

1 GARY S. WINUK
Chief of Enforcement
FAIR POLITICAL PRACTICES COMMISSION

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6
7 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

8 STATE OF CALIFORNIA

9
10 In the Matter of) FPPC No. 11/319
11)
12 PARI-MUTUEL EMPLOYEES GUILD,) DEFAULT DECISION AND ORDER
LOCAL 280 PAC,)
13)
14 Respondent.) (Gov. Code §§ 11506 and 11520)
15)

16 Complainant, Gary S. Winuk, Chief of the Enforcement Division of the Fair Political Practices
17 Commission, hereby submits this Default Decision and Order for consideration at its next regularly
18 scheduled meeting.

19 Pursuant to the California Administrative Procedure Act,¹ Respondents Pari-Mutuel Employees
20 Guild, Local 280 PAC has been served with all of the documents necessary to conduct an administrative
21 hearing regarding the above-captioned matter, including the following:

- 22 1. An Order Finding Probable Cause;
23 2. An Accusation;
24 3. A Notice of Defense (Two Copies);
25

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

1 4. A Statement to Respondent; and

2 5. Copies of Sections 11506, 11507.5, 11507.6 and 11507.7 of the Government Code.

3 Government Code Section 11506 provides that failure of a respondent to file a Notice of Defense
4 within 15 days after being served with an Accusation shall constitute a waiver of respondent's right to a
5 hearing on the merits of the Accusation. The Statement to Respondent, served on Respondent on
6 October 18, 2012 explicitly stated that a Notice of Defense must be filed in order to request a hearing.
7 Respondent failed to file a Notice of Defense within fifteen days of being served with the Accusation.

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

12 Respondent Pari-Mutuel Employees Guild, Local 280 PAC violated the Political Reform Act as
13 described in Exhibit 1, and accompanying declarations, which are attached hereto and incorporated by
14 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the law and
15 evidence in this matter. This Default Decision and Order is submitted to the Commission to obtain a
16 final disposition of this matter.

17
18 Dated: _____

19 Gary S. Winuk, Chief of Enforcement
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 (\$7,500.00) upon Respondent Pari-Mutuel Employees Guild,
4 Local 280 PAC, payable to the “General Fund of the State of California.”
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6 IT IS SO ORDERED, effective upon execution below by the Chair of the Fair Political Practices
7 Commission at Sacramento, California.
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10 Dated: _____

11 Ann Ravel, Chair
12 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Pari-Mutuel Employees Guild, Local 280 PAC (“Respondent”) is a general purpose recipient committee. Respondent was required by the Political Reform Act (the “Act”)¹ to file semiannual campaign statements no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31 of each year. This case resulted from referrals from the County of Los Angeles Registrar-Recorder/County Clerk (“County Clerk”) and Office of the Secretary of State (“SOS”) to the Fair Political Practices Commission (“Commission”) for Respondent’s failure to file semiannual campaign statements for the reporting periods ending December 31, 2010, June 30, 2011, and December 31, 2011. The subsequent investigation by the Commission’s Enforcement Division revealed that Respondent failed to file campaign statements as required by the Act.

For the purposes of this Default Decision and Order, Respondent’s violations of the Act are as follows:

COUNT 1: Respondent Pari-Mutuel Employees Guild, Local 280 PAC failed to file a semiannual campaign statement for the October 17, 2010 through December 31, 2010 reporting period by the January 31, 2011 deadline in violation of Section 84200, subdivision (a).

COUNT 2: Respondent Pari-Mutuel Employees Guild, Local 280 PAC failed to file a semiannual campaign statement for the January 1, 2011 through June 30, 2011 reporting period by the August 1, 2011 deadline in violation of Section 84200, subdivision (a).

COUNT 3: Respondent Pari-Mutuel Employees Guild, Local 280 PAC failed to file a semiannual campaign statement for the July 1, 2011 through December 31, 2011 reporting period by the January 31, 2012 deadline in violation of Section 84200, subdivision (a).

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

When the Commission determines there is probable cause to believe the Act was violated, it may hold a hearing to determine if a violation occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the “APA”).² (Section 83116.) A hearing to determine whether the Act was

¹The 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 (“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.

² The California Administrative Procedure Act, which governs administrative adjudications, is contained in

violated is initiated by the filing of an Accusation, which shall be a concise written statement of the charges specifying the statutes and rules 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 matters 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 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-6, and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondent in this matter by serving them with a packet containing a cover letter, a Report in Support of a Finding of Probable Cause (the "Report"), a

Sections 11370 through 11529 of the Government Code.

memorandum regarding probable cause proceedings, selected sections of the California Government Code regarding probable cause proceedings for the Commission, and selected regulations of the Commission regarding probable cause proceedings. (Certification, Exhibit A-1.) Respondent was served by certified mail, return receipt requested.¹ The original return receipt addressed to Respondent was signed on July 9, 2012, and was returned to the Enforcement Division. (Certification, Exhibit A-2.) Therefore, the administrative action commenced on July 9, 2012, the date the registered mail receipt was signed, and the five year statute of limitations was effectively tolled on this date.

The information contained in the above-mentioned packet advised Respondent that it had 21 days in which to request a probable cause conference and/or to file a written response to the Report. Respondent 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 Respondent 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 Zackery Morazzini, General Counsel for the Commission on August 21, 2012. (Certification, Exhibit A-3.)

On September 7, 2012, Zackery Morazzini issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-4.)

C. The Issuance and Service of the Accusation

Under the Act, if the Executive Director, or his/her designee, makes a finding of probable cause, an accusation shall be prepared pursuant to Section 11503 of the APA, and it shall be 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

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.)

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 September 13, 2012, the Commission's Chief of Enforcement, Gary S. Winuk, issued an Accusation against Respondent 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, and copies of Government Code Sections 11506, 11507.5, 11507.6 and 11507.7 were personally served on Respondent on October 18, 2012. (Certification, Exhibit A-5.)

The "Statement to Respondent" notified Respondent that it 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. Respondent did not file a Notice of Defense within the statutory time period, which ended on November 2, 2012.

As a result, on or around November 14, 2012, the Enforcement Division sent a letter to Respondent advising it that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for December 13, 2012. (Certification, Exhibit A-6.) A copy of the Default Decision and Order and this Exhibit 1 were included with the letter.

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 to inhibit improper practices. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose.

Duty to File Campaign Statements

Committees are included among the entities subject to the Act's campaign reporting requirements. Section 82013 defines a committee as any person or combination of persons who directly or indirectly receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year. This type of committee is commonly referred to as a "recipient committee."

Section 84200, subdivision (a) requires all recipient committees to file semiannual campaign statements (Form 460) each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.¹ Sections 84214 and Regulation 18404 require a recipient committee to file campaign statements until it terminates its obligations by filing a Statement of Termination (Form 410).

SUMMARY OF THE FACTS

Documents supporting the factual history are included in the attached Certification of Records ("Certification") filed herewith at Exhibit A, A-7 through A-16, and incorporated herein by reference.

Respondent is a general purpose recipient committee. This matter arose out of referrals from the County Clerk and the SOS. As a general purpose recipient committee, Respondent was required to file semiannual campaign statements pursuant to Section 84200, subdivision (a). Respondent failed to file a semiannual statement for the period between October 17, 2010 and December 31, 2010 by the January 31, 2011 deadline. The County Clerk sent Respondent a written notice on February 15, 2011 informing it that the statement was past due. (Certification Exhibit A-7.) The County Clerk sent Respondent another notice dated March 2, 2011 reiterating that the statement was past due and informing Respondent that it would refer the matter to the Commission if the statement was not filed within two weeks. (Certification Exhibit A-8.) Respondent failed to file the required statement.

The SOS also sent Respondent a notice dated April 7, 2011 indicating that Respondent had failed to file the required semiannual campaign statement for the October 17, 2011 through December 31, 2011 period. (Certification Exhibit A-9.) Respondent failed to file the statement and SOS referred the matter to the Commission. (Certification Exhibit A-10.)

Respondent also failed to file a semiannual campaign statement for the reporting period between January 1, 2011 and June 30, 2011 by the August 1, 2011 deadline. The SOS sent Respondent letters dated September 16, 2011 and November 15, 2011 regarding their failure to file the required statement. (Certification Exhibit A-11.) Respondent failed to respond and the

¹ Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a late in-kind contribution required by Section 84203.3) be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day. Relevant to this matter, January 31, 2009 was a Saturday, January 31, 2010 was a Sunday, and Jul 31, 2010 was a Saturday.

SOS referred the matter to the Commission on or about January 26, 2012. (Certification Exhibit A-12.)

The Commission's Enforcement Division sent Respondent a letter dated July 18, 2011 reminding Respondent of their obligation to file semiannual campaign statements. (Certification Exhibit A-13.) The Enforcement Division sent Respondent letters dated September 23, 2011 October 28, 2011, February 29, 2012, and March 29, 2012 (Certification Exhibit A-14) with proposed settlement agreements but Respondent did not respond to the letters.

Lastly, Respondent failed to file a semiannual campaign statement for the July 1, 2011 through December 31, 2011 reporting period. The SOS sent Respondent letters dated March 20, 2012 and May 22, 2012 regarding its failure to file the required statements. (Certification Exhibit A-15.) Respondent failed to respond and the SOS referred the matter to the Commission on or about August 27, 2012. (Certification Exhibit A-16.)

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

COUNT 1

Failure to File Semiannual Statement for October 17, 2010 – December 31, 2010 Period

As a recipient committee, Respondent had a duty to file a semiannual campaign statement by the January 31, 2011 deadline for the October 17, 2010 through December 31, 2010 period. Respondent failed to file the statement. By failing to file a semiannual campaign statement, Respondent violated Government Code section 84200, subdivision (a).

COUNT 2

Failure to File Semiannual Statement for January 1, 2011 – June 30, 2011 Period

As a recipient committee, Respondent had a duty to file a semiannual campaign statement by the August 1, 2011 deadline for the January 1, 2011 through June 30, 2011 period. Respondent failed to file the statement. By failing to file a semiannual campaign statement, Respondent violated Government Code section 84200, subdivision (a).

COUNT 3

Failure to File Semiannual Statement for July 1, 2011 – December 31, 2011 Period

As a recipient committee, Respondent had a duty to file a semiannual campaign statement by the January 31, 2012 deadline for the July 1, 2011 through December 31, 2011 period. Respondent failed to file the statement. By failing to file a semiannual campaign statement, Respondent violated Government Code section 84200, subdivision (a).

CONCLUSION

This matter consists of three counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count, for a total maximum administrative penalty of \$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.

Other similar cases regarding failure to file semiannual campaign statements recently approved by the Commission include:

- *In the Matter of Michael Glover, Michael G. Glover for Assembly, Glover for Assembly 2008, Committee to Elect Mike Glover for 70th AD, 2010, and Doris Neel*, FPPC No. 09/615: Respondents failed to file four semiannual campaign statements over a three year period. In a default decision on March 15, 2012, the Commission found four counts of failing to file semiannual campaign statements and imposed a fine of \$3,000 per count.
- *In the Matter of Sergio Casanova and Alhambra Firefighter's PAC*, FPPC No. 10/521: Respondents failed to file three semiannual campaign statements. In a default decision on September 22, 2011 the Commission found three counts of failing to file a semiannual campaign statement and imposed a fine of \$2,500 per count.
- *In the Matter of Elizabeth Todd-Gallardo*, FPPC No. 07/544: Respondent failed to file three consecutive semiannual campaign statements. In a default decision on May 13, 2010, the Commission found three counts of failing to file semiannual campaign statements and imposed a fine of \$2,500 per count.

In this matter, Respondent failed to file campaign statement as required by the Act. Failure to file a campaign statement is a serious violation of the Act. The public harm inherent in such a violation is that the public is deprived of important and timely information from Respondent regarding the payments Respondent received and amounts expended in connection with supporting or opposing candidates and/or ballot measures.

Respondent was well aware of its filing obligations as it has experience with filing campaign statements dating back to 1988. Respondent received multiple reminders of its filing obligations from the County Clerk, the SOS, and the Commission and it ignored all of them.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Five Hundred Dollars (\$2,500) for each of the three counts is recommended, for a total penalty of Seven Thousand Five Hundred Dollars (\$7,500).