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FAIR POLITICAL PRACTICES COMMISSION
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Attorney for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of	) FPPC No. 12/301
	)
	)
	) STIPULATION, DECISION and
YES ON PROPOSITION A,	) ORDER
	)
	)
	)
Respondent.	)

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent Yes on Proposition A, hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

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

It is further stipulated and agreed that Respondent violated the Political Reform Act by failing to provide proper written disclosure for a period of at least five seconds of a broadcast of thirty seconds on a television advertisement or to provide for the reasonable degree of color contrast between the background and text of the statement, in violation of Government Code Section 84503 (Count 1).

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

Dated: _____

_____
Gary S. Winuk, Chief of Enforcement, on behalf of the
Fair Political Practices Commission

Dated: _____

_____
Bill Baber
Yes on Proposition A

DECISION AND ORDER

The foregoing Stipulation of the parties "In the Matter of Yes on Proposition A, FPPC No. 12/301," 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 Yes on Proposition A (Respondent Committee) was formed in 2012 as a primarily formed ballot measure committee supporting Proposition A, which was placed on the June 5, 2012 ballot in the City of San Diego.

The committee ran a television advertisement on or about May 2012 in support of Proposition A. The proposition was to prohibit the City of San Diego from requiring project labor agreements on city construction projects.

At the end of the advertisement, the text PAID FOR BY FAIR AND OPEN COMPETITION – SAN DIEGO – YES ON A, WITH MAJOR FUNDING BY ASSOCIATED BUILDERS & CONTRACTORS OF SAN DIEGO, INC. AND ASSOCIATED GENERAL CONTRACTORS OF SAN DIEGO, INC. was displayed.

The disclosure statement was not displayed on a contrasting background, but instead was displayed on a multi-colored background that reflected several people standing just behind the disclosure text. Additionally, the text of the advertising disclosure statement was displayed for less than five seconds. Therefore, the public was deprived of the opportunity to sufficiently view the disclosure.

Respondent was required under the Political Reform Act (the "Act")[1], to provide specified written disclosures under the Act, for a period of at least five seconds of a broadcast of thirty seconds, and with the reasonable degree of color contrast between the background and text of the statement for all television advertisements, but failed to do so.

The Fair Political Practices Commission (FPPC) contacted the principal liability officer, Bill Baber, to direct the campaign committee to correct the disclosure deficiencies immediately or the FPPC would seek immediate injunctive relief in Superior Court. The Committee promptly complied with this direction, and the advertisement was corrected 6 days prior to the election date. Furthermore, only the advertisement containing the corrected disclosure statements aired after the committee was contacted.

For the purposes of this Stipulation, Respondent's violation is as follows:

COUNT 1: Respondent violated the Political Reform Act by failing to provide written disclosure for a period of at least five seconds with the

[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 18109 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.

reasonable degree of color contrast between the background and text of the statement on a television advertisement, in violation of Government Code Section 84503.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 84503, is to ensure that the supporters of campaign advertisement are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act therefore establishes a campaign disclosure requirement related to advertisements to accomplish this purpose.

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

Identification of Committee

Any committee which supports or opposes a ballot measure, shall print or broadcast its name as provided in this section as part of any advertisement or other paid public statement. Section 84503. If candidates or their controlled committees, as a group or individually, meet the contribution thresholds for a person, they shall be identified by the controlling candidate's name. Government Code Section 84504.

Advertisements

An "advertisement" means any general or public advertisement which is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure or ballot measures. Government Code Section 84501.

Contents of Disclosure Statements - Advertisement Disclosure

Where a "disclosure statement" or "disclosure" is required for an advertisement under Sections 84503, 84504, 84506, or 84506.5, the following shall apply to the committee that authorized and paid for the advertisement:

> FPPC Regulation 18450.4 (b) (3): The disclosures required by Sections 84503, 84504, 84506, and 84506.5 shall be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of the person(s) or committee(s) that paid for the communication, as specified below.
>
> > (A) Video: The information shall be both written and spoken either at the beginning or at the end of the communication, except that if the disclosure *statement is written for at least five seconds of a broadcast of thirty seconds* or less or ten seconds of a sixty second broadcast, a spoken disclosure statement is not required. The written disclosure statement shall be of sufficient size to be readily legible to an average viewer and air for not less than four seconds. (emphasis added).

…

(G) Electronic Media: The disclosure statement on electronic media advertisements must be presented in a clear and conspicuous manner. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked. An electronic media disclosure statement is considered clear and conspicuous if it meets the following, as applicable to the advertisement:

(3) …The written disclosure statement shall appear with a *reasonable degree of color contrast between the background and the text of the statement*, must be of sufficient size to be readily legible to an average viewer and air for not less than four seconds. (emphasis added).

Remedies for Violations; Fines

In addition to the remedies provided for in Chapter 11 (commencing with Section 91000) of the Act, any person who violates Section 84503 or 84504 of the Act is liable in a civil or administrative action brought by the Commission or any person for a fine up to three times the cost of the advertisement, including placement costs. This also applies to any person who purposely causes any other person to violate any provision of this article or who aids and abets any other person in a violation. Government Code Section 84510.

SUMMARY OF THE FACTS

Respondent Yes on Proposition A is a primarily formed ballot measure committee. It was created in 2012 to support Proposition A, which appeared on the June 5, 2012 ballot in the City of San Diego.

The committee ran a television advertisement on or about May 2012 in support of Proposition A. The proposition was to prohibit the City of San Diego from requiring project labor agreements on city construction projects.

At the end of the advertisement, the text PAID FOR BY FAIR AND OPEN COMPETITION – SAN DIEGO – YES ON A, WITH MAJOR FUNDING BY ASSOCIATED BUILDERS & CONTRACTORS OF SAN DIEGO, INC. AND ASSOCIATED GENERAL CONTRACTORS OF SAN DIEGO, INC. was displayed.

The disclosure statement was not displayed on a contrasting background, but instead was displayed on a multi-colored background that reflected several people standing just behind the disclosure text. Additionally, the text of the advertising disclosure statement was displayed for less than five seconds. Therefore, the public was deprived of the opportunity to sufficiently view the disclosure.

The Fair Political Practices Commission (FPPC) contacted the principal liability officer, Bill Baber, to direct the campaign committee to correct the disclosure deficiencies immediately or the FPPC would seek immediate injunctive relief in Superior Court. The Committee promptly complied with this direction, and the advertisement was corrected 6 days prior to the election date. Furthermore, only the advertisement containing the corrected disclosure statements aired after the committee was contacted.

COUNT 1

(Failure to Provide Proper Written Disclosure)

Respondent Committee ran a television advertisement on or about May 2012 that did not air the proper written disclosure of the committee name. Specifically, the committee name failed to run the required five seconds of a broadcast of thirty seconds, and also the disclosure did not meet the requirement of reasonable degree of color contrast between the background and text of statement.

By failing to provide proper written disclosure on a television advertisement Respondent violated Government Code Section 84503.

CONCLUSION

This matter consists of one count of violating the Act, which carry 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, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

The failure to provide proper written disclosure for an advertisement can be a serious violation of the Act because it deprives the public of important information regarding the funding of the advertisement. In this matter, Respondents failed to air the disclosure for the required amount of time on their television advertisement, and failed to display the advertisement disclosure with a reasonable degree of color contrast between the background and the text of the statement.

In mitigation, however, Respondents have no history of violating the Act, and cooperated with the investigation. Additionally, Respondents immediately corrected their television advertisement when notified of the violation.

Recent penalties approved by the Commission concerning violations of Section 84503, include:

- ***In the Matter of Yes on Proposition B, FPPC No. 10/932.*** This case involved a one count violation for failure to provide written disclosure for a period of at least five seconds identifying persons whose contributions were $50,000 or more on a television advertisement, in violation of Government Code Section 84503. A $2,000 penalty was approved by the Commission on January 28, 2011.

- ***In the Matter of Committee for Proposition A, The Rural Lands Initiative, and Judith Sakrison, FPPC No. 04/097.*** This case involved a violation consisting of 11 counts including: failed to maintain campaign records in violation of Government Code Section 84104 (2 counts), failed to disclose required contributor information in violation of Government Code Section 84211, subdivision (f) (4 counts), and failed to include a proper disclosure statement in two television advertisements in violation of Government Code Section 84503 (2 counts). For the violations of Government Code Section 84503, a $2000 per count penalty was approved by the Commission on August 14, 2008.

Because Respondents failed to run their disclosure statement for the required five seconds of a broadcast of thirty seconds, and the disclosure also did not meet the requirement of a reasonable degree of color contrast between the background and the text of the statement, imposition of an administrative penalty in the amount of Two Thousand Five Hundred Dollars ($2,500) is recommended. This is in the mid-range of penalties, but below the maximum penalty recommended for violation of Section 84503.

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Five Hundred Dollars ($2,500) is recommended.

* * * * *