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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

FPPC No. 09/261

12 LOUIE MARTINEZ,

STIPULATION, DECISION AND ORDER

13 Respondent.
14

15 **STIPULATION**

16 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
17 and Respondent Louie Martinez hereby agree that this Stipulation will be submitted for consideration by
18 the Fair Political Practices Commission at its next regularly scheduled meeting.

19 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
20 matter and to reach a final disposition without the necessity of holding an additional administrative
21 hearing to determine the liability of Respondent.

22 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
26 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
28 the hearing as a hearing officer, and to have the matter judicially reviewed.

1 As described in Exhibit 1, it is further stipulated and agreed that Respondent Louie Martinez, in
2 his capacity as Senior Project Manager for the City of Irvine:

- 3 (i) accepted gifts in excess of the annual gift limit in violation of Government Code section
4 89503, subdivision (c) (2 counts); and
- 5 (ii) used his official position to influence a governmental decision in which he had reason to
6 know that he had a financial interest, in violation of Government Code section 87100 (1
7 count).

8 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein,
9 is a true and accurate summary of the facts in this matter.

10 Respondent agrees to the issuance of the Decision and Order, which is attached hereto, and
11 Respondent agrees to the Commission imposing upon him an administrative penalty in the amount of
12 \$8,000. A cashier's check or money order from Respondent totaling said amount, made payable to the
13 "General Fund of the State of California," is submitted with this Stipulation as full payment of the
14 administrative penalty and shall be held by the State of California until the Commission issues its
15 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
16 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
17 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
18 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
19 agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the

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1 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
2 shall be disqualified because of prior consideration of this Stipulation.

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4 Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

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7 Dated: _____

Louie Martinez, Respondent

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9 **DECISION AND ORDER**

10 The foregoing Stipulation of the parties “In the Matter of Louie Martinez,” FPPC No. 09/261,
11 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
12 Practices Commission, effective upon execution below by the Chairman.

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14 IT IS SO ORDERED.

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16 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

At all relevant times, Respondent Louie Martinez (“Respondent”) was a Senior Project Manager for the City of Irvine.

Under the Political Reform Act (the “Act”)¹, public officials, including designated employees of local government agencies, are prohibited from accepting gifts from a single source in excess of certain annual gift limits. Also, under the Act, public officials are prohibited from making, participating in making, using or attempting to use their official positions to influence any governmental decisions in which they have a financial interest.

For purposes of this Stipulation, Respondent’s violations of the Act are set forth as follows:

COUNT 1: In approximately October 2007, Respondent Louie Martinez accepted an over-the-limit gift from Artistic Maintenance, Inc. in violation of Section 89503, subdivision (c). The gift was in the form of home landscaping services, which were discounted more than \$1,000 solely on account of Respondent’s official status. At the time, the annual gift limit for gifts from a single source was \$390.

COUNT 2: In approximately July 2008, Respondent Louie Martinez accepted an over-the-limit gift from Artistic Maintenance, Inc. in violation of Section 89503, subdivision (c). The gift was in the form of home landscaping services, which were discounted more than \$2,000 solely on account of Respondent’s official status. At the time, the annual gift limit for gifts from a single source was \$390.

COUNT 3: In approximately April or May 2008, Respondent Louie Martinez, in his capacity as Senior Project Manager for the City of Irvine, used his official position to influence a governmental decision in which he had reason to know that he had a financial interest, in violation of Section 87100. Specifically, he inspected Civic Center landscaping work performed by Artistic Maintenance, Inc. under contract with the City of Irvine, and based upon this inspection, he approved an invoice for payment of approximately \$86,000 to Artistic Maintenance, Inc.

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations.

Definition of Gift

“Gift” includes “a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.” (Section 82028, subd. (a).)

Prohibition Against Accepting Gifts in Excess of Gift Limit

No designated employee of a state or local government agency may accept gifts from any single source in any calendar year with a total value of more than \$390 if the employee would be required to report the receipt of income or gifts from that source on his statement of economic interests. (Section 89503, subd. (c); Regulation 18940.2.)

“Designated employee” means any officer, employee, member, or consultant of any agency whose position with the agency is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. (Section 82019, subd. (a)(3).)

Conflicts of Interest

The primary purpose of the conflict-of-interest provisions of the Act is to ensure that, “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subd. (b).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his official position to influence a governmental decision in which the official knows, or has reason to know, that he has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.²

² The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

First, the individual must be a public official. (Section 87100.) Section 82048 defines “public official” to include an employee of a local government agency.

Second, the official must make, participate in making, or attempt to use his official position to influence a governmental decision. (Section 87100 and Regulation 18700.)

Third, the official must have an economic interest that may be financially affected by the governmental decision. (Sections 87100 and 87103.) A public official has a financial interest in any donor of a gift or gifts aggregating \$390 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Sections 87103, subd. (e), and 89503, subd. (c); Regulation 18940.2.)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Regulation 18704.)

Fifth, it must be determined if the governmental decision has a material financial effect on the economic interest. (Sections 87100 and 87103.) In the case of an economic interest that is the directly involved donor of a gift, the financial effect is presumed to be material. (Regulation 18705.4, subd. (a).)

Sixth, at the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect. (Sections 87100 and 87103.) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Regulation 18706, subd. (a).) Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends upon the facts of each particular case. (Regulation 18706, subd. (b).)

SUMMARY OF THE FACTS

As stated above, at all relevant times, Respondent Louie Martinez was a Senior Project Manager for the City of Irvine. (This was a position that he held for approximately four years. Prior to this, he was a landscape maintenance supervisor for the City of Irvine for a number of years.)

Pursuant to Respondent’s agency conflict of interest code, he was a designated employee within the meaning of Section 82019, subdivision (a)(3), and he was required to file statements of economic interests.

When Respondent’s employer became aware of the facts giving rise to this case, Respondent retired prior to a full investigation.

Counts 1 and 2: Accepting Gifts in Excess of Annual Gift Limit

In approximately October 2007, Respondent accepted an over-the-limit gift from Artistic Maintenance, Inc. (“Artistic”) in the form of home landscaping services, which were discounted

more than \$1,000 solely on account of Respondent's official status. At the time, the annual gift limit for gifts from a single source was \$390, and Respondent was required to report the receipt of income or gifts from Artistic on his statement of economic interests.

Also, in approximately July 2008, Respondent accepted an over-the-limit gift from Artistic Maintenance, Inc. ("Artistic") in the form of home landscaping services, which were discounted more than \$2,000 solely on account of Respondent's official status. At the time, the annual gift limit for gifts from a single source was \$390, and Respondent was required to report the receipt of income or gifts from Artistic on his statement of economic interests.

Neither discount was available to the public through Artistic's regular course of business.

By accepting over-the-limit gifts as described above, Respondent committed two violations of Section 89503, subdivision (c).

Count 3: Conflict of Interest

In approximately April or May 2008, Respondent inspected Civic Center landscaping work performed by Artistic Maintenance, Inc. under contract with the City of Irvine, and based upon this inspection, he approved an invoice for payment of approximately \$86,000 to Artistic Maintenance, Inc.

As an employee of the City of Irvine, Respondent was a public official. His inspection and subsequent approval of the invoice for payment of approximately \$86,000 to Artistic amounted to using his official position to influence a governmental decision in which he had reason to know that he had a financial interest.³

As stated in Count 1, during the 12 months prior to Respondent's approval of the invoice for payment to Artistic, Respondent accepted an over-the-limit gift from Artistic in the form of discounted home landscaping services. Accordingly, Respondent had an economic interest in Artistic when he approved the invoice for payment to Artistic in the approximate amount of \$86,000 in connection with the Civic Center landscaping work. Artistic was directly involved in the governmental decision because payment to Artistic was the subject of the decision, and it was reasonably foreseeable that Respondent's approval would have a material financial effect on Artistic.

In acting as described above, Respondent committed one violation of Section 87100.

CONCLUSION

This matter consists of three counts of violating the Act, which carry a maximum administrative penalty of \$15,000.

³ Although Respondent did not have final authority with respect to issuing the check, his approval/recommendation was given great weight, and he could not recall ever being overruled by his superiors.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1)-(6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Making a governmental decision in which an official has a financial interest is one of the more serious violations of the Act because it may create the appearance that a governmental decision was made on the basis of a public official's financial interest, especially when the financial interest is the donor of over-the-limit gifts.

Administrative penalties for violations of the Act vary depending upon the specific facts of each case. In this case, the following aggravating and mitigating factors are present.

Factors in Aggravation

Respondent should have reported both of the over-the-limit gifts from Artistic on his statements of economic interests, but he did not do so.

When Respondent approached Artistic about home landscaping services for his personal residence, he knew that Artistic was a commercial landscaper and that normally Artistic would not do landscaping on an individual basis for homeowners. Also, Respondent had reason to believe that Artistic only charged him "city prices" for the home landscaping services that were provided to him. Additionally, the Artistic invoice for the home landscaping services that are the subject of Count 1 reflected "N/C" for \$765 of construction supervisor time and "N/C" for \$315 of dump truck time.

During the 12 months that followed the gift that is the subject of Count 1, Respondent approved several dozen invoices for payments to Artistic totaling hundreds of thousands of

dollars. This approval took the form of Respondent initialing Artistic invoices, and he was never overruled by his superiors. Respondent has stated that he did not personally inspect the work performed by Artistic in connection with these payments; rather, he relied upon inspections performed by subordinate lead technicians.

Factors in Mitigation

Respondent cooperated with the Enforcement Division of the Fair Political Practices Commission during all phases of the investigation and by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held.

Investigation did not reveal any evidence of bribery or extortion.

Respondent has stated that he did not understand that the discounted home landscaping services were a gift because he paid what he was invoiced (approximately \$1,845 for the first job and approximately \$7,675 for the second job). Also, Respondent has stated that he used Artistic and several other contractors to perform work throughout the city for various projects, as he had done for years without issue, and Artistic was not favored more than any other contractor. Additionally, Respondent has stated that he did not influence whether or not Artistic was awarded any contracts with the city.

Respondent does not have a history of violating the Act.

Penalty

The facts of this case, including the aggravating and mitigating factors discussed above, justify imposition of an agreed upon penalty of \$2,000 per count for Counts 1 and 2, and \$4,000 for Count 3, for a total penalty in the amount of \$8,000.