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7 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

8 STATE OF CALIFORNIA

9
10 In the Matter of) FPPC No. 12/321
)
11 JAMES MCGHEE,) DEFAULT DECISION AND ORDER
)
12 Respondent.) (Gov. Code §§ 11506 and 11520)

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

15 Respondent James McGhee has been advised as to his rights to a probable cause hearing and
16 administrative hearing under the Political Reform Act, Administrative Procedure Act, and all other
17 relevant laws, and he has chosen to waive all such rights to a probable cause hearing and administrative
18 hearing and to allow this matter to proceed to a default decision.

19 In this case, Respondent James McGhee violated the Political Reform Act by failing to file a
20 Leaving Office Statement of Economic Interests within 30 days of leaving office, as described in Exhibit
21 1, which is incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate
22 summary of the law and evidence in this matter.

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1 This Default Decision and Order is submitted to the Commission to obtain a final disposition of
2 this case.

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4 Dated: _____

5 Gary S. Winuk, Chief of Enforcement
6 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 \$4,000 against Respondent James McGhee. This penalty is payable to the “General Fund of the State
4 of California.”

5 Pursuant to Government Code Section 83116, subdivision (b), the Commission further orders
6 Respondent James McGhee to immediately file with the Commission a Statement of Economic Interests
7 that discloses all reportable investments, business positions, interests in real property, and income that
8 Respondent held or received at any time during the January 1 through June 1, 2011, period.

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

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12 Dated: _____

Sean Eskovitz, Vice Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent James McGhee (“Respondent”) was a member of the California Board of Psychology (“Psychology Board”), an agency within the Department of Consumer Affairs, from 2003 until June 1, 2011. As a member of the Psychology Board, Respondent was a “designated employee” as defined in Section 82019, subdivision (a), of the Political Reform Act (the “Act”)¹ and in the conflict of interest code of the Department of Consumer Affairs. As a designated employee of the Psychology Board, Respondent was required, by Section 87300 and the Psychology Board’s conflict of interest code, to file a Leaving Office Statement of Economic Interests (“SEI”) with the Fair Political Practices Commission (the “Commission”) within 30 days after leaving office.

In this matter, Respondent failed to file a Leaving Office SEI with the Commission by July 1, 2011.

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

COUNT 1: As a member of the California Board of Psychology who left that position on June 1, 2011, Respondent James McGhee had a duty to file a Leaving Office Statement of Economic Interests with the Commission by July 1, 2011. Respondent James McGhee failed to file a Leaving Office Statement of Economic Interests with the Commission by July 1, 2011, in violation of Government Code section 87300.

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

Respondent has been informed of the charge set forth herein. Respondent has had the opportunity to consult with an attorney of his own choosing about his rights to a probable cause hearing and an administrative hearing under the Act, the Administrative Procedure Act, and all other relevant laws. Respondent has agreed to waive these rights and is aware that by doing so the Commission’s 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 attached as Exhibit A and incorporated herein by reference as if in full.

¹ The 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 Article 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.

NATURE OF DEFAULT PROCEEDINGS

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

SUMMARY OF THE LAW

The Commission is charged with the duty to administer, implement, and enforce the provisions of the Act. By enacting the Act, California voters specifically found and declared that previous laws regulating political practices had suffered from inadequate enforcement, and that it was their purpose to ensure that the Act be vigorously enforced. (Sections 81001, subd. (h), and 81002, subd. (f)). To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

All statutory references and discussions of law pertain to the Act's provisions as they existed at the time of the violation in question.

Leaving Office Statement of Economic Interests

Section 82019, subdivision (a), defines "designated employee" to include any member of any agency whose position is "designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest."

Section 87302, subdivision (b), requires that every agency's conflict of interest code require each designated employee of the agency to file a Leaving Office SEI within 30 days of leaving office, disclosing reportable investments, business positions, interests in real property, and income held or received at any time during the period between the closing date of the last statement required to be filed and the date of leaving office.

The conflict of interest code for the Department of Consumer Affairs requires all designated employees, including members of the Psychology Board, to file a SEI with the Commission within 30 days of leaving office, as required by Section 87302, subdivision (b).

Section 87300 declares that the requirements of an agency's conflict of interest code shall have the force of law, and any violation of those requirements shall be deemed a violation of the Act.

SUMMARY OF THE EVIDENCE

On February 11, 2010, the Commission fined Respondent \$2,000 for his failure to file a 2007 Annual SEI. On June 1, 2011, Respondent left the Psychology Board, and, as a designated employee under the conflict of interest code for the Department of Consumer Affairs, was therefore required to file a statement of economic interests with the Commission within 30 days.

On or about November 10, 2011, the Commission's Technical Assistance Division ("TAD") sent Respondent a letter advising him that his Leaving Office SEI was past due and requesting that he file the statement within 30 days.

On or about December 29, 2011, after receiving no reply from Respondent, TAD sent a second letter to Respondent advising him that his Leaving Office SEI remained past due. The letter further advised Respondent that the matter would be referred to the Commission's Enforcement Division (the "Enforcement Division") if the delinquent statement was not received by the Commission within 30 days.

On or about May 9, 2012, after receiving no reply from Respondent, TAD referred the matter to the Enforcement Division. On June 21, 2012, the Enforcement Division sent Respondent a settlement offer and requested that he file the delinquent statement. Respondent did not respond to the Enforcement Division's settlement offer, and, to date, the Commission has not received the delinquent statement.

On November 27, 2013, Respondent waived his right to a probable cause hearing and administrative hearing, and agreed that this case would proceed to a default recommendation by the Enforcement Division.

Accordingly, Respondent committed the following violation of the Act:

COUNT 1

Failure to File a Leaving Office Statement of Economic Interests

As a member of the California Board of Psychology who left that position on June 1, 2011, Respondent James McGhee had a duty to file a Leaving Office Statement of Economic Interests with the Fair Political Practices Commission by July 1, 2011. Respondent James McGhee failed to file a Leaving Office Statement of Economic Interests with the Fair Political Practices Commission by July 1, 2011, in violation of Government Code section 87300.

CONCLUSION

This matter consists of one count of violating the Act, which carries 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): 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.

The failure to file a SEI is a serious violation of the Act because it deprives the public of important information about a public official's economic interests which might lead to potential conflicts of interests regarding decisions they may make in their official capacity.

Recent fines imposed by the Commission for failing to file a SEI include:

- ***In the Matter of Jonathan Leone, FPPC No. 11/932 (Default Decision)***. This case involved two counts of failing to file Annual SEI's. The respondent disregarded numerous notifications from his filing officer and the Commission regarding his duty to file his Annual SEI's, and he did not file the delinquent statements. Additionally, Respondent remained in office, and showed a pattern of willful disregard of his filing obligations. On August 22, 2013, the Commission approved a \$5,000 penalty for each of these two counts.
- ***In the Matter of Jocelyn Woodward, FPPC No. 12/527 (Default Decision)***. This case involved one count of failing to file an Annual SEI. The respondent disregarded numerous written and telephonic notifications from the County of Los Angeles Board of Supervisors and the Commission regarding her duty to file her Annual SEI, and she did not file the delinquent statement. However, she had no prior history of enforcement actions. On September 19, 2013, the Commission approved a \$5,000 penalty for the one count.

In this matter, Respondent disregarded numerous written notifications from the Commission regarding his duty to file a Leaving Office SEI, and to date he has not filed the delinquent statement. Also, Respondent has previously been fined by the Commission for failing to file a SEI. Therefore Respondent was aware of his duty to file SEI's at the time he committed the violation in this matter and has shown a pattern of willful disregard of his filing obligations. However, Respondent voluntarily waived his rights to a probable cause hearing and an administrative hearing.

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 \$4,000 penalty is recommended.

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**FAIR POLITICAL PRACTICES COMMISSION
ENFORCEMENT DIVISION**

**WAIVER OF RIGHT TO PROBABLE CAUSE
HEARING AND ADMINISTRATIVE HEARING**

1. I, the undersigned, am the respondent in Fair Political Practices Commission (“FPPC”) Case No. 12/321.
2. I have had the opportunity to consult with an attorney of my choosing, and I understand my rights to a probable cause hearing and administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws.
4. I hereby waive my rights to a probable cause hearing and administrative hearing, and I understand and agree that this case will proceed to a default recommendation by the Enforcement Division of the FPPC.

Dated: _____

James McGhee, Respondent

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