

1 GARY S. WINUK
Chief of Enforcement
2 ZACHARY W. NORTON
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 13/204
13)
14 GARY SINGH, GARY SINGH FOR CITY)
COUNCIL 2010, and JOANN LEW,) DEFAULT DECISION and ORDER
15)
16 Respondents.) (Gov. Code, §§ 11506 and 11520)
17)

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

20 Respondents Gary Singh, Gary Singh for City Council 2010, and Joann Lew, have been provided
21 advice by an attorney of their choosing as to their rights to a probable cause hearing and an
22 administrative hearing under the Political Reform Act, Administrative Procedure Act, and all other
23 relevant laws, and they have chosen to waive all such rights to a probable cause hearing and
24 administrative hearing and to allow this matter to proceed to a default decision.

25 In this case, Respondents Gary Singh, Gary Singh for City Council 2010, and Joann Lew
26 violated the Political Reform Act as described in Exhibit 1, which is attached hereto and incorporated by
27 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the law and
28 evidence in this matter.

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

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

1 **DECISION AND ORDER**

2 The Commission issues this Default Decision and Order and imposes an administrative penalty of of
3 Fifteen Thousand Dollars (\$15,000) against Respondents Gary Singh, Gary Singh for City Council 2010,
4 and Joann Lew. This penalty is payable to “The General Fund of the Sate of California.”

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

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9 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Gary Singh has been a member of the Union City Planning Commission since 2006, and was an unsuccessful candidate for Union City Council in the November 2, 2010 election. He is also the owner of Bay Star Auto Care, an automobile repair business, located in Union City. At all relevant times, Gary Singh for City Council 2010 (“Respondent Committee”) was the controlled committee of Gary Singh. Joann Lew was the treasurer for the Committee. Respondents violated the Political Reform Act (the “Act”)¹ by making a contribution in the name of another.

In this matter, Respondent Gary Singh (“Respondent Singh”) made two contributions, totaling \$1,200 to Gary Singh for City Council 2010 on and between March 15, 2010 and May 15, 2010, in names other than his own name, in violation of Government Code Section 84301. These violations denied the public of information regarding the true source of Gary Singh’s financial support, during the time when he was running for Union City Council. Respondent Singh also accepted four contributions, totaling \$2,100, not in the form of a written instrument drawn from the account of the donor, and accepted a contribution of more than \$250 from a party to proceedings involving a land use decision within three months following the date final decisions were rendered.

For the purposes of this stipulation, Respondents’ violations of the Act are stated as follows:

RESPONDENT GARY SINGH

- COUNT 1: On or about March 15, 2010, Respondent Gary Singh made a \$600 contribution to the Gary Singh for City Council 2010 committee, in the name of Ginger Smith, rather than his own name, in violation of Section 84301 of the Government Code.
- COUNT 2: On or about May 15, 2010, Respondent Gary Singh made a \$600 contribution to the Gary Singh for City Council 2010 committee, in the name of Joshua Leonardo, rather than his own name, in violation of Section 84301 of the Government Code.
- COUNT 3: On or about September 13, 2010, Respondent Gary Singh accepted a \$600 campaign contribution from John Pappas, a party to a proceeding involving a decision on a use permit before the Union City Planning Commission, within three months following the date final decisions were rendered in the proceeding in violation of Section 84308, subdivision (b).

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, California Code of Regulations. All regulatory references are to Title 2, Division 6, of the California Code of Regulations, unless otherwise indicated.

RESPONDENTS GARY SINGH, GARY SINGH FOR CITY COUNCIL 2010, AND JOANN LEW

COUNT 6: Between approximately July 9, 2010, and September 29, 2010, Respondents Gary Singh, Gary Singh for City Council 2010, and Joann Lew accepted monetary contributions totaling approximately \$2,100 in the form of four cashier's checks or money orders for \$100 or more, which were not drawn from the bank accounts of the contributors or donors, in violation of Section 84300, subdivision (c).

PROCEDURAL HISTORY

Respondents have been informed of the charges set forth herein. Also, they have consulted with an attorney of their choosing about their 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, Respondents have agreed to waive these rights, and are 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 Respondents being held liable for the penalty amount of Fifteen Thousand Dollars (\$15,000).

A certified copy of Respondents' written waiver in this regard is submitted herewith as Exhibit A and incorporated herein by reference as if in full.

NATURE OF DEFAULT PROCEEDINGS

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

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act therefore provides for the full disclosure of receipts and expenditures in election campaigns through the periodic filing of campaign statements, as provided in Sections 84200 through 84211.

Prohibitions Regarding Campaign Contributions

Section 81002, subdivision (a) provides that "receipts and expenditures in election campaigns shall be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited." Timely and truthful disclosure of the source of campaign contributions is an essential part of the Act's mandate.

In order to obtain disclosure of the true source of a contribution, Section 84301 provides that no contribution shall be made, directly or indirectly, by any person in a name other than the name by which that person is identified for legal purposes.

Disqualification

Section 84308 deals specifically with members of appointed boards or commissions who make decisions in proceedings that involve licenses, permits, or other entitlements for use, and the receipt of campaign contributions from persons involved in those proceedings. Although the receipt of campaign contributions is not a basis for disqualification under the conflict-of-interest provisions found in sections 87100 et seq., under section 84308 there are restrictions in the amount and timing of contributions, which can trigger disclosure and disqualification requirements.

Section 84308, subdivision (b) prohibits solicitation or acceptance of campaign contributions of more than \$250 from certain persons during proceedings which involve licenses, permits, or other entitlements for use, or for three months after the final decision. Subdivision (b) states in part:

“No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest [in the decision].”

Section 84308, subdivision (a) sets forth various definitions of specific terms used in the above prohibitory statutes. A *party* means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use. A *participant* means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision.

Pursuant to regulation 18438.3, a person is an *agent* of a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use, only if he or she represents that person in connection with the proceeding involving the license, permit, or other entitlement for use.

Under Section 84308, subdivision (a)(3), *Agency* means an agency as defined in Section 82003, except the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency. An *officer* is

defined in Section 84308, subdivision (a)(4) as any elected or appointed officer of an agency, and any candidate for elective office.

Under Section 84308, subdivision (a)(5), “*License, permit, or other entitlement for use*” means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

Contributions Not Drawn on the Contributor’s Bank Account

Section 84300, subdivision (c), provides that no contribution of \$100 or more, other than an in-kind contribution, shall be made unless in the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor or intermediary, as defined in Section 84302.

Liability of Committee Treasurers

As provided in Section 84100, every committee shall have a treasurer. Under Section 84100 and Regulation 18427, subdivision (a), it is the duty of a committee’s treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds. Under Sections 83116.5 and 91006, a committee’s treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.

SUMMARY OF THE FACTS

Respondent Gary Singh has been a member of the Union City Planning Commission since 2006, and was an unsuccessful candidate for Union City Council in the November 2, 2010 election, receiving approximately 15% of the vote. At all relevant times, Gary Singh for City Council 2010 was the controlled committee of Gary Singh. Respondent Singh is also the owner of Bay Star Auto Care (“Bay Star”), an automobile repair business, located in Union City.

At all relevant times, a Union City ordinance imposed a \$600 limit on campaign contributions made to candidates for elected office.

COUNTS 1-2

Making a Contribution in a Name Other Than One’s Own Name

On or about March 13, 2010, Respondent Singh asked Vernon Edward Leandro to pay for automobile repairs by writing checks to his Committee instead of Bay Star. Mr. Leandro owed Bay Star for a new air conditioner compressor for his GMC Yukon and a brake job for a car belonging to his girlfriend, Ginger Smith. Mr. Leandro went to Bay Star on March 13, 2010 with the intention of paying Singh in cash for the work. Singh asked him not to pay him in cash but to write a check to his campaign.

Mr. Leonardo gave cash to Ms. Smith and asked that she write the check to the Committee. Mr. Leonardo also wrote a check to Bay Star on March 13, 2010, for the balance owed for repair work that was not covered by the check to the Committee. Mr. Leandro said that this arrangement to pay what he owed to Bay Star was Singh's idea. Mr. Leandro filled out the contributor card for Ms. Smith's contribution. Ginger Smith confirmed that she wrote the check to the Committee and that she received cash from Mr. Leonardo.

The May 15, 2010 contribution came about because Mr. Leandro had Bay Star replace gaskets for the rear-end of his Yukon. Again Respondent Singh asked him to write a check to his Committee instead of paying Bay Star. Respondent Singh told Mr. Leandro that the check would have to be from someone else since Ms. Smith had already contributed the maximum amount. At Respondent Singh's suggestion, Mr. Leandro used his son Joshua's name to make this contribution. Mr. Leandro did not owe the shop \$600 for the rear-end work, so Respondent offered Mr. Leonardo \$185 in credit for future work so that this contribution would total \$600. Mr. Leandro deposited the cash that he would have used to pay Singh in his account so that the check would clear. At the time, Joshua worked at J and J Vending in the warehouse. He was not a driver as the contributor card states. Mr. Leandro said that he filled out the contributor card on his son's behalf.

The two contributions that were made by Respondent Singh to Gary Singh for City Council 2010, in the names of other persons, are as follows:

Count	Receipt Date of Contribution	Person Reported as Contributor	Amount
1	03/15/2010	Smith, Ginger	\$600
2	05/15/2010	Leandro, Joshua	\$600
Total			\$1,200

By making the two contributions as stated above, Respondent Singh committed two violations of Section 84301.

COUNT 3

Disqualification/Conflict of Interest

Respondent Singh is current Union City Planning Commissioner and has held this office in 2010. The minutes of the Union City Planning Commission meeting on August 19, 2010 show that Respondent Singh voted to approve a Zoning Text Amendment AT-06-10 and Use Permit, UP-07-10 for Pappas Union City LP. This modification would allow a Comcast Store to open in a building owned by Pappas Investments. During the meeting, John Pappas (John Papagiannopoulos) stated that his family owns the property and developed it in 2005. Singh's campaign received a check from Pappas dated September 13, 2010 in the amount of \$600. The email on the contributor card states "johnpappasinvestments.com."

COUNT 4

Accepting Cashier's Checks/Money Orders from Contributors

A cashier's check is similar to a money order in that it is not drawn from the account of the remitter. Rather, the remitter pays the bank to issue a cashier's check, which is guaranteed by the bank, but not drawn from the account of the remitter. (See, e.g., Cal. U. Com. Code, §§ 3103, subs. (a)(2), (3), and (11), and 3104, subs. (f) and (g).) In the case of a contribution made in the form of a cashier's check or money order, the remitter is referred to as the contributor.

Subject to certain exceptions, which are not applicable in this case, Section 84300, subdivision (c), provides that no contribution of \$100 or more shall be made unless in the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor or intermediary.

Between approximately July 9, 2010, and September 29, 2010, Respondents Gary Singh and Gary Singh for City Council 2010 accepted monetary contributions totaling approximately \$2,100 in the form of four cashier's checks or money orders for \$100 or more, which were not drawn from the bank accounts of the contributors or donors.

The first was a Bank of the West cashier's check or money order, dated July 9, 2010, in the amount of \$500, listing Balram Kumar as the remitter. The cashier's check/money order was not drawn from the account of Balram Kumar.

The second was a Groupex cashier's check or money order, dated July 31, 2010, in the amount of \$500, listing Raquel Tovar as the remitter. The cashier's check/money order was not drawn from the account of Raquel Tovar.

The third was a MoneyGram cashier's check or money order, dated August 2, 2010, in the amount of \$500, listing Manuela Flores as the remitter. The cashier's check/money order was not drawn from the account of Manuela Flores.

The fourth was another Wells Fargo cashier's check or money order, dated September 29, 2010, in the amount of \$600, listing Nestor Belmonte as the remitter. The cashier's check/money order was not drawn from the account of Nestor Belmonte.

By accepting cashier's checks/money orders from contributors as described above, Respondents Gary Singh, Gary Singh for City Council 2010, and Joann Lew violated Section 84300, subdivision (c).

CONCLUSION

This matter consists of four counts of violating the Act, which carries a maximum administrative penalty of Thirty Thousand Dollars (\$20,000).

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. 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 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.

Making a contribution in another person's name is one of the most serious types of violations of the Act, because it denies the public of information about where a candidate receives his or her financial support. At the time of the violations, Union City had a city ordinance that imposed a \$600 limit on individual campaign contributions to candidates for elected office.

In mitigation, Respondents have not previously been found to have violated the Act.

Recent penalties approved by the Commission concerning violations of Section 84301 include:

In the Matter of James Larry Minor, FPPC No. 11/008. James Larry Minor made ten campaign contributions, each in the amount of \$3,900 to the Jeff Stone for State Senate Campaign 2009 committee in a name other than his own, and made one contribution in 2006, in the amount of \$3,300 to The Committee to Elect Brenda Salas campaign committee in a name other than his own, in violation of Government Code Section 84301 (11 counts) and made a contribution in excess of the campaign contribution limits, a total contribution of \$39,000, to the Jeff Stone for State Senate Campaign 2009 committee, in excess of contribution limits, in violation of Government Code Section 85301(a) (1 count). In April of 2011, the Commission imposed a penalty of \$5,000 per count, for a total of \$60,000.

In the Matter of Ana Maria Gonzalez Ibarra, FPPC No. 11/802. (Default Decision) In this matter, Respondent made two campaign contributions through her friends, by reimbursing them with a personal check, for the campaign contributions they made. The two contributions, totaling \$600, were made in the name of another person to circumvent the local contribution limit of \$300 because Respondent had already contributed the maximum allowable amount. The Commission approved settlement of this case in December 13, 2012, and the penalty for this violation was \$5,000 per count.

One of the most recent stipulations involving the violation of Section 84308 includes:

In the Matter of Dennis Hansberger, FPPC No. 03/663. County of San Bernardino Supervisor Dennis Hansberger, while serving as an appointed member of the Inland Valley Development Agency and the San Bernardino International Airport Authority, accepted a contribution of more than \$250 from a party to proceedings involving the award of contracts

within three months following the date final decisions were rendered. The commission approved settlement of this case in January 20, 2006, and the agreed upon penalty for each of these violations was \$3,000 per count.

A recent stipulation involving the acceptance of contributions in the form of cashier's checks or money orders includes:

In the Matter of Mary Ann Andreas, Andreas for Assembly, Marta Baca, and Phyllis Nelson, FPPC No. 06/77. Respondents accepted monetary contributions totaling approximately \$9,400 in the form of three cashier's checks or money orders for \$100 or more, which were not drawn from the bank accounts of the contributors or donors. The commission approved settlement of this case in June 10, 2010, and the agreed upon penalty for this violation was \$2,000 per count.

PROPOSED PENALTY

After review of the facts of this case, including consideration of the factors of Regulation 18361.5, and the factors discussed above, it is respectfully submitted that imposition of the maximum penalty of Five Thousand Dollars (\$5,000) per count for Counts One and Two; Three Thousand Dollars (\$3,000) for Count Three; and Two Thousand Dollars (\$2,000) for Count Four is justified, for a total penalty of Fifteen Thousand Dollars (\$15,000).



**FAIR POLITICAL PRACTICES COMMISSION
ENFORCEMENT DIVISION**

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

1. We, the undersigned, Gary Singh and Joann Lew, are the Respondents in Fair Political Practices Commission (“FPPC”) Case No. 13/204.
2. I have consulted 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: _____

Gary Singh, Respondent, Individually and on behalf
of “Gary Singh for City Council 2010”

Dated: _____

Joann Lew, Respondent, Individually and on behalf
of “Gary Singh for City Council 2010”