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9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA
11

12 In the Matter of) FPPC No. 13/1162
13)
14 ROBERT E. BERNOSKY and BERNOSKY FOR) STIPULATION, DECISION and
ASSEMBLY 2012,) ORDER
15 Respondents.)
16)
17)

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19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
20 Respondents Robert E. Bernosky and Bernosky for Assembly 2012, hereby agree that this Stipulation
21 will be submitted for consideration by the Fair Political Practices Commission at its next regularly
22 scheduled meeting.

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

26 Robert E. Bernosky and Bernosky for Assembly 2012 understand, and hereby knowingly and
27 voluntarily waive, any and all procedural rights set forth in sections 83115.5, 11503, and 11523 of the
28 Government Code, and in section 18361.1 through 18361.9 of Title 2 of the California Code of

1 Regulations. This includes, but is not limited to, the right to personally appear at any administrative
2 hearing held in this matter, to be represented by an attorney at Robert E. Bernosky and Bernosky for
3 Assembly 2012's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
4 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
5 the hearing as a hearing officer, and to have the matter judicially reviewed.

6 It is further stipulated and agreed that Robert E. Bernosky and Bernosky for Assembly
7 2012 violated the Political Reform Act by failing to file in paper format and electronically a semi-annual
8 campaign statement by January 31, 2013 for the reporting period October 21, 2012 through December
9 31, 2012, in violation of Section 84200, subdivision (a) and 84605, subdivision (b) of the Government
10 Code (1 count), as described in Exhibit 1, which is attached hereto and incorporated by reference, as
11 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

12 Robert E. Bernosky and Bernosky for Assembly 2012 agree to the issuance of the Decision and
13 Order, which is attached hereto. Robert E. Bernosky and Bernosky for Assembly 2012 also agrees to
14 the Commission imposing upon them an administrative penalty in the amount of \$2,500. A cashier's
15 check from Robert E. Bernosky and Bernosky for Assembly 2012 in said amount, made payable to the
16 "General Fund of the State of California," is submitted with this Stipulation as full payment of the
17 administrative penalty, and shall be held by the State of California until the Commission issues its
18 decision and order regarding this matter. The parties agree that in the event the Commission refuses to
19 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
20 Commission meeting at which the Stipulation is rejected, all payments tendered by Robert E. Bernosky
21 and Bernosky for Assembly 2012 in connection with this Stipulation shall be reimbursed to them.
22 Robert E. Bernosky and Bernosky for Assembly 2012 further stipulate and agree that in the event the
23 Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes
24 necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified
25 because of prior consideration of this Stipulation.

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Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____

Respondent Robert E. Bernosky, individually and
on behalf of Respondent Bernosky for Assembly 2012

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Robert E. Bernosky and Bernosky for
3 Assembly 2012, FPPC No. 13/1162,” including all attached exhibits, is hereby accepted as the final
4 Decision and Order of the Fair Political Practices Commission, effective upon execution below by the
5 Chairman.

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7 IT IS SO ORDERED.

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9 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Robert E. Bernosky (“Bernosky”) was an unsuccessful candidate for California State Assembly, District 30 in the 2012 election. Respondent Bernosky for Assembly 2012 (“Committee”) was his candidate controlled committee. Bernosky also served as treasurer for the Committee.

This matter arose out of a referral from the Secretary of State. The Political Reform Act (the “Act”)¹ requires candidates and committee to timely file campaign statements and reports and disclose particular information. Bernosky and Bernosky for Assembly 2012 violated the Act by failing to timely file a semi-annual campaign statement for the reporting period covering October 21, 2012 through December 31, 2012.

SUMMARY OF THE LAW

An express purpose of the Act 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.² The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

The Act defines a “committee” as including any person or combination of persons who receives contributions totaling \$1,000 or more in a calendar year.³

Duty to File Campaign Statements and Reports

The Act requires candidates to file campaign statements at specific times disclosing information regarding contributions received and expenditures made by the campaign. A candidate includes, in relevant part, and individual who is listed on the ballot for election to any elective office.⁴

Duty to File Semi-Annual Campaign Statements

Candidate controlled committees must file two semi-annual campaign statements each year. A committee must file a semi-annual campaign statement, no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.⁵ All filing obligations continue until the campaign is terminated by filing a statement of termination

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations.

² Section 81002, subdivision (a).

³ Section 82013, subdivision (a).

⁴ Section 82001.

⁵ Section 84200, subdivision (a).

(Form 410) with the Secretary of State and a copy with the local filing officer receiving the campaign's original campaign statements.⁶

An original and one paper copy of these semi-annual campaign statements must be filed with the Secretary of State, as well as by online or electronic means.⁷

SUMMARY OF THE FACTS

Robert E. Bernosky ran in the 2012 Primary and General Elections for California State Assembly, District 30. He advanced past the Primary Election on June 5, 2012. He was subsequently defeated in the General Election on November 6, 2012, receiving 35.3% of the vote. Bernosky for Assembly 2012 qualified as a candidate controlled recipient committee on or about March 16, 2012. Bernosky is also the treasurer for the Committee. The Committee received contributions exceeding \$25,000, and triggered online filing obligations, in June, 2012. The Committee terminated effective December 31, 2012.

VIOLATION

Count 1: Failure to Timely File a Semi-annual Campaign Statement

Robert E. Bernosky and Bernosky for Assembly 2012 failed to timely file a semi-annual campaign statement, in paper and electronic format, by the January 31, 2013 due date, for the reporting period October 21, 2012 through December 31, 2012, in violation of Government Code Sections 84200, subdivision (a) and 84605, subdivision (a).

CONCLUSION

This matter consists of one count, which carries a maximum possible 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. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: 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 amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

⁶ Section 84214; Regulation 18404.

⁷ Section 84215, subdivision (a).

The Commission also considers penalties in prior cases involving similar violations, including:

- *In the Matter of In the Matter of California Autobody Repair Political Action Committee, and Rick Johnson*, FPPC Nos. 06/763 and 07/164. Respondents failed to timely file, in paper format and electronically, two semi-annual campaign statements. On December 10, 2009, the Commission approved a penalty of \$2,500 for each of the two violations.

Due to a previous Enforcement action against Robert E. Bernosky and Bernosky for Assembly 2012, they were aware of their duties and requirements under the Act. On April 25, 2013, the Commission approved a stipulated settlement with a \$200 penalty for failing to file a second pre-election campaign statement, covering the period October 1, 2012, through October 20, 2012. As a Condition of settlement, Robert E. Bernosky and Bernosky for Assembly 2012 have now filed the delinquent semi-annual campaign statement, which disclosed \$8,300 in contributions received and \$14,278.16 in expenditures made for the reporting period, and terminated the committee.

PROPOSED PENALTY

After considering the factors listed above, a penalty of \$2,500 is recommended.