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8

9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

10 STATE OF CALIFORNIA

11 In the Matter of) OAH No. 2020090823
12) FPPC No. 2015/2076
13)
14 LLOYD A JOHNSON FOR WEST) COMPLAINANT'S REPLY BRIEF IN SUPPORT
COVINA CITY COUNCIL 2015,) OF THE PROPOSED DECISION
15 LLOYD JOHNSON, and JOHN)
SHEWMAKER,)
16) Hearing Judge: Deena R. Ghaly
Respondents.) Hearing Date: **August 30, 2021**
17) Hearing Time: 9:00 a.m.
18) Hearing Place: Via videoconference
320 W. Fourth Street, Suite 630
Los Angeles, CA 90013

19 This matter came before Administrative Law Judge Deena R. Ghaly of the Office of
20 Administrative Hearings ("OAH"), on August 30, 2021, in Los Angeles, California, who issued a
21 Proposed Decision on September 30, 2021. Complainant, the Enforcement Division of the Fair Political
22 Practices Commission ("Commission"), having submitted an Opening Brief and received Respondent
23 John Shewmaker's Brief in Opposition, submits the following Reply Brief.

24 **I. INTRODUCTION**

25 Respondent John Shewmaker ("Shewmaker") generally argues that Respondents Lloyd Johnson
26 ("Johnson") and Lloyd A Johnson for West Covina City Council 2015 ("Committee") should not be held
27 liable for the violations found in the Proposed Decision because Johnson had no knowledge of
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1 Shewmaker’s actions. Shewmaker also argues that he should not be liable for the violations because he
2 was merely a “vendor” and thus has no responsibility to comply with the Political Reform Act (the “Act”).¹
3 In his brief, Shewmaker also asserts that the Enforcement Division failed to fully investigate the matter
4 and repeatedly makes inaccurate assertions regarding the investigation and statements made at hearing.

5 As discussed in the Enforcement Division’s Opening Brief and in this Reply Brief, the Proposed
6 Decision states findings of fact that are supported by and consistent with the evidence presented at the
7 hearing in his matter. There is no additional material evidence which could, with reasonable diligence,
8 have been discovered and presented at the administrative hearing. Thus, the Enforcement Division
9 respectfully requests that the Commission make technical and minor changes as discussed in
10 Complainant’s Opening Brief in Support of the Proposed Decision and adopt it as the decision.

11 **II. DISCUSSION**

12 **A. Johnson and the Committee are Liable Under the Act**

13 As discussed in the Proposed Decision, the Act holds that there is a presumption that an
14 expenditure funding a communication expressly advocating for the defeat of a clearly identifiable
15 candidate is not independent of the candidate for whose benefit the expenditure is made when it is made
16 by an agent of the benefitted candidate in the course of the agent’s involvement in the current campaign.
17 The evidence presented at hearing supports a finding that Shewmaker was an agent for Johnson and the
18 Committee at the time the mailers at issue here were produced and mailed. Throughout the campaign,
19 Shewmaker made expenditures on behalf of Johnson and the Committee, consulted on content for the
20 campaign, communicated and negotiated with vendors on behalf of Johnson and the Committee, and
21 permitted the use of his bulk mailing permit to Johnson and the Committee. Shewmaker was paid by the
22 Committee at various times during the election, including after the mailing of the mass mailings at issue
23 in this case. Due to the evidence presented of these continued interactions, it was established that
24 Shewmaker continued to be an agent of Johnson and the Committee even after he was terminated as the
25 Committee’s treasurer.

26 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are
27 to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of
28 the California Code of Regulations, and all regulatory references are to this source. See §§ 83111 and 83116.

1 The Respondents failed to bring credible evidence to overcome the presumption that Shewmaker,
2 as an agent for Johnson and the Committee, caused the mass mailings to be distributed to oppose Johnson’s
3 competitors in the city council race. The Respondents made statements that were contradicted by the
4 evidence, including statements regarding Shewmaker’s role in the Johnson campaign.

5 The Proposed Decision did not make a factual conclusion as to Johnson’s knowledge of the mass
6 mailings but rather asserts that regardless of Johnson’s actual knowledge, Shewmaker’s actions
7 “implicated and created liability for Johnson and the [Committee].²”

8 **B. Shewmaker’s Role as a Consultant and Agent for the Committee is Supported by the**
9 **Evidence**

10 Shewmaker asserts that his role was that of a “vendor” and that as such, he has no legal liability
11 under the Act. This theory is not consistent with the facts of this case, nor the law. As discussed above,
12 the Proposed Decision, supported by the evidence, found that Shewmaker was a consultant and agent for
13 Johnson and the Committee at the time the mailers at issue here were produced and mailed. Shewmaker
14 likens his role to that of a printer or print shop, but this is not an appropriate comparison.

15 A vendor is typically a person or company offering something for sale. For example, Chicas
16 Graphics and Designs (“Chicas Graphics”), the printer used by Shewmaker and Johnson, offered printing
17 services in exchange for a fixed cost. Shewmaker, on the other hand, provided substantially different
18 services to Johnson and the Committee. Shewmaker offered his input into Johnson’s candidate statement,
19 business cards, and more. Shewmaker designed several mass mailings to support Johnson’s candidacy,
20 caused these mass mailings to be printed, and caused these mass mailings to be delivered to potential
21 voters. Additionally, Shewmaker negotiated on behalf of Johnson and the Committee with Chicas
22 Graphics regarding timing and costs. Also, according to invoices provided by Respondents, Shewmaker
23 worked on robocalls, phone lists, and signs. This evidence establishes that Shewmaker was more than just
24 a vendor for Johnson and the Committee and was instead a consultant and agent of Johnson and the
25 Committee.

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28 ² Proposed Decision, page 9, paragraph 14.

1 Further, as it specifically relates to the negative mass mailings at issue, Shewmaker caused the
2 violations. At various points, Shewmaker has admitted he designed the mailers and was responsible for
3 their content. He distributed the mailers during the time he served as a paid consultant and agent for
4 Johnson and the Committee. Therefore, along with Johnson and the Committee, he is liable for the
5 violation of failing to include an accurate and complete disclosure statement. The Act holds that any
6 person who violates any provision of this title, who purposely or negligently causes any other person to
7 violate any provision of this title, or who aids and abets any other person in any provision of this title,
8 shall be liable.³ This applies to persons who have filing or reporting obligations under the Act or who are
9 compensated for services involving the planning, organizing, or directing any activity regulated by this
10 title shall be liable for violating the Act or for purposefully or negligently causing another person to violate
11 the Act.⁴ During the hearing and in his Reply Brief, Shewmaker asserted the negative mass mailings were
12 created at the direction of and for another client. However, Shewmaker was not able to provide any
13 evidence in support of his assertions and the Proposed Decision found his assertions to not be credible.⁵

14 **C. Respondents Failed to Produce Credible Evidence to Substantiate Their Theory of**
15 **the Case**

16 Shewmaker makes several statements that suggest that the Proposed Decision should be set aside
17 because Complainant failed to fully investigate the case. On the contrary, Complainant followed the
18 evidence as provided by the original complaints, witnesses, interviews with the Respondents, and
19 documentary evidence provided by the Respondents and by 3rd parties, including the United States Post
20 Office and the printing shop utilized by the Respondents. Contrary to Shewmaker's assertion,
21 Complainant investigated his alternative theory discussed at an initial in-person interview and raised again
22 the Probable Cause Conference. Ultimately, Complainant found him and the theory lacking credibility or
23 any supporting evidence.

24 As discussed above, the Respondents had the burden to rebut the presumption that Shewmaker's
25 actions were attributable to Johnson and the Committee. They failed to bring credible evidence during the
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27 ³ Section 83116.5.

⁴ *Id.*

⁵ Proposed Decision, page 6, paragraph 10.

1 investigation and during the hearing. The Proposed Decision makes sound, evidence-based conclusions
2 regarding the facts of this matter and applies the law appropriately.

3 **III. CONCLUSION**

4 As stated in Complainant's Opening Brief, the Enforcement Division recommends that the
5 Commission make technical and minor changes in the proposed decision and adopt the Proposed Decision
6 as the decision because the Proposed Decision states findings of fact that are supported by and consistent
7 with the evidence presented at hearing in this matter. There is no additional material evidence which could,
8 with reasonable diligence, have been discovered and presented at the administrative hearing. Thus, the
9 Enforcement Division respectfully requests that the Commission make technical and minor changes in the
10 proposed decision and adopt it as the decision.

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12 Dated: 11/08/2021

FAIR POLITICAL PRACTICES COMMISSION

By: Angela J. Brereton
Chief of Enforcement

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16 _____
Theresa Gilbertson
Senior Commission Counsel

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, CA 95811.

On 11/9/2021, I served the following document(s):

1. Complainant's Opening Reply Brief in Support of Proposed Decision, in the Matter of Lloyd A Johnson for West Covina City Council 2015, Lloyd Johnson, and John Shewmaker
FPPC No. 2015/2076; OAH No. 2020090823.

By Personal Delivery. I personally delivered the document(s) listed above to the person(s) at the address(es) as shown on the service list below.

By United States Postal Service. I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the addresses listed below and placed the envelope or package for collection and mailing by first class mail, following my company's ordinary business practices. I am readily familiar with this business' practice for collection and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

By Email or Electronic Transmission. I caused the document(s) to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

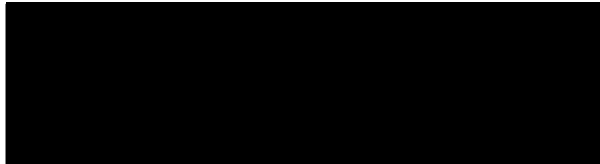
I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail in Sacramento County, California.

SERVICE LIST

Lloyd Johnson



John Shewmaker



Sasha Linker, Commission Assistant
VIA Email: CommAsst@fppc.ca.gov

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on 11/9/2021

Ginny Jamboing