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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

FPPC No: 10/947

12 CINDY FINERTY, COMMITTEE TO
13 ELECT CINDY FINERTY, and
14 DEBBI HALL

Respondents.

STIPULATION, DECISION, and
ORDER

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17 Complainant Roman G. Porter, Executive Director of the Fair Political Practices
18 Commission, and Respondents Cindy Finerty, Committee to Elect Cindy Finerty, and Debbi Hall
19 hereby agree that this Stipulation will be submitted for consideration by the Fair Political
20 Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised
22 by this matter and to reach a final disposition without the necessity of holding an administrative
23 hearing to determine the liability of Respondents.

24 Respondents understand, and hereby knowingly and voluntarily waive, any and all
25 procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and
26 in Sections 18361.1 through 18361.9 of title 2 of the California Code of Regulations. This
27 includes, but is not limited to, the right to personally appear at any administrative hearing held in
28 this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-

1 examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to
2 have an impartial administrative law judge preside over the hearing as a hearing officer, and to
3 have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents violated the Political Reform Act by
5 making an independent expenditure from the Respondent Committee to Elect Cindy Finerty to
6 support Jean Benson and Jim Ferguson for Palm Desert City Council in the November 2, 2010
7 election, in violation of Government Code section 85501 (1 Count); as described in Exhibit 1.
8 Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein.
9 Exhibit 1 is a true and accurate summary of the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondents also agree to the Commission imposing upon them an administrative penalty in the
12 amount of Two Thousand Five Hundred Dollars (\$2,500). A cashier's check from Respondents
13 in said amount, made payable to the "General Fund of the State of California," is submitted with
14 this Stipulation as full payment of the administrative penalty, and shall be held by the State of
15 California until the Commission issues its Decision and Order regarding this matter. The parties
16 agree that in the event the Commission refuses to accept this Stipulation, it shall become null and
17 void, and within fifteen (15) business days after the Commission meeting at which the
18 Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation
19 shall be reimbursed to Respondents. Respondents further stipulate and agree that in the event the
20 Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
21 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
22 disqualified because of prior consideration of this Stipulation.

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26 Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

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Dated: _____

Cindy Finerty, individually and on behalf of
Committee to Elect Cindy Finerty, Respondents

Dated: _____

Debbi Hall, individually and on behalf of
Committee to Elect Cindy Finerty, Respondents

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Cindy Finerty, Committee to Elect Cindy Finerty, and Debbi Hall, FPPC No.10/947,” including all attached Exhibits, is hereby accepted as the final Decision and Order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Cindy Finerty (“Respondent Finerty”) is currently a member of the Palm Desert City Council. Respondent Finerty has been a Palm Desert City Council Member since 2006. The Committee to Elect Cindy Finerty (“Respondent Committee”) is the controlled committee of Respondent Finerty. At all relevant times, Respondent Debbi Hall (“Respondent Hall”) was the treasurer of Respondent Committee.

The Political Reform Act (“Act”)¹ prohibits a candidate controlled committee from making independent expenditures to support or oppose other candidates. In this matter, Respondents made an impermissible independent expenditure by paying for and sending mailers to support two candidates for Palm Desert City Council in the November 2, 2010 election.

For the purposes of this Stipulation, Respondents’ violation is stated as follows:

COUNT 1: On or about October 1, 2010, Respondents made an independent expenditure from the Respondent Controlled Committee to support Jean Benson and Jim Ferguson for Palm Desert City Council, in violation of Government Code section 85501.

SUMMARY OF THE LAW

Prohibition of Independent Expenditures from a Candidate Controlled Committee

Government Code section 85501 prohibits a controlled committee of a candidate from making independent expenditures or contributing funds to another committee for the purpose of making independent expenditures to support or oppose other candidates.

Definition of an Independent Expenditure

Government Code section 82031, in relevant part, defines an Independent Expenditure as an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

Joint and Several Liability of Candidate and Treasurer

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.

Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, it is the duty of a candidate and the treasurer of his or her controlled committee to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A candidate and the treasurer of his or her controlled committee may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (See Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

Respondent Finerty is currently a member of the Palm Desert City Council and has been since 2006. Respondent Committee is the controlled committee of Respondent Finerty. At all relevant times, Respondent Hall was the treasurer for Respondent Committee.

On or about October 1, 2010, Respondent Committee paid for and sent two mailers to residents in Palm Desert supporting the candidacies of Jean Benson and Jim Ferguson for Palm Desert City Council. The headline of one of the mailers was "From the Desk of Cindy Finerty to the Residents of Palm Desert." This mailer discussed Respondent Finerty's concerns relating to the preservation and protection of Palm Desert's hillsides. The letter explains that Jean Benson and Jim Ferguson have long voting records of preserving the hillsides. The letter ends by stating "If you feel as I do, please vote to reelect Jean Benson and Jim Ferguson whose voting records show they walk their talk." This letter was signed by Respondent Finerty. Respondent Finerty was not a candidate in the November 2, 2010 election.

The second letter was printed on letterhead for Buford A. Crites, the former Mayor of Palm Desert, which included his address. This mailer began: "As our busy election season begins, I am taking this opportunity to share my thoughts regarding one of Palm Desert's most valuable set of resources-our parks, trails, hillsides, and open space." This letter explains that Jean Benson and Jim Ferguson have consistent voting records to support preservation of the local resources. The letter concludes: "Re-electing Jim Ferguson and Jean Benson will help ensure a successful city for visitors, residents and businesses." This letter was signed by Buford A. Crites, who was not a candidate in the November 2, 2010 election.

Respondent Committee paid for both of these mailers. Respondent Committee disclosed making an independent expenditure in the amount of approximately \$16,335 to support Jean Benson and Jim Ferguson on the pre-election campaign statement for the period, July 1, 2010, through October 20, 2010.

Both Jean Benson and Jim Ferguson stated that they did not know about these mailers until after the mailers were sent to Palm Desert residents. Jean Benson filed a Form 470 because she had less than \$1,000 activity during this election period. Jean Benson was re-elected to the Palm Desert City Council in the November 2, 2010 election. Jim Ferguson was an unsuccessful Palm Desert City Council candidate in the November 2, 2010 election.

By making an independent expenditure from Respondent Committee, Respondent Finerty's candidate controlled committee, to support the candidacies of Jean Benson and Jim

Ferguson, Respondents Committee, Finerty and Hall committed one count of violating Government Code section 85501.

CONCLUSION

This matter consists of one count of violating the Act, and carries a maximum administrative penalty of Five Thousand Dollars (\$5,000).

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): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Government Code section 85501 functions to prevent a candidate-controlled committee from making independent expenditures to support or oppose other candidates. At the state level and in many local jurisdictions, there is a limit on the amount that persons may contribute to a candidate and a limit on the amount that a candidate or officeholder may contribute or transfer to another candidate's campaign. (Sections 85303 and 85305.) Absent Section 85501, limits on the amount that a person may give a candidate or that an officeholder may contribute or transfer to another candidate would be rendered ineffective if a candidate-controlled committee could make an unlimited amount of independent expenditures to support or oppose another candidate. Section 85501 serves to level the playing field for all candidates. As the Commission's St. Croix Opinion states, "section 85501 prohibits candidates from using their own campaign funds for the purpose of getting another candidate elected." (In re *St. Croix* (2005) 18 FPPC Ops. 1.)

There are no comparable cases for a violation of Section 85501. In this matter, the Respondent did disclose the independent expenditure on campaign statements prior to the election. Also, there are no local contribution limits in the City of Palm Desert. Further, the Enforcement Division found no evidence that this violation of the Act was intentional or that Respondent intended to deceive the voting public. Respondent Finerty signed her name to the mailer at issue and cooperated with the Enforcement Division in the investigation of this matter. Additionally, Respondents have no prior history with the Enforcement Division. However, Section 85501 is a prohibition on the use of campaign funds. Respondents illegally used campaign funds to make over \$16,000 in independent expenditures to support the candidacies of two local City Council Candidates. Further, the candidate that was supported in the independent expenditure and was successfully elected to the Palm Desert City Council received and spent less than \$1,000 in her campaign account.

RECOMMENDED PENALTY

After consideration of the factors of Regulation 18361.5, and the facts of this case, including the aggravating and mitigating factors discussed above, the Enforcement Division recommends the imposition of the agreed upon penalty of Two Thousand Five Hundred Dollars (\$2,500).