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7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

9 STATE OF CALIFORNIA

10 In the Matter of) FPPC No. 10/521
11)
12)
13 SERGIO CASANOVA AND ALHAMBRA) DEFAULT DECISION AND ORDER
14 FIREGIGHTER’S PAC,)
15 Respondents.) (Gov. Code §§ 11506 and 11520
16)

17 Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission,
18 hereby submits this Default Decision and Order for consideration by the Fair Political Practices
19 Commission at its next regularly scheduled meeting.

20 Pursuant to the California Administrative Procedure Act,¹ Respondents Sergio Casanova
21 (Respondent Casanova) and Alhambra Firefighter’s PAC (Respondent Committee) have been served
22 with all of the documents necessary to conduct an administrative hearing regarding the above-captioned
23 matter, including the following:

- 24 1. An Order Finding Probable Cause;
25 2. An Accusation;

26
27 ¹The California Administrative Procedure Act, which governs administrative adjudications, is
28 contained in Sections 11370 through 11529 of the Government Code.

- 1 3. A Notice of Defense (Two Copies);
- 2 4. A Statement to Respondent; and
- 3 5. Copies of Sections 11506, 11507.5, 11507.6 and 11507.7 of the Government Code.

4 Government Code Section 11506 provides that failure of a respondent to file a Notice of Defense
5 within 15 days after being served with an Accusation shall constitute a waiver of respondent's right to a
6 hearing on the merits of the Accusation. The Statement to Respondent, served on Respondent Casanova
7 and Respondent Committee (Respondents), explicitly stated that a Notice of Defense must be filed in
8 order to request a hearing. Respondents failed to file a Notice of Defense within fifteen days of being
9 served with the Accusation.

10 Government Code Section 11520 provides that, if the respondent fails to file a Notice of
11 Defense, the Commission may take action, by way of a default, based upon the respondent's express
12 admissions or upon other evidence, and that affidavits may be used as evidence without any notice to the
13 respondent.

14 Respondents violated the Political Reform Act as described in Exhibit 1, and accompanying
15 declaration, which are attached hereto and incorporated by reference as though fully set forth herein.
16 Exhibit 1 is a true and accurate summary of the law and evidence in this matter. This Default Decision
17 and Order is submitted to the Commission to obtain a final disposition of this matter.

18
19
20 Dated: _____

Roman G. Porter
Executive Director
Fair Political Practices Commission

1 **ORDER**

2 The Commission issues this Default Decision and Order and imposes an administrative penalty
3 of Seven Thousand Five Hundred Dollars (\$7,500) upon Respondent Sergio Casanova and Respondent
4 Alhambra Firefighter’s PAC, payable to the “General Fund of the State of California.”

5 IT IS SO ORDERED, effective upon execution below by the Chair of the Fair Political Practices
6 Commission at Sacramento, California.

7
8 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Alhambra Firefighter's PAC ("Respondent Committee") is a state general purpose committee, and Sergio Casanova ("Respondent Casanova") has been Respondent Committee's treasurer at all relevant times. As a state general purpose committee and its treasurer, Respondent Committee and Respondent Casanova ("Respondents") are required to file periodic campaign statements under the Political Reform Act (the "Act").¹

This matter arose out of a referral received by the Fair Political Practices Commission's Enforcement Division (the "Enforcement Division") from the Secretary of State (the "SOS") alleging Respondents failed to file campaign statements required by the Act. The subsequent investigation by the Enforcement Division revealed that Respondents failed to file three semi-annual campaign statements required by the Act.

For the purposes of this Default Decision and Order, Respondents' violations of the Act are stated as follows:

COUNT 1: As a state general purpose committee, Respondent Alhambra Firefighter's PAC, and its treasurer, Respondent Sergio Casanova, had a duty to file a semi-annual campaign statement for the July 1, 2009, through December 31, 2009, reporting period, by February 1, 2010. Respondents Alhambra Firefighter's PAC and Sergio Casanova failed to file a semi-annual campaign statement for the July 1, 2009, through December 31, 2009, reporting period, by February 1, 2010, in violation of Government Code Section 84200, subdivision (a).

COUNT 2: As a state general purpose committee, Respondent Alhambra Firefighter's PAC, and its treasurer, Respondent Sergio Casanova, had a duty to file a semi-annual campaign statement for the January 1, 2010, through June 30, 2010, reporting period, by August 2, 2010. Respondents Alhambra Firefighter's PAC and Sergio Casanova failed to file a semi-annual campaign statement for the January 1, 2010, through June 30, 2010, reporting period, by August 2, 2010, in violation of Government Code Section 84200, subdivision (a).

COUNT 3: As a state general purpose committee, Respondent Alhambra Firefighter's PAC, and its treasurer, Respondent Sergio Casanova, had a duty to file a semi-annual campaign statement for the July 1,

¹ The Political Reform 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.

2010, through December 31, 2010, reporting period, by January 31, 2011. Respondents Alhambra Firefighter's PAC and Sergio Casanova failed to file a semi-annual campaign statement for the July 1, 2010, through December 31, 2010, reporting period, by January 31, 2011, in violation of Government Code Section 84200, subdivision (a).

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

When the Fair Political Practice Commission (the "Commission") determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the "APA").¹ (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation's form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent's failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent's right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

PROCEDURAL REQUIREMENTS AND HISTORY

A. Initiation of the Administrative Action

Section 91000.5 provides that "[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action." (Section 91000.5, subd. (a).)

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing

¹ The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred.

Documents supporting the procedural history are included in the attached Certification of Records (“Certification”) filed herewith at Exhibit A, A-1 through A-9, and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondents in this matter by serving them with a Report in Support of a Finding of Probable Cause (the “Report”) dated March 7, 2011. (Certification, Exhibit A-1.) Respondents were served by certified mail, return receipt requested.¹ The original return receipt addressed to Respondent Casanova was signed on April 22, 2011, and was returned to the Enforcement Division. (Certification, Exhibit A-2.) The original return receipt addressed to Respondent Committee was signed on April 25, 2011, and was returned to the Enforcement Division. (Certification, Exhibit A-3.) Therefore, the administrative action commenced on April 25, 2011, the date the registered mail receipt was signed, and the five year statute of limitations was effectively tolled on this date for both respondents.

As required by Section 83115.5, the packets served on Respondents contained a cover letter, dated April 18, 2011, and a memorandum describing Probable Cause Proceedings, advising that Respondents had 21 days in which to request a probable cause conference and/or to file a written response to the Report. (Certification, Exhibit A-4.) Respondents neither requested a probable cause conference nor submitted a written response to the Report.

B. Ex Parte Request for a Finding of Probable Cause

Since Respondents failed to request a probable cause conference or submit a written response to the Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to Executive Director Roman G. Porter on May 27, 2011. (Certification, Exhibit A-5.) Respondent was sent copies of these documents. (Certification, Exhibit A-6.)

On June 29, 2011, Executive Director Roman G. Porter issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-7.)

¹ Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law. (Section 8311.)

C. The Issuance and Service of the Accusation

Under the Act, if the Executive Director makes a finding of probable cause, he or she shall prepare an accusation pursuant to Section 11503 of the APA, and have it served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

Section 11503 states:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a), requires that, upon the filing of the accusation, the agency shall 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b), sets forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c), provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On June 29, 2011, the Commission's Executive Director, Roman G. Porter, issued an Accusation against Respondents in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506, 11507.5, 11507.6 and 11507.7, and a cover letter dated July 11, 2011, were personally served on Respondents on July 18, 2011. (Certification, Exhibit A-8.)

Along with the Accusation, the Enforcement Division served Respondents with a “Statement to Respondent” which notified them that they could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, they would be deemed to have waived the right to a hearing. Respondents did not file a Notice of Defense within the statutory time period, which ended on August 2, 2011.

As a result, on August 5, 2011, the Enforcement Division sent a letter to Respondents advising them that this matter would be submitted for a Default Decision and Order at the Commission’s public meeting scheduled for September 22, 2011. A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter. (Certification, Exhibit A-9.)

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. The Act therefore establishes a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

The following reflects the Act as it was in effect at the time of the relevant violations.

Duty to File Campaign Statements and Reports

The Act requires committees to file campaign statements at specific times disclosing information regarding contributions received and expenditures made by the committee. State general purpose committees must file an original and one copy of all required campaign statements with the SOS, a copy with the Registrar-Recorder of Los Angeles County, and a copy with the Registrar of Voters of the City and County of San Francisco. (Section 84215, subd. (a).) A state general purpose committee is a committee to support or oppose candidates or measures voted on in a state election, or in more than one county. (Section 82027.5, subd. (b).)

Duty to File Semi-Annual Campaign Statements

Committees are required to file semi-annual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. (Section 84200, subd. (a).) All filing obligations continue until the committee is terminated by filing a statement of termination (Form 410) with the Secretary of State and a copy with the local filing officer receiving the committee’s original campaign statements. (Section 84214; Regulation 18404.)

SUMMARY OF THE FACTS

Unless otherwise indicated, documents supporting the following summary of evidence are included in the attached Certification of Records filed herewith at Exhibit A, A-10 through A-11, and incorporated herein by reference.

Respondent Committee has been a state general purpose committee since October 7, 2000, and Respondent Casanova has been Respondent Committee's treasurer at all relevant times. Respondents failed to file semi-annual campaign statements for July 1, 2009, through December 31, 2009, reporting period, by February 1, 2010, the January 1, 2010, through June 30, 2010, reporting period, by August 2, 2010, and the July 1, 2010, through December 31, 2010, reporting period, by January 31, 2011.

On or about March 10, 2010, April 21, 2010, April 30, 2010, August 11, 2010, September 28, 2010, November 15, 2010, March 17, 2011, and May 20, 2011, the SOS issued Respondent Committee written notices warning that Respondent Committee had failed to file the required semi-annual campaign statements by their due dates. (Certification, Exhibit A-10.)

On or about May 25, 2010, July 20, 2010, September 20, 2010, May 20, 2011, and July 15, 2011, the Enforcement Division received referrals from the SOS for Respondents' failures to file semi-annual campaign statements. (Certification, Exhibit A-11.)

To date, Respondents have not filed any of the delinquent campaign statements.

Accordingly, Respondents committed three violations of the Act, as follows:

Count 1

Failure to File a Semi-Annual Campaign Statement

As a state general purpose committee, Respondent Alhambra Firefighter's PAC, and its treasurer, Respondent Sergio Casanova, had a duty to file a semi-annual campaign statement for the July 1, 2009, through December 31, 2009, reporting period, by February 1, 2010. Respondents Alhambra Firefighter's PAC and Sergio Casanova failed to file a semi-annual campaign statement for the July 1, 2009, through December 31, 2009, reporting period, by February 1, 2010, in violation of Government Code Section 84200, subdivision (a).

Count 2

Failure to File a Semi-Annual Campaign Statement

As a state general purpose committee, Respondent Alhambra Firefighter's PAC, and its treasurer, Respondent Sergio Casanova, had a duty to file a semi-annual campaign statement for the January 1, 2010, through June 30, 2010, reporting period, by August 2, 2010. Respondents Alhambra Firefighter's PAC and Sergio Casanova failed to file a

semi-annual campaign statement for the January 1, 2010, through June 30, 2010, reporting period, by August 2, 2010, in violation of Government Code Section 84200, subdivision (a).

Count 3

Failure to File a Semi-Annual Campaign Statement

As a state general purpose committee, Respondent Alhambra Firefighter's PAC, and its treasurer, Respondent Sergio Casanova, had a duty to file a semi-annual campaign statement for the July 1, 2010, through December 31, 2010, reporting period, by January 31, 2011. Respondents Alhambra Firefighter's PAC and Sergio Casanova failed to file a semi-annual campaign statement for the July 1, 2010, through December 31, 2010, reporting period, by January 31, 2011, in violation of Government Code Section 84200, subdivision (a).

CONCLUSION

This matter consists of three counts of violating the Act, which carry a maximum administrative penalty of Five Thousand Dollars (\$5,000) per count, for a total maximum administrative penalty of Fifteen Thousand Dollars (\$15,000).

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 context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the respondent(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

The failure to file campaign statements is a serious violation of the Act because it deprives the public of important information about a committee's contributors and financial activities. In this matter, Respondents failed to file three consecutive semi-annual campaign statements, and therefore deprived the public of information regarding Respondent Committee's contributors and financial activities for a year and a half.

Respondents' violations of the Act were deliberate at worst and negligent at best. Due to previous enforcement actions against Respondents, Respondents should have been aware of their duties under the Act to file campaign statements.

Respondents have demonstrated a pattern of violating the Act. Respondents failed to file a semi-annual campaign statement for the July 1, 2008, through December 31, 2008, reporting period, due February 2, 2009, and were sent a warning letter by the Enforcement Division for that violation on or about April 28, 2009. Respondents also failed to file a semi-annual campaign

statement for the January 1, 2009, through June 30, 2009, reporting period, due July 31, 2009, and Respondent Committee was sent a warning letter by the Enforcement Division for that violation on or about April 15, 2010. Respondents have failed to file a campaign statement for five consecutive reporting periods, and therefore have deprived the public of important information regarding Respondent Committee's contributors and financial activities for two and a half years.

Recent penalties approved by the Commission concerning violations of Section 84200, subdivision (a), include:

- *In the Matter of John Dragone, Committee to Elect John Dragone and Kathy Dragone* (Default), FPPC No. 08/702. This case involved five counts of violating Section 84200, subdivision (a). A penalty of Two Thousand Dollars (\$2,000) per count was approved by the Commission on November 12, 2010. Respondent John Dragone had been fined by the Commission in the past, FPPC Case No. 96/202, for failing to file semi-annual campaign statements.
- *In the Matter of Elizabeth Todd-Gallardo* (Default), FPPC No. 07/544. This case involved three counts of violating Section 84200, subdivision (a). A penalty of Two Thousand Five Hundred Dollars (\$2,500) per count was approved by the Commission on May 13, 2010. Respondents had been sent a warning letter by the Enforcement Division in the past, FPPC Case No. 07/103, for failing to file semi-annual campaign statements.

Because Respondents' actions were similar, imposition of an administrative penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) per count is recommended. This is in the mid range of penalties but below the maximum penalty recommended for violations of Section 84200, subdivision (a).

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a penalty of Seven Thousand Five Hundred Dollars (\$7,500) is recommended.

* * * * *