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

11
12 In the Matter of) FPPC No. 12/108
13)
14 CARL HILLIARD and HILLIARD FOR) STIPULATION, DECISION and
SUPERVISOR 2012,) ORDER
15 Respondents.)
16)
17)

18 Complainant, the Fair Political Practices Commission, and respondents Carl Hilliard and Hilliard
19 for Supervisor 2012 (collectively "Respondents") agree that this Stipulation will be submitted for
20 consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

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

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

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 Respondents failed to timely file a semi-annual campaign
4 statement by January 31, 2012, for the reporting period ending on December 31, 2011, in violation of
5 Government Code Section 84200, subdivision (a) (Count 1). All counts are described in Exhibit 1,
6 which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a
7 true and accurate summary of the facts in this matter.

8 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
9 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
10 of \$1,500. A cashier's check from Respondents in said amount, made payable to the "General Fund of
11 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,
12 to be held by the State of California until the Commission issues its decision and order regarding this
13 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
14 become null and void, and within fifteen (15) business days after the Commission meeting at which the
15 Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall be
16 reimbursed to Respondents. Respondents further stipulate and agree that in the event the Commission
17 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
18 any member of the Commission, nor the Executive Director, shall be disqualified because of prior
19 consideration of this Stipulation.
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21 Dated: _____

Gary Winuk, Enforcement Chief,
On behalf of the Fair Political Practices Commission

23 Dated: _____

Carl Hilliard, Respondent,
Individually and on behalf of Hilliard for Supervisor 2012

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DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Carl Hilliard and Hilliard for Supervisor 2012” FPPC No. 12/108, 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 Chair.

IT IS SO ORDERED.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Carl Hilliard (“Respondent Hilliard”) was a candidate for County Supervisor of San Diego’s Supervisorial District 3 in the June 5, 2012, primary election, and Hilliard for Supervisor 2012 (“Respondent Committee”) was his candidate controlled committee.

This matter arose out of a sworn complaint submitted to the Fair Political Practices Commission’s (the “Commission”) Enforcement Division (“Enforcement Division”) alleging Respondent Hilliard and Respondent Committee (collectively “Respondents”) failed to report a \$15,000 expenditure made by Respondent Committee. The subsequent investigation by the Enforcement Division revealed that Respondent Hilliard paid \$15,000 for a telephone survey to assess his popularity as a candidate for County Supervisor of San Diego’s Supervisorial District 3 in the June 5, 2012, primary election and that Respondents failed to file a semi-annual campaign statement by January 31, 2012, for the reporting period ending on December 31, 2011, as required by the Political Reform Act (the “Act”).¹

For the purposes of this Stipulation, Respondents’ violation of the Act is stated as follows:

COUNT 1: On or about October 12, 2011, Respondent Carl Hilliard made a \$15,000 contribution to Respondent Hilliard for Supervisor 2012, his candidate controlled committee for the June 5, 2012, primary election for County Supervisor of San Diego’s Supervisorial District 3. Because Respondent Hilliard for Supervisor 2012 qualified as recipient committee on October 12, 2011, it had the duty to file a semi-annual campaign statement by January 31, 2012, for the reporting period ending on December 31, 2011. Respondents Carl Hilliard and Hilliard for Supervisor 2012 failed to timely file a semi-annual campaign statement by January 31, 2012, for the reporting period ending on December 31, 2011, in violation of Government Code Section 84200, subdivision (a).

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violation.

Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and

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.

local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

Qualifying as a Candidate

Any individual who receives a contribution or makes an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made, qualifies as a “candidate”. (Section 82007.)

“Expenditure”, in pertinent part, is defined as a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. (Section 82025.) A payment is made for “political purposes” if it is received by a candidate or if it is for the purpose of influencing the action of the voters for or against the nomination or election of a candidate. (Regulation 18215.)

However, an individual may undertake certain exploratory activities without qualifying as a candidate. (Powell Advice Letter, No. A-85-241.) Such activities include conducting a survey to determine what issues are considered most important to voters. (*Id.*) However, if the survey lists the potential candidate’s qualifications, implies that the person is qualified for a particular office, or lists the names of persons who are supporting the individual’s candidacy, the survey is not an exploratory activity, but, rather, is an expenditure that qualifies the potential candidate as a candidate. (*Id.*)

Qualifying as a Committee

Any person or combination of persons who directly or indirectly receives a contribution totaling \$1,000 or more in a calendar year qualifies as a “committee”. (Section 82013, subd. (a).) The definition of “contribution” includes a candidate’s own money used on behalf of his candidacy other than personal funds of the candidate used to pay either the filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code. (Section 82015, subd. (c).) Therefore the moment a candidate spends \$1,000 or more of his personal money on his candidacy, the candidacy qualifies as a committee.

Duty to File Semi-Annual Campaign Statements

Section 84200, subdivision (a), requires all candidates and committees pursuant to Section 82013, subdivision (a), to file semi-annual campaign statements each year no later than

July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.²

Treasurer and Candidate Liability

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. A committee's treasurer and candidate may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee under Sections 83116.5 and 91006.

SUMMARY OF THE FACTS

On or about October 12, 2011, Respondent Hilliard paid David Binder Research \$15,000 to conduct a telephone survey of 400 registered voters living in San Diego's Supervisorial District 3.

Question 29 of the survey stated:

Now I'm going to tell you some more information about two possible candidates for the San Diego County Board of Supervisors:

Carl Hilliard currently serves on the Del Mar City Council where he has focused on enhancing the city's quality of life. As a long-time resident, Hilliard admires San Diego's unique character and has worked to protect and restore our open space by supporting Smart Growth and the restoration of the San Dieguito Lagoon and River Park. Thanks to his experience as a successful businessman and attorney, Del Mar's finances are healthy and balanced and he will use this expertise as Supervisor to ensure San Diego's long-term fiscal well-being. However, Hilliard is 75 year old and some say he lacks the energy and fresh ideas needed to guide San Diego forward.

Now that you have heard more, do you have a strongly favorable, somewhat favorable, somewhat unfavorable, or strongly unfavorable view of Carl Hilliard?

Questions 32 through 38 of the survey stated:

Now I'm going to read you some statements made by supporters of Carl Hilliard. For each one I read, please tell how convincing the statement is at getting you to support Carl Hilliard for the Board of Supervisors. Please use a scale of 0 to 10,

² Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a late in-kind contribution required by Section 84203.3) be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day.

where 0 means the statement is not at all convincing and 10 is extremely convincing at getting you to SUPPORT Hilliard.

Current County Supervisor Pam Slater-Price endorsed Carl Hilliard for his current seat on the city council, touting his strong support for the environment and fiscal constraint.

Carl Hilliard founded a nonprofit organization to protect and support consumers against the unfair business practices of powerful wireless manufacturers and carriers. Because of Carl's work, 911-emergency cell phone calls are free. No one can be denied the service because a phone bill hasn't been paid or because the service has been cut off.

Following graduation from Pomona College in 1957, Carl enlisted in the U.S. Navy and served in Japan. When he returned to the United States, he enrolled in USC School of Law, graduating in 1963.

Carl has had a successful 38-year career highlighted by positions as diverse as being the president of a telecommunications company with 168 employees, lead negotiator for the acquisition of communications satellites, an attorney and a law professor, and a U.S. Navy officer.

Since 2004, Carl has served on the Del Mar City Council, where he as used his business skills to negotiate a healthy, balanced budget.

As a long-term resident of San Diego, Hilliard has worked to preserve open space by supporting Smart Growth and the restoration of the San Dieguito Lagoon and River Park.

Carl has experience representing our communities on several State and Regional committees including Board Member of SANDAG and Vice Chair of the Regional Planning Committee.

On or about June __, 2012, Respondents filed a semi-annual campaign statement for the reporting period ending December 31, 2012, reporting Respondent Hilliard's \$15,000 contribution to Respondent Committee and Respondent Committee's \$15,000 expenditure made on the telephone survey on October 12, 2011.

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

Count 1

Failure to Timely File a Semi-Annual Campaign Statement

On or about October 12, 2011, Respondent Carl Hilliard made a \$15,000 contribution to Respondent Hilliard for Supervisor 2012, his candidate controlled committee for the June 5,

2012, primary election for County Supervisor of San Diego's Supervisorial District 3. Because Respondent Hilliard for Supervisor 2012 qualified as recipient committee on October 12, 2011, it had the duty to file a semi-annual campaign statement by January 31, 2012, for the reporting period ending on December 31, 2011. Respondents Carl Hilliard and Hilliard for Supervisor 2012 failed to timely file a semi-annual campaign statement by January 31, 2012, for the reporting period ending on December 31, 2011, in violation of Government Code Section 84200, subdivision (a).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum 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. 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): 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(s) 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. The facts are required to be considered by the Commission under Regulation 18361.5.

The failure to timely file a campaign statement is a serious violation of the Act because it deprives the public of important information about a campaign's contributors and financial activities. In this matter, Respondents failed to timely file a campaign statement that included a \$15,000 contribution received by and a \$15,000 expenditure made by Respondent Committee.

There are no aggravating factors in this matter.

In mitigating, Respondents cooperated with the Enforcement Division's investigation in this matter. Additionally, Respondents have filed the delinquent campaign statement.

Recent penalties approved by the Commission concerning violations of Section 84200, subdivision (a), include:

In the Matter of Sandra Davis and Committee to Elect Sandra Davis, FPPC No. 06/372. This case involved one count of failing to timely file a semi-annual campaign statement. The campaign statement included 50% of all contributions received (\$5,610) as well as 64% of all expenditures made (\$7,015) for the entire campaign. A \$2,000 penalty was approved by the Commission on September 17, 2010.

In the Matter of Charles R. Brehmer, Brehmer for Judge and Jon W. Parnell, FPPC No. 10/591. This case involved one count of failing to timely file two semi-annual campaign statements. All contributions were timely reported, and the expenditures not reported timely were relatively low when compared to the total amount spent by the campaign. In addition, Respondent Brehmer was a first time candidate and had limited experience with the Act. A \$2,000 penalty was approved by the Commission on September 22, 2011.

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a \$1,500 penalty on Respondents is recommended.

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