

1 GARY S. WINUK
Chief of Enforcement
2 ANGELA J. BRERETON
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
4 428 J Street, Suite 620
5 Sacramento, CA 95814
Telephone: (916) 322-5660
Facsimile: (916) 322-1932

6 Attorneys for Complainant

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

10
11 In the Matter of) FPPC No. 12/489
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
Respondent.) (Gov. Code §11503)

Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and Order for consideration at its next regularly scheduled meeting.

Respondent Guadalupe “Lupe” Ramos Watson has been provided advice by an attorney of her choosing as to her rights to a probable cause conference and an administrative hearing under the Political Reform Act, Administrative Procedure Act, and all other relevant laws. Respondent has chosen to waive all such rights to a probable cause conference and administrative hearing and to allow this matter to proceed to a default decision.

In this case, Respondent Guadalupe “Lupe” Ramos Watson violated the Political Reform Act as described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the law and evidence in this matter. This Default Decision and Order is submitted to the Commission to obtain a final disposition of this matter.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

DECISION AND ORDER

The Commission issues this Default Decision and Order and imposes an administrative penalty of Four Thousand Dollars (\$4,000) upon Respondent Guadalupe “Lupe” Ramos Watson, payable to the “General Fund of the State of California.”

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

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Guadalupe “Lupe” Ramos Watson (“Respondent”) is a member of the City of Indio City Council. Respondent has served on Indio’s City Council since 2004, and she served as Mayor from 2007 to 2008 and from 2010 to 2011.

At all relevant times, Respondent was a managing member of Guadalusara Investments, LLC, a real estate investment and development company. On June 19, 2006, Guadalusara Investments, LLC, entered into a contract to sell real property located at 83085 Indio Blvd, Indio, CA, to MAGIC, LLC, and between October 2006 and December 2008, MAGIC, LLC, made eight (8) payments to Guadalusara Investments, LLC, for the sale of the property, totaling \$195,750.

In this case, Respondent made a governmental decision as a member of the Indio City Council in which the real property located at 83085 Indio Blvd was within 500 feet of the boundaries of the property involved in the governmental decision, in violation of Government Code Section 87100 of the Political Reform Act (the “Act”),¹ which prohibits public officials from making any governmental decision in which they know or have reason to know they have a financial interest.

For the purposes of this Stipulation, Respondent’s violations are stated as follows:

COUNT 1: Respondent Guadalupe “Lupe” Ramos Watson, on November 14, 2007, as a member of the City of Indio City Council, made a governmental decision in which she had a financial interest, by voting to authorize a lease agreement between the Redevelopment Agency for the City of Indio and KEB Enterprises, LLC, for the lease of the Indio Transportation Center site, which was located within 500 feet of real property in which Respondent held an economic interest of \$2,000 or more, in violation of Government Code Section 87100.

PROCEDURAL 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).)

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.

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-2, 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 her, through counsel, with a packet containing a cover letter, a Report in Support of a Finding of Probable Cause (the “Report”), a fact sheet regarding probable cause proceedings, selected sections of the California Government Code regarding probable cause proceedings for the Fair Political Practices Commission, and selected regulations of the Fair Political Practices Commission regarding probable cause proceedings. (Certification, Exhibit A-1.) Respondent was served by certified mail, return receipt requested.² The packet was delivered by the USPS on November 13, 2012. (Certification, Exhibit A-2.) Therefore, the administrative action commenced on November 13, 2012, the date the packet was delivered via certified mail, and the five year statute of limitations was effectively tolled on this date.

B. Waiver of Rights Under the Act and the APA

Respondent has been informed of the charges set forth herein and her rights to a probable cause hearing and an administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws. However, Respondent has agreed to waive these rights, and Respondent is aware that by doing so, the Enforcement Division will proceed with this default recommendation to the Commission, which, if approved by the Commission, will result in Respondent being held liable for the penalty amount of \$4,000.

A copy of Respondent’s written waiver in this regard is submitted herewith as Exhibit B and incorporated herein by reference as if in full.

///

² 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.)

NATURE OF DEFAULT PROCEEDINGS

In this situation, where the Respondent has waived her rights to a probable cause conference and an administrative hearing, the Commission may take action based upon the Respondent's express admissions (if any) or upon other evidence, and affidavits may be used as evidence without any notice to the Respondent. (Section 11520, subdivision (a).)

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 violation in question.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to prevent conflicts of interest by public officials. (Section 81002, subd. (c).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

Conflicts of interests

The primary purpose for 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).)

To prevent conflicts of interest in governmental decision making, Section 87100 prohibits state and local public officials from making, participating in making, or attempting to use their official positions to influence a governmental decision in which they know, or have reason to know, that they have 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 a recognized economic interest of the official. For purposes of Sections 87100 and 87103, there are eight analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision. Steps seven and eight of the standard step by step analysis are exceptions to the Act, and the respondent has the responsibility to provide facts and evidence that support the use of these exceptions. (Regulations 18707, 18708.) Because the facts and evidence do not indicate that either of the exceptions are applicable to this case, these exceptions are not discussed. The six relevant steps of the analysis follow below.

First, the individual must be a public official as defined by the Act. Section 82048 defines "public official" to include members of a state or local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.1, subdivision (a) (1), a public official “makes a governmental decision” when the official votes on a matter.

Third, the official must have an economic interest that may be financially affected by the governmental decision. A public official has an economic interest in any real property in which the public official has a direct or indirect interest worth \$2,000 or more. (Regulation 18703.2, subd. (a).) Pursuant to Section 82033, “interest in real property” includes any ownership interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official if the fair market value of the interest is two thousand dollars (\$2,000) or more. Interests in real property of an individual includes a pro rata share of interests in real property of any business entity in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Regulation 18704.2 enumerates six circumstances under which a public official’s real property is directly involved in a governmental decision. As is applicable to the facts for this case, these include when the real property is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. (Regulation 18704.2, subd. (a)(1).)

Fifth, it must be determined what materiality standard will apply to the economic interest of the public official. If the real property in which the public official has an economic interest is directly involved in the governmental decision, the financial effect of the governmental decision on the real property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property. (Regulation 18705.2, subd. (a).)

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely, not just a mere possibility, that one or more of the materiality standards applicable to that economic interest will be met as a result of the governmental decision. (*In re Thorner* (1975) 1 FPPC Ops. 198.)³

When determining whether a governmental decision will have a reasonably foreseeable material financial effect on a respondent’s economic interest there are several factors that may be considered. These factors include the scope of the governmental decision in question, and the extent to which the occurrence of the material financial effect is contingent upon intervening events, not including future governmental decisions by the official’s agency, or any other agency appointed by or subject to the budgetary control of the official’s agency. (Regulation 18706, subd. (b).)

³ The *Thorner* opinion was codified in Regulation 18706 to provide that a material financial effect on an economic interest is reasonably foreseeable, within the meaning of Section 87103, if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision.

SUMMARY OF THE FACTS

Respondent Guadalupe “Lupe” Ramos Watson (“Respondent”) is a member of the City of Indio City Council. Respondent has served on Indio’s City Council since 2004, and she served as Mayor from 2007 to 2008 and from 2010 to 2011.

At all relevant times, Respondent was a managing member of Guadalusara Investments, LLC, a real estate investment and development company. Respondent is one of only two individuals identified as members of Guadalusara Investments, LLC, in documents signed by Respondent and maintained by the Secretary of State. Respondent listed Guadalusara Investments, LLC, in Schedule A-2 (ownership interest in a business entity of 10% or greater) of her 2007 annual statement of economic interests, and included MAGIC, LLC as a single source of income over \$10,000.00.

In June 2006, Guadalusara Investments, LLC, entered into a contract to sell real property, APN 611-400-007, located at 83085 Indio Blvd, Indio, CA, to MAGIC, LLC. Guadalusara Investments, LLC, loaned \$180,000 of the purchase price to MAGIC, LLC. According to the “Note Secured By Deed Of Trust” dated June 29, 2006, the principal amount was to be paid by MAGIC, LLC, in quarterly installments until July 2009 at 7% interest rate. Between October 2006 and December 2008, MAGIC, LLC, made at least eight (8) payments to Guadalusara Investments, LLC, for the sale of the property, totaling \$195,750, as follows:

Date	Amount	Note on Check
10/11/2006	\$3,150.00	“Oct 2006 Note Payment”
04/09/2007	\$3,150.00	“April Payment”
10/10/2007	\$3,150.00	“83085 Indio Blvd Interest”
01/19/2008	\$3,150.00	
02/11/2008	\$60,000.00	“83-085 Indio Blvd. \$120K Balance”
03/14/2008	\$60,000.00	
07/12/2008	\$61,050.00	“Principal Payoff \$60,000 + \$1,050 Interest”
12/11/2008	\$2,100.00	“April Interest Avg Balance = \$120,000 x .07 / 4 = \$2,100
Total	\$195,750.00	

The agreement between Guadalusara Investments, LLC, and MAGIC, LLC, gave Guadalusara Investments, LLC, a beneficial interest in APN 611-400-007 until the principal balance was paid in full and the Deed of Reconveyance was recorded with the Riverside County Assessor. The Deed of Reconveyance was recorded on December 19, 2008.

As of November 14, 2007, MAGIC, LLC, had paid interest only, in an amount of \$9,450. Thus, Respondent’s interest in APN 611-400-007 was at least \$180,000, since no principal had yet been paid.

On November 14, 2007, according to the minutes of the City of Indio City Council meeting, as a member of the City of Indio City Council, Respondent moved and voted to authorize a lease agreement between the Redevelopment Agency for the City of Indio and KEB Enterprises, LLC, for the lease of the real property on which KEB Enterprises, LLC, would build

the Indio Transportation Center. The proposed site for the Indio Transportation Center was directly across Indio Blvd from APN 611-400-007.

Litigation later occurred between KEB Enterprises, LLC, and the City of Indio, during which Respondent was deposed. In her deposition testimony, Respondent admitted that she had a conflict of interest regarding voting on the contract to develop the Indio Transportation Center at the time of the vote on November 14, 2007 because she “owned real property in the general vicinity.”

Accordingly, Respondent committed one (1) violation of the Act, as follows:

Count 1

(Made a Governmental Decision in Which the Public Official Had a Financial Interest)

On November 14, 2007, as a member of the City of Indio City Council, Respondent Ramos Watson moved and voted to authorize a lease agreement between the Redevelopment Agency for the City of Indio and KEB Enterprises, LLC, for the lease of the real property on which KEB Enterprises, LLC, would build the Indio Transportation Center, the site for which was within 500 feet of real property in which Respondent held an interest of \$2,000 or more.

The relevant analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision are set forth below.

Step One: Respondent Was a Public Official as Defined By the Act

As a member of the City of Indio City Council, Respondent was a member of a local government agency. Therefore she was a public official as defined in Sections 82041 and 82048.

Step Two: Respondent Made Governmental Decisions

On November 14, 2007, as a member of the City of Indio City Council, Respondent made a governmental decision when she moved and voted to authorize a lease agreement between the Redevelopment Agency for the City of Indio and KEB Enterprises, LLC, for the lease of the real property on which KEB Enterprises, LLC, would build the Indio Transportation Center. Thus, Respondent made a governmental decision pursuant to Section 87100 and Regulation 18702.

Step Three: Respondent Had an Economic Interest in APN 611-400-007

At all relevant times, Respondent Ramos Watson was a managing member of and held an ownership interest of 10% or greater in Guadalusara Investments, LLC, a real estate investment and development company.

In June 2006, Guadalusara Investments, LLC, entered into a contract to sell real property, APN 611-400-007, which was located at 83085 Indio Blvd, Indio, CA, to MAGIC, LLC. Guadalusara Investments, LLC, loaned \$180,000 of the purchase price to MAGIC, LLC. The agreement between Guadalusara Investments, LLC, and MAGIC, LLC, gave Guadalusara Investments, LLC, a beneficial interest in APN 611-400-007 until the principal balance was paid

in full and the Deed of Reconveyance was recorded with the Riverside County Assessor. As of November 14, 2007, MAGIC, LLC, had paid interest only, in an amount of \$9,450. Thus, Guadalusara Investments, LLC's interest in APN 611-400-007 was at least \$180,000, since no principal had yet been paid.

Respondent, owned at least 10% of Guadalusara Investments, LLC, and as much as 50%. Thus, on November 14, 2007, Respondent's interest in APN 611-400-007 was at least \$18,000, and at most \$90,000. Therefore, Respondent had an economic interest of \$2,000 or more in APN 611-400-007, for the purposes of Section 87103, subdivision (b).

Step Four: Respondent's Economic Interest Was Directly Involved in the Decisions

The governmental decision Respondent made on November 14, 2007, involved a lease of real property from the City of Indio Redevelopment Agency to KEB Enterprises, Inc. The property involved in the decision was located directly across Indio Blvd and within 500 feet of APN 611-400-007, real property in which Respondent had an economic interest of \$2,000 or more. Therefore, APN 611-400-007 was directly involved in the governmental decision. (Regulation 18704.2, subd. (a).)

Step Five: Applicable Materiality Standard

Since APN 611-400-007 was directly involved in the governmental decision, the financial effect of the governmental decision is presumed to be material. (Regulation 18705.2, subd. (a).)

Step Six: It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

In this case, the material financial effect on APN 611-400-007 of the governmental decision was reasonably foreseeable. On November 14, 2007, the property was a nightclub/restaurant, which was owned/operated by MAGIC, LLC. A new transportation hub across the street from APN 611-400-007 would bring many more people to the area of the nightclub/restaurant, many being potential customers. Also, the new transportation center would provide options for patrons of the nightclub/restaurant for safe transportation to and from the establishment. Further, the new transportation center would increase the value of APN 611-400-007 because more people would be drawn to the area, creating more business for the nightclub/restaurant, and more desirability for APN 611-400-007 and the surrounding properties. It should also be noted that increasing business for the nightclub/restaurant also increased the likelihood that MAGIC, LLC, would complete payment of the principal on the loan from Guadalusara Investments, LLC. Thus, the material financial effect on APN 611-400-007 of the governmental decision was reasonably foreseeable.

Therefore, by making the governmental decision on November 14, 2007 in which she had a financial interest, Respondent Ramos Watson committed one violation of Government Code Section 87100.

///

CONCLUSION

This matter consists of one count of violating the Act, carrying a maximum administrative penalty of \$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.

For Count 1, the conduct of making a governmental decision in which an official has a financial interest is a serious violation of the Act as it may create the appearance that a governmental decision was made on the basis of an official's financial interest.

In this matter, Respondent moved and voted to authorize a lease agreement between the Redevelopment Agency for the City of Indio and KEB Enterprises, LLC, for the lease of the real property on which KEB Enterprises, LLC, would build the Indio Transportation Center, the site for which was within 500 feet of real property in which Respondent held an interest of \$2,000 or more.

Respondent knew or should have known that she had a conflict of interest in this regard. In multiple website biographies, Respondent states that she "has an extensive background as a businesswoman;" "she owned a small business based in Indio that specialized in engineering, commercial planning for local projects and a real estate investment firm;" and she "managed the finances of her companies." Thus, Respondent holds herself out as a savvy businesswoman with financial and real estate experience. Respondent therefore knew or should have known at the time of the vote on November 14, 2007, that she held an interest in APN 611-400-007 through her position as a managing member of Guadalusara Investments, Inc. Indeed, despite failing to recuse herself from the vote, she admitted in subsequent deposition testimony that she had a conflict of interest regarding voting on the contract to develop the Indio Transportation Center at the time of the vote on November 14, 2007 because she "owned real property in the general vicinity." Thus, Respondent's actions, taken as a whole, show a serious violation of the Act that was, at least, negligent, and at worst, deliberate.

Respondent refused to be interviewed by Enforcement Division staff during the investigation of this matter.

In mitigation, Respondent has no prior enforcement history with the Commission, and Respondent disclosed both Guadalusara Investments, LLC, and MAGIC, LLC, on her applicable statements of economic interests.

Recent prior enforcement actions approved by the Commission involving violations of the same Government Code sections as in this Stipulation are as follows:

Conflicts of Interests:

- **In the Matter of Jerry “Pat” Maguire, FPPC No. 10/114.** – Respondent, as a member of the Board of Directors for the El Camino Irrigation District, made two governmental decisions, which had a material financial effect on his real property, by voting to approve an irrigation plan concerning real property located within 500 feet of real property owned by Respondent. Penalty per relevant count: \$3,500. Approved by Commission January 2011.
- **In the Matter of Dendra Dengler, FPPC No. 09/438** – Respondent, as a member of the Board of Directors for the Manila Community Services District, made a governmental decision, which had a material financial effect on her real property, by voting to approve the purchase of certain real property that was within 500 feet of real property owned by Respondent. Penalty per relevant count: \$4,000. Approved by Commission January 2011.
- **In the Matter of Lawrence Franzella, FPPC No. 04/004.** – Respondent, as mayor of the City of San Bruno, made a governmental decision, which had a material financial effect on his real property, by voting to approve a plan to relocate the train station that was within 500 feet of rental real property owned by Respondent. Penalty per relevant count: \$5,000. Approved by Commission December 2008.

RECOMMENDED PENALTY

The facts of this case, including aggravating and mitigating factors, justify imposition of the recommended penalty of Four Thousand Dollars (\$4,000) for Count 1.

* * * * *

Intentionally left blank