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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11 In the Matter of) FPPC No. 11/186
12)
13)
BARBARA DELGLEIZE,) STIPULATION, DECISION and
14) ORDER
15)
Respondent.)

16 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
17 Respondent Barbara Delgleize, hereby agree that this Stipulation will be submitted for consideration by
18 the Fair Political Practices Commission at its next regularly scheduled meeting.

19 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
20 matter and to reach a final disposition without the necessity of holding an administrative hearing to
21 determine the liability of Respondent, pursuant to Section 83116 of the Government Code.

22 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
23 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
24 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
25 the right to personally appear at any administrative hearing held in this matter, to be represented by an
26 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
27

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent Barbara Delgleize violated the Political
4 Reform Act by making a decision in a proceeding involving a license, permit, or other entitlement for
5 use pending before her agency in which she knowingly received a contribution in an amount of more
6 than two hundred fifty dollars (\$250) within the preceding 12 months from a party to the proceeding,
7 and failing to disclose on the record that she received the contribution, in violation of Government Code
8 Section 84308, subdivision (c) (1 count). All counts are described in Exhibit 1, which is attached hereto
9 and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary
10 of the facts in this matter.

11 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
12 Respondent also agrees to the Commission imposing upon her an administrative penalty in the amount
13 of Two Thousand Dollars (\$2,000). A cashier's check from Respondent in said amount, made payable
14 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
15 administrative penalty, to be held by the State of California until the Commission issues its Decision and
16 Order regarding this matter. The parties agree that in the event the Commission refuses to accept this
17 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
18 meeting at which the Stipulation is rejected, all payments tendered by Respondent in connection with
19 this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and agrees that in the
20 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
21 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
22 disqualified because of prior consideration of this Stipulation.

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24 Dated: _____

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

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26
27 Dated: _____

Barbara Delgleize, Respondent

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of In the Matter of Barbara Delgleize, FPPC No. 11/186,” including all attached exhibits, is hereby accepted as the final Decision and Order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Barbara Delgleize is an appointed member of the Huntington Beach Planning Commission. She was also an unsuccessful candidate for Huntington Beach City Council in the November 2, 2010 election.

As an appointed member of the Huntington Beach Planning Commission, Respondent Delgleize is subject to the conflict of interest provisions of the Political Reform Act (the "Act")¹, including the provisions of Section 84308. This section prescribes disclosure and disqualification requirements for members of appointed boards and commissions who make decisions with respect to licenses, permits, or other entitlements for use.

This matter arose out of a sworn complaint alleging that Respondent Delgleize violated Section 84308, subdivision (c) by failing to disqualify herself from making a Huntington Beach Planning Commission decision involving a local real estate developer who had contributed in excess of \$250 to Respondent Delgleize's city council campaign within the preceding 12 months of the decision before her agency, and by failing to disclose her receipt of the campaign contributions on the record of the proceedings in which the decision was made.

For the purposes of this Stipulation, Respondent's violation of the Act is stated as follows:

COUNT 1: Respondent Barbara Delgleize, on February 8, 2011, as an appointed member of the Huntington Beach Planning Commission, made a decision in a proceeding involving a license, permit, or other entitlement for use pending before her agency in which she knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party to the proceeding, by voting to approve Site Plan Review No. 10-004, the applicant for which was Sares-Regis Group, a real estate developer from whom Respondent Delgleize received a contribution of \$520 on October 30, 2010, and Respondent Delgleize failed to disclose on the record that she received the contribution from Sares-Regis Group, in violation of Government Code Section 84308, subdivision (c).

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 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.

SUMMARY OF THE LAW

The primary purpose for the conflict of interest provisions of the Act is to ensure that “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subd. (b).)

The following reflects the Act as it was in effect at the time of the relevant violations.

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 Section 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 (c) requires disqualification in proceedings which involve licenses, permits, or other entitlements for use, if an officer has received campaign contributions of \$250 or more from a party to the proceeding within twelve months preceding the decision. Specifically, subdivision (c) states, in part:

No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than \$250 within the preceding 12 months from a party or his or her agent
...

Subdivision (c) also requires the public disclosure of campaign contributions, as follows:

Prior to rendering any decision in a proceeding involving a license, permit, or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than \$250 from a party or from any participant shall disclose that fact on the record of the proceeding.

Section 84308, subdivision (a) sets forth various definitions of specific terms used in the prohibitory statute. A *party* is any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use. *Agency* means any state or local government agency, as defined in section 82003, excluding the courts or any agency in the judicial branch of government, local government agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. An *officer* is defined in Section 84308, subdivision (a) as any elected or appointed officer of an agency, and any candidate for elective office. A *license, permit, or other entitlement for use* is defined as “all

business, professional, trade and land use licenses and permits, and all other entitlements for use, including all entitlements for land use....”

Generally, under Sections 81004, subdivision (b), 84100, and 84213, and Regulation 18427, subdivisions (a), (b) and (c), it is the duty of a committee’s treasurer and candidate 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.

Specifically, Section 81004, states, in part:

- (a) All reports and statements filed under this title shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his knowledge it is true and complete.
- (b) ...Every person who signs and verifies any report or statement required to be filed under this title which contains material matter which he knows to be false is guilty of perjury.

SUMMARY OF THE FACTS

Respondent Barbara Delgleize is an appointed member of the Huntington Beach Planning Commission. She was also an unsuccessful candidate for Huntington Beach City Council in the November 2, 2010 election. Respondent Delgleize established a candidate controlled campaign committee, Barbara Delgleize for City Council 2010 (the Committee), to accept contributions and make expenditures regarding her run for office.

On or about October 30, 2010, Respondent Delgleize received a contribution in the amount \$520, from Sares-Regis Group, a developer and provider of comprehensive commercial and residential real estate services throughout the western United States, which is based in Irvine CA.

On or about November 18, 2010, staff for the Huntington Beach Planning Commission deemed completed and accepted for processing Application No. 2010-184, the applicant for which was Sares-Regis Group, “for development of 477 apartment homes, 10,000 SF of retail space, and all supporting facilities and parking areas” near the intersection of Edinger Avenue and Gothard Street in Huntington Beach, CA.

On January 11, 2011, the Committee filed a post-election semi-annual campaign statement for the reporting period of October 17 – December 31, 2010, disclosing the Sares-Regis Group contribution. During this reporting period, the Committee reported receiving contributions totaling \$6,222.00, and reported making expenditures totaling \$13,883.73. Respondent Delgleize and the Committee’s treasurer signed the campaign statement. This campaign statement also served as the Committee’s terminating statement, showing the cash balance and outstanding debts at \$0.

During the February 8, 2011 Huntington Beach Planning Commission meeting, Respondent Delgleize voted to approve Agenda Item No. B-2: Site Plan Review No. 10-004 (Boardwalk Mixed Use Project). This was the Huntington Beach Planning Commission's initial approval for Sares-Regis Group's Application No. 2010-184 to develop a mixed use project consisting of apartments, commercial/retail space, office space, recreation buildings and a park. The evidence shows that Respondent Delgleize did not disclose on the record that she received a contribution from Sares-Regis Group, and she did not recuse herself from the proceeding. This item was unanimously approved by the Huntington Beach Planning Commission.

Shortly after the February 8, 2011 meeting, Respondent Delgleize became aware that she may have violated Section 84308. She explained in a letter to the Enforcement Division:

I erroneously and without malicious intent broke FPPC section 84308. ... During my campaign, I followed strict guidelines either refusing or returning campaign contributions from entities who I had previously voted on as well as whose companies may have immediate future business come before the Planning Commission as to avoid any conflicts of interests. The contribution from Sares-Regis was to be refunded upon initial receipt. After confirming with my campaign treasurer, I [recently] realized the campaign contribution had not been returned, but deposited and included on my 460 report. Thus, an honest mistake but one I want to rectify.

Respondent was cooperative with the investigation of this matter. Additionally, the Enforcement Division learned that Respondent Delgleize had contacted the Commission's Technical Assistance Division in this regard shortly before receiving notification from the Enforcement Division that a complaint was filed against her.

Accordingly, Respondent committed one violation of the Act, as follows:

COUNT 1

(Made a Governmental Decision in Which the Public Official Received a Contribution from a Party to the Proceeding, and Failed to Disclose the Contribution on the Record)

As an appointed member of the Huntington Beach Planning Commission, Respondent Delgleize had a duty to disqualify herself from voting in proceedings involving a license, permit, or other entitlement for use pending before her agency brought by parties from whom she knowingly received contributions in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months. Additionally, Respondent had a duty to disclose such contributions on the record of the applicable proceedings. In this case, Respondent Delgleize failed both to disqualify herself from such a proceeding and to disclose the contribution on the record of the proceeding.

By failing to disqualify herself from making a decision involving a license, permit, or other entitlement for use pending before her agency brought by Sares-Regis Group, a party to the proceeding from whom she knowingly received a contribution of \$520 within the preceding 12

months, and by failing to disclose the \$520 campaign contribution from Sares-Regis Group on the record of the proceeding, Respondent Delgleize violated Section 84308, subdivision (c).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of Five Thousand Dollars (\$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):

1. The seriousness of the violations;
2. The presence or lack of intent to deceive the voting public;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the Respondent demonstrated good faith in consulting with Commission staff;
5. Whether there was a pattern of violations; and
6. Whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

Making a governmental decision in which an appointed official has received a contribution from a party to the proceeding, and failing to disclose the contribution on the record of the proceeding is a serious violation of the Act as it creates the appearance of biased decision-making, and disclosure omissions create an appearance of impropriety.

In this matter, Respondent Delgleize failed to disqualify herself from making a decision involving a license, permit, or other entitlement for use pending before her agency brought by Sares-Regis Group, a party to the proceeding from whom she knowingly received a contribution of \$520 within the preceding 12 months, and she failed to disclose the \$520 campaign contribution from Sares-Regis Group on the record of the proceeding. At the time she received the contribution, and at the time she made the decision, Respondent Delgleize was aware of the requirements and prohibitions of Section 84308.

Respondent Delgleize contends that the violation was inadvertent, and at the time of the vote, Respondent Delgleize was mistakenly under the impression that the contribution from Sares-Regis Group had been returned to Sares-Regis Group in accordance with her campaign committee's usual practice. However, the contribution was not returned, but instead was deposited in her campaign account, and reported on her controlled-committee's campaign statement, which was signed by Respondent Delgleize, and which made it possible for the public to uncover Respondent's violations of Section 84308.

In mitigation, Respondent Delgleize has demonstrated good faith in consulting with the Commission staff, she has freely admitted that she violated the Act, and she has been very forthcoming about the circumstances of this matter. Respondent Delgleize has no prior history of violating the Act, and she has been cooperative with the Enforcement Division during its investigation.

One previous prosecution has been approved by the Commission concerning violations of Section 84308, subdivision (c):

- ***In the Matter of Andy Quach, Andy Quach for City Council, and Diemmy N. Tran, FPPC No. 01/205.*** This case involved a member of the Westminster Planning Commission, in which two counts were charged for failure to disqualify himself from making and participating in two governmental decisions involving a party to a proceeding that was pending before the Westminster Planning Commission and failure to disclose campaign contributions aggregating more than \$250 from that party on the record of those proceedings, in violation of Government Code Section 84308, subdivision (c). A \$2,000 penalty per count was approved by the Commission on April 19, 2005 (the maximum fine amount for each count was \$5,000 for these violations).

Because Respondent Delgleize failed to disqualify herself from making a decision involving a license, permit, or other entitlement for use pending before her agency brought by Sares-Regis Group, a party to the proceeding from whom she knowingly received a contribution of \$520 within the preceding 12 months, and she failed to disclose the \$520 campaign contribution from Sares-Regis Group on the record of the proceeding, imposition of an administrative penalty in the amount of Two Thousand Dollars (\$2,000) is recommended. This recommendation is consistent with the previously recommended penalties for violations of Section 84308, subdivisions (b) and (c).

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Dollars (\$2,000) is recommended.

* * * * *