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

12
13 In the Matter of:

14 TONY RACKAUCKAS

15 Respondent.

FPPC Case No. 16/612

16 STIPULATION, DECISION, AND ORDER

17
18 INTRODUCTION

19 Respondent Tony Rackauckas is the District Attorney for Orange County. Rackauckas is also the
20 President of the Orange County Gang Reduction and Intervention Partnership (“OC GRIP”), a non-profit
21 organization. The Political Reform Act (the “Act”)¹ requires elected officials to report all payments of
22 \$5,000 or more made to a charitable organization at the official’s behest within 30 days of the payment.
23 Rackauckas violated the Act by failing to timely disclose 14 payments of \$5,000 or more made at his behest
24 to OC Grip.

25
26
27 _____
28 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 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.

1 **SUMMARY OF THE LAW**

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

3 When enacting the Political Reform Act, the people of California found and declared that previous
4 laws regulating political practices suffered from inadequate enforcement by state and local authorities.²
5 For this reason, the Act is to be construed liberally to accomplish its purposes.³

6 **Behested Payments**

7 A payment made at the behest of an elected officer for a charitable purpose must be reported within
8 30 days following the date on which the payment or payments equal or exceed \$5,000 in the aggregate
9 from the same source in the same calendar year.⁴ The official reports the behested payment by filing a
10 Behested Payment Report (Form 803) with the official’s agency.⁵ A payment is made at the behest of an
11 official if it’s made under the control or at the direction of, in cooperation, consultation, coordination, or
12 concert with, at the request or suggestion of, or with the express, prior consent of the official.⁶

13 **SUMMARY OF THE FACTS**

14 OC GRIP’s stated mission is to prevent at-risk minors in Orange County from joining criminal
15 street gangs. As president of OC GRIP, Rackauckas has an active role in OC GRIP’s fundraising.

16 In 2016, OC GRIP received 14 payments of \$5,000 or more made at the behest of Rackauckas for
17 which Rackauckas failed to timely file Form 803s disclosing the behested payments. Rackauckas
18 eventually filed Form 803s for each of the behested payments six to nine months after they were due. The
19 following table below details the behested payments of 2016:

Payor	Amount of payment	Date payment received	Date Form 803 filed
Delta Partners LLC	\$ 10,000.00	9/29/2016	6/29/2017
Keller Anderle LLP	\$ 10,000.00	10/11/2016	6/29/2017
Michael Harrah	\$ 5,000.00	10/12/2016	6/29/2017
Greenburg Gross LLP	\$ 5,000.00	10/18/2016	6/29/2017
SA Recycling	\$ 10,000.00	10/20/2016	6/29/2017

26 ² § 81001, subd. (h).

27 ³ § 81003.

28 ⁴ §82015, subd. (b)(2)(B)(iii).

⁵ §82015, subd. (b)(2)(B)(iii).

⁶ Reg. 18215.3, subd. (a).

Duda Family Foundation	\$ 5,000.00	10/24/2016	6/29/2017
Heritage Fields El Toro LLC	\$ 25,000.00	10/27/2016	6/29/2017
Angels Baseball LP	\$ 5,000.00	10/27/2016	6/29/2017
Robinson Calcagnie, Inc.	\$ 25,000.00	10/28/2016	6/29/2017
Massiah Foundation	\$ 10,000.00	11/1/2016	6/29/2017
Lyon Living	\$ 10,000.00	11/1/2016	6/29/2017
Larkin Living Trust 1982	\$ 10,000.00	11/3/2016	6/29/2017
Dr. Henry T. Nicholas	\$ 35,000.00	11/22/2016	6/29/2017
Michael J. Schroeder	\$ 25,000.00	12/28/2016	6/29/2017
Total:	\$ 190,000.00		

Rackauckas contends he did not directly solicit the donations in question at the time they were made but became aware of the need to file Form 803 behested payment reports for the donations when reviewing “thank you” notes to the donors. Rackauckas acknowledged that as president of OC GRIP, and given his role in fundraising activities, the donations had been made at his behest so he filed the Form 803s for the payments in question.

In 2014, OC GRIP received six payments of \$5,000 or more totaling \$102,500.00 made at the behest of Rackauckas. Rackauckas timely submitted Form 803s for each of these behested payments to the Orange County Registrar of Voters by Federal Express. However, the Registrar’s Office failed to file the reports. Because Rackauckas timely submitted these Form 803s to the Registrar of Voters, he is not liable for violating the Act for the 2014 behested payments.

VIOLATIONS

Counts 1 – 14: Failure to timely disclose behested payments

Rackauckas failed to timely disclose 14 payments of \$5,000 or more made at his behest to OC GRIP in 2016 in violation of section 82015(b)(2)(B)(iii).

PROPOSED PENALTY

This matter consists of fourteen counts. The maximum penalty that may be imposed is \$5,000 per count. Thus, the maximum penalty that may be imposed is \$70,000.⁷

⁷ §83116, subd. (c).

1 In determining the appropriate penalty for a particular violation of the Act, the Commission
2 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission
3 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention
4 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)
5 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
6 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.⁸

7 Payments made at the behest of an elected official is another avenue by which a donor could seek
8 to gain favor with an elected official. For this reason, the Act requires that behested payments of \$5,000 or
9 more be promptly reported. In this case, the violations appear to be the result of negligence by Rackauckas
10 in failing to recognize the payments had been made at his behest to OC GRIP. The Enforcement Division
11 found no evidence of intent to conceal the payments. Rackauckas eventually voluntarily filed the Form
12 803s reporting the behested payments.

13 The Commission also considers penalties in prior cases with similar violations in determining the
14 appropriate penalty. *In the Matter of Kevin Johnson*, FPPC No. 12/555, concerned 25 payments made to
15 charitable organizations at the behest of Sacramento Mayor Kevin Johnson which he failed to timely report.
16 Johnson had no prior history of violating the Act, subsequently reported all of the behested payments, and
17 the Enforcement Division did not find the violations were intentional. At its meeting on December 13,
18 2012, the Commission approved a penalty of \$1,500 per behested payment not timely reported, for a total
19 penalty of \$37,500. Similarly, *In the Matter of Robert King Fong*, FPPC No. 12/588, concerned two
20 instances of a Sacramento City Council member failing to timely disclose payments made at his behest.
21 Fong did not have a history of violating the Act, the violations did not appear to be deliberate, and there
22 was no indication of an intent to deceive the public. At its December 13, 2012 meeting, the Commission
23 imposed a penalty of \$1,500 per untimely reported behested payment for a total penalty of \$3,000.

24 Like the comparable cases, Rackauckas does not have a history of violating the Act. Rackauckas
25 cooperated fully with the Enforcement Division's investigation. Also, the Enforcement Division found no
26 indication the violations were intentional, and Rackauckas has since filed all of the delinquent Form 803s.

27 For the foregoing reasons, a penalty of \$1,500 per count is recommended, for a total administrative
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⁸ Reg. 18361.5, subd. (d).

1 penalty in the amount of \$21,000.

2 **CONCLUSION**

3 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
4 Respondent Tony Rackauckas hereby agree as follows:

5 1. Respondent violated the Act as described in the foregoing pages, which are a true and
6 accurate summary of the facts in this matter.

7 2. This stipulation will be submitted for consideration by the Fair Political Practices
8 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

9 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
10 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
11 liability of Respondents pursuant to Section 83116.

12 4. Respondent has consulted with his attorney, Charles Bell of Bell, McAndrews & Hiltachk,
13 LLP, and understands, and hereby knowingly and voluntarily waives, all procedural rights set forth in
14 Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not
15 limited to the right to appear personally at any administrative hearing held in this matter, to be represented
16 by an attorney at Respondent’s own expense, to confront and cross-examine all witnesses testifying at the
17 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
18 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

19 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
20 Respondent agrees to the Commission imposing against it an administrative penalty in the amount of
21 \$21,000. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
22 Fund of the State of California—is/are submitted with this stipulation as full payment of the administrative
23 penalty described above, and same shall be held by the State of California until the Commission issues its
24 decision and order regarding this matter.

25 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
26 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
27 rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed to
28 Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before

1 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
2 shall be disqualified because of prior consideration of this Stipulation.

3 7. The parties to this agreement may execute their respective signature pages separately. A
4 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
5 or as a PDF email attachment is as effective and binding as the original.

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7 Dated: _____
8 Galena West, Chief of Enforcement
9 Fair Political Practices Commission

10 Dated: _____
11 Tony Rackauckas

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17 The foregoing stipulation of the parties "In the Matter of Tony Rackauckas," FPPC No. 16/612, is hereby
18 accepted as the final decision and order of the Fair Political Practices Commission, effective upon
19 execution below by the Chair.

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21 IT IS SO ORDERED.

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23 Dated: _____
24 Joann Remke, Chair
25 Fair Political Practices Commission
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