including Picture Man. And even if Harris did actually solicit and collect *some* bids from *some* vendors on *some* purchase orders, the stipulation does not indicate the timing or role of any such bids. In the one example addressed in detail in Harris’s OCI interview, Harris solicited some bids only after the requestor had already obtained the required minimum number of bids, including a bid from Picture Man, and had selected Picture Man; Harris then obtained some *additional* bids from *other* vendors. It is hard to see how such conduct creates even an appearance of impropriety.

The hearing officer failed to perceive or take into account any of this complexity. Instead, the hearing officer made the following finding: “The parties stipulated to the facts in this case so the allegations contained in Respondent’s letter of discharge of May 17, 2013 are true.” That finding is not supported by substantial evidence, because the May 17 discharge notice contains factual allegations that are not resolved by the parties’ stipulation. For example, the discharge notice states, “Ms. Harris, during your interview with OCI investigators, you

admitted that you obtained bids from and approved [purchase orders] awarded to your parents' business." Harris did not stipulate that she made any such admission in the interview. Moreover, the transcript of the interview was admitted into evidence at the hearing, and it confirms that Harris did *not* admit that she obtained bids from Picture Man. The hearing officer erroneously concluded that by entering into the joint stipulation, Harris admitted everything alleged in the discharge notice, and that there were no further factual issues to be resolved.

What I have presented is not an exhaustive description of the gaps, ambiguities, and other oddities in the present evidentiary record and the hearing officer's findings. Again, the central issue for determining the appropriate level of discipline is Harris's role in the selection of Picture Man as the vendor on the purchase orders she processed. It is impossible on this record to resolve that issue at the necessary level of factual detail. I therefore concur in the decision to reverse the judgment and direct the trial court to remand the matter to the Commission to take additional evidence and reconsider what form of discipline to impose.

MENETREZ, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.