

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING**

BALLARD COALITION

Plaintiff,

Vs.

THE CITY OF SEATTLE, et. al.,

Defendants

No. 18-2-04988-1 SEA

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT
Re: APPEARANCE OF FAIRNESS

This matter is a part of a long-running dispute between Defendants, the City of Seattle (“City”), and the Plaintiff, a coalition of businesses, individuals and others (“Coalition”), regarding the expansion of the Burke Gilman Trail in the Ballard area of Seattle. The issue before this Court is whether a deputy hearing examiner handling the current litigation between the City and the Coalition violated the appearance of fairness doctrine when he applied for, and eventually became, the chief hearing examiner while the matter was pending before him. This Court rejects the Coalition’s arguments and hereby grants Summary Judgment to the City as explained below.

ORDER - 1

Judge Samuel S. Chung
King County Superior Court
516 Third Ave.
Seattle, WA 98104
(206) 477-1417

From November 27, 2017, to December 5, 2017, then-deputy hearing examiner Ryan Vancil presided over an EIS appeal hearing between the City and the Coalition. The center of this long-running dispute concerns the so-called “missing link” through the Ballard neighborhood for the historic Burke Gilman trail. In May, 2017, the Seattle Department of Transportation issued the Final Environmental Impact Statement (“EIS”) and the Coalition filed an appeal challenging its adequacy. The Coalition asserts that the hearing between the City and the Coalition was hotly contested and of great interest to the City, with members of the City Council attending some of the hearings. Prior to the hearing, Mr. Vancil had applied to become the chief hearing examiner for the City of Seattle. He issued his decision on January 31, 2018, in favor of the City. One day later, on February 1, 2018, the City Council announced his appointment as the chief hearing officer.¹

Under the appearance of fairness doctrine, proceedings before a quasi-judicial tribunal are valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing. Matter of Johnston, 99 Wh. 2d 466, 478 (1983). The appearance of fairness doctrine is adopted and specified in section 2.15(b) of the Hearing Examiner Rules of Practice and Procedure. It states “(T)he appearance of fairness doctrine applies to proceedings under these Rules.”

The Coalition’s main argument is that the hearing examiner’s actions violated the appearance of fairness doctrine because the timing of the “promotion,” from a deputy examiner to the chief examiner, shows that the parties did not obtain a fair and impartial hearing. The Coalition

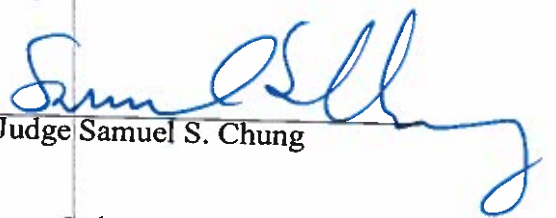
¹ Plaintiffs allege and Defendants do not dispute that Mr. Vancil was interviewed twice for the chief position while the matter was pending.

asserts that, to a prudent and disinterested observer, the fact that the hearing examiner applied for a higher position with the City, issued a ruling in favor of the City, then was subsequently hired to the higher position one day later simply appears unfair and biased. The Coalition points to Fleming v. City of Tacoma, 81 Wn.2d 292 (1972), in which the court found the process lacked impartiality when a city councilman switched his vote on a measure before the council in favor of a proponent of a measure and then immediately began working for same party, merely 48 hours after his vote.

As the City argues, however, the Fleming case is distinguishable on the facts. In this case, there has been no switching of the sides or applying for a job with the opposite side while the matter is pending. The hearing examiner instead applied for a higher position within the examiner's office, a separate and independent branch of the City charged with handling disputes, many involving the City of Seattle itself. The selection process for a hearing examiner is laid out in the Seattle Municipal Code and the selection committee is comprised of members from different parts of the City, the county, as well as a member selected by the Seattle King County Bar Association.

Furthermore, this Court agrees with the City that a potential bias based on an application for a higher position within the hearing examiner's office would impose a presumption that would taint all virtually all decision making by that body. Every hearing examiner is presumed to be fair and impartial, and an advancement within that office under these facts do not form a basis for an appearance of fairness violation.

Dated this 7/19, 2018


Judge Samuel S. Chung