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7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

9 STATE OF CALIFORNIA

10 In the Matter of) FPPC No. 10/930
11)
12)
12 GEORGE EADS and COMMITTEE TO ELECT) DEFAULT DECISION AND ORDER
13 GEORGE EADS MARINA COAST WATER)
DISTRICT NOVEMBER 2, 2010,)
14 Respondents.) (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 George Eads and
20 Committee to Elect George Eads Marina Coast Water District November 2, 2010 have been served with
21 all of the documents necessary to conduct an administrative hearing regarding the above-captioned
22 matter, including the following:

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

26 ¹The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections
27 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 respondents' right to a
6 hearing on the merits of the Accusation. The Statement to Respondent, served on Respondents on
7 November 19, 2012 explicitly stated that a Notice of Defense must be filed in order to request a hearing.
8 Respondents failed to file a Notice of Defense within fifteen days of being served with the Accusation.

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

13 Respondents George Eads and Committee to Elect George Eads Marina Coast Water District
14 November 2, 2010 violated the Political Reform Act as described in Exhibit 1, and accompanying
15 declarations, 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.

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19 Dated: _____

20 Gary S. Winuk, Chief of Enforcement
21 Fair Political Practices Commission
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1 **ORDER**

2 The Commission issues this Default Decision and Order and imposes an administrative penalty
3 of Five Thousand Five Hundred Dollars (\$5,500.00) upon Respondents George Eads and Committee to
4 Elect George Eads Marina Coast Water District November 2, 2010, payable to the “General Fund of the
5 State of California.”

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

9
10
11 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent George Eads (“Respondent Eads”) ran for director on the Marina Coast Water District (“District”) Board in 2010. Respondent Committee to Elect George Eads Marina Coast Water District November 2, 2010 (“Respondent Committee”) was his committee. Respondent Eads and Respondent Committee are referred to collectively hereafter as “Respondents.”

Under the Political Reform Act (the “Act”)¹, a mass mailing sent by a candidate or committee must include the name, street address, and city of the candidate or committee. Also, under the Act a candidate is required to establish a campaign bank account for all campaign funds, and must maintain adequate accounting records. As set forth below, Respondents violated the Act by sending out three mass mailers that did not include Respondents’ street address and city, failing to establish a campaign bank account, and inadequate recordkeeping of campaign activity.

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

- COUNT 1: Respondents sent three mass mailers prior to the 2010 General Election that did not display the street address and city of the Respondents in violation of Section 84305, subdivision (a).
- COUNT 2: Respondents failed to establish a campaign bank account and Respondent Eads deposited campaign contributions and made campaign expenditures from his personal bank account in violation of Section 85201.
- COUNT 3: Respondents failed to maintain detailed accounts, records, bills and receipts necessary to prepare campaign statements and to establish campaign statements were properly filed in violation of Section 84104 and Regulation §18401.

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

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.

Procedure Act (the “APA”).¹ (Section 83116.) A hearing to determine whether the Act was 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.

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

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 packet containing a cover letter, a Report in Support of a Finding of Probable Cause (the "Report"), a 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.) Respondents were served by certified mail, return receipt requested.¹ The original return receipt addressed to Respondents was signed on October 15, 2012, and was returned to the Enforcement Division. (Certification, Exhibit A-2.) Therefore, the administrative action commenced on October 15, 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 Respondents that they had 21 days in which to request a probable cause conference and/or to file a written response to the Report. 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 Zackery Morazzini, General Counsel for the Commission on November 7, 2012. (Certification, Exhibit A-3.)

On November 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, probable cause proceedings shall be heard by the Commission's General Counsel or an attorney from the Commission's legal division. (Regulation 18361, subd. (b).) If the hearing officer 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

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.)

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 November 7, 2012, the Commission's Chief of Enforcement, Gary S. Winuk, issued an Accusation against Respondents in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondents, two copies of a Notice of Defense Form, and copies of Government Code Sections 11506 through 11508, were personally served on Respondents on November 19, 2012. (Certification, Exhibit A-5.)

The "Statement to Respondent" notified Respondents 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 December 4, 2012.

As a result, on February 6, 2013, 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 February 28, 2013. (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

Mass Mailer Sender Identification Requirements

Section 84305, subdivision (a) prohibits a candidate or committee from sending a mass mailer unless the name, street address, and city of the candidate or committee are shown on the mailer. Section 82041.5 defines a “mass mailing” as 200 or more substantially similar pieces of mail. The “sender” of a mass mailer is the candidate or committee who pays for the largest portion of expenditures attributable to the design, printing, and posting of the mailer. (Regulation §18435.)

Campaign Bank Account

Section 85201 requires every candidate or committee to establish a campaign bank account prior to accepting any contributions. A candidate must deposit all campaign contributions received in the campaign bank account and make all campaign expenditures from the account. (Section 85201, subd. (c) and (e).) Money in a campaign account shall be spent only on expenses associated with the candidate’s election. (Regulation §18524, subd. (a).)

Campaign Recordkeeping

Section 84104 places a duty on a candidate to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements and to establish that campaign statements were properly filed. Regulation §18401 details what documents a candidate must retain. Generally, for any contributions received or expenditures made, the candidate must retain source documents sufficient to show continuous computation of campaign account balances. Examples of such documents include copies of checks, check registers, deposit slips, etc. Larger contributions and expenditures require the candidate to retain additional documentation. Candidates for local offices are required to retain these records for four years from the date of the election. (Regulation §18401, subd. (b)(2).)

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-8, and incorporated herein by reference.

In 2010, Respondent Eads ran for a director position on the District’s Board of Directors. He did not win one of the three available positions on the Board. This case resulted from a complaint from a customer of the District who received a mailer sent by Respondent Eads and two other candidates. An investigation by the Commission revealed that Respondents had failed to establish a campaign bank account separate from Respondent Eads personal checking account and failed to retain any financial documents from the campaign.

Mass Mailers

Respondent Eads and fellow candidates Howard Gustafson and William Lee collaborated to have printed and mailed three joint mass mailers prior to the 2010 election. The mailers encouraged voters to vote for the three men for the three available District Board director positions. A friend of Mr. Lee named Bob Drake coordinated the effort to produce the mailers.

The candidates split the total cost of each mailer evenly amongst the three of them and each candidate approved the content of the mailers. The mailers were on cardstock, with printing on both sides and sent by bulk rate U.S. Mail. They had 2,500 units printed for the first mailer, 2,681 units for the second mailer, and 2,681 units for the third mailer. (See Certification, Exhibit A-7 for copies of the mailers with the front side of each mailer printed on one page and the back side printed on the next page.)

Each mailer had a picture of the three candidates, as well as their name and email address. However, the first mailer did not have the street address or city for any of the three candidates printed on it. The second and third mailers did have the street address and city for Mr. Lee printed on them but did not have the street address or city for Respondent Eads or Mr. Gustafson.

Campaign Bank Account

Respondent Eads' bank records show he deposited multiple checks that were campaign contributions into a checking account with JP Morgan Chase Bank. That account is listed on Respondents' Statement of Organization (Form 410) as the campaign bank account. But many of the deposits and expenditures from the account are of a personal nature, including direct deposit payments from Respondent Eads' employer, as well as debit card expenditures seemingly unrelated to campaign activities. Further, the name on the account is "George Eads," not the Respondent Committee's name.

Campaign Recordkeeping

A Special Investigator with the Commission called Respondent Eads on April 20, 2012 to obtain copies of Respondents' campaign records. Respondent Eads said he did not have any campaign records because he shredded the records after the election due to identity theft concerns. (See Investigation Report at Certification, Exhibit A-8.) Respondents did not produce any campaign records.

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

Count 1

Failure to Display Address on Mass Mailers

Respondents sent three mass mailers prior to the 2010 General Election that did not display the street address and city of the Respondents in violation of Section 84305, subdivision (a).

Count 2

Failure to Establish a Campaign Bank Account

Respondents failed to establish a campaign bank account and Respondent Eads deposited campaign contributions and made campaign expenditures from his personal bank account in violation of Section 85201.

Count 3
Failure to Maintain Campaign Records

Respondents failed to maintain detailed accounts, records, bills and receipts necessary to prepare campaign statements and to establish campaign statements were properly filed in violation of Section 84104 and Regulation §18401.

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.

Mass Mailers

Cases recently before the Commission involving similar violations include:

- *In the Matter of California Voter Guide and Gary Crummitt*, FPPC No. 12/374: Respondents produced two slate mailers that did not display their address and city. On September 13, 2012, the Commission approved a penalty of \$1,500 per count for two counts of violating the Act.
- *In the Matter of Peter Cuthbert*, FPPC No. 10/1000: Respondent produced a mailer advocating the election of three local candidates that did not identify the respondent as the sender. The respondent had no experience with campaign reporting and no prior violations of the Act. The Commission approved a penalty of \$2,500 on October 13, 2011 for this violation.
- *In the Matter of Protect Burlingame and Kevin Osborne*, FPPC No. 09/804: Respondents sent two separate mailers with each advocating for the passage of two local measures. One of the mailers did not include the name, street address, or city of the committee. The other had the committee's name but not its street address or city. Respondents had no prior violations of the Act and no prior experience with campaign reporting. On April 11, 2011 the Commission approved a penalty of \$2,500 for one count of violating the Act.

In the case now before the Commission, Respondents failed to provide his street address and city on the mailer. The failure to provide proper sender identification for a mass mailer deprives the public of important information regarding the sponsor of the mailing. But Respondent Eads' name, email address and picture appeared on all three of the mass mailers so there was no intent to hide his identity or deceive the public as to the source of the mailer.

Campaign Bank Account

Cases recently before the Commission involving similar violations include:

- *In the Matter of George Barich*, FPPC No. 09/774: Respondent was a multi-term city councilman who ran for reelection in 2008. During the campaign, he violated the Act by failing to establish a campaign bank account, and deposited campaign contributions into, and making campaign expenditures from, his personal checking account. Respondent had no prior violations of the Act. On January 28, 2011, the Commission approved a penalty of \$3,000 for this violation.
- *In the Matter of Maria G Lopez, Campaign to Elect Maria Lopez, and Adolph J. Lopez*, FPPC No. 06/379: Respondent, a candidate elected to a local school board, made campaign expenditures of \$4,263 directly from her personal bank account even though she had a campaign account. Respondent had no prior violations of the Act. On October 8, 2009, the Commission approved a default judgment against respondents that imposed a penalty of \$3,000 for paying campaign expenditures from a personal bank account.

Failure to establish a campaign account for campaign expenditures and contributions makes it difficult to track and account for campaign funds, and ensure compliance with the Act. Respondent Eads deposited campaign contributions and made campaign expenditures from his personal checking account, making it difficult to determine the purposes for which he used the campaign contributions.

Campaign Recordkeeping

Cases recently before the Commission involving similar violations include:

- *Michael Glover, Michael G. Glover for Assembly 2008, and Committee to Elect Mike Glover for 70th AD, 2010*, FPPC No. 09/615: On multiple occasions, respondents failed to produce campaign records when requested by Commission staff. In a default decision on March 15, 2012, the Commission imposed a penalty of \$3,000 for the recordkeeping violation.
- *Arturo Chacon and Art Chacon for Water Board 2010*, FPPC No. 08/652: Respondents failed to retain records for a number of contributions received and expenditures made by the campaign resulting in two counts for violating Section 84104. On February 10, 2011, the Commission approved a penalty of \$2,000 per count for the recordkeeping violations.

- *Jennifer Rodriguez, Committee to Elect Jennifer Rodriguez, Rogelio Rodriguez, and Gerardo Rodriguez*, FPPC No. 05/158: Respondents provided no documents for campaign activity from 2007 and 2008 despite multiple requests from Commission staff resulting in two counts of violating Section 84104. On June 10, 2010, the Commission imposed a penalty of \$1,500 per count for the recordkeeping violations.

Destruction of campaign records causes significant public harm because it deprives the Commission and the public of information necessary to determine whether the candidate properly reported campaign activity. This is especially true in a case like this one where the Respondents campaign funds were comingled with personal funds in a single bank account.

In this case it appears the violations were due to Respondents' negligence and lack of knowledge about the law, not an intent to deceive the public or conceal information regarding the campaign. Respondents had no prior history of violating the Act and no experience with campaign reporting. Lastly, Respondent Eads did not win the election.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including the presence or absence of good faith, as well as consideration of penalties in prior enforcement actions, the recommended penalties are as follows: For Count 1, a penalty of \$1,000. For Count 2, a penalty of \$2,500. For Count 3, a penalty of \$2,000. The total recommended penalty is \$5,500.