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

10
11 In the Matter of:

12 RANDY MARK,

13 Respondent.

FPPC No. 12/101

14 STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
17 Respondent Randy Mark hereby agree that this Stipulation will be submitted for consideration by the Fair
18 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 additional administrative
21 hearing to 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 Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
26 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
28 the hearing as a hearing officer, and to have the matter judicially reviewed.

1 As described in Exhibit 1, it is further stipulated and agreed that Respondent Randy Mark, in his
2 capacity as Chief District Operator for the Grizzly Lake Community Services District, participated in
3 making a series of governmental decisions in which he had a financial interest, in violation of
4 Government Code section 87100 (1 count).

5 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein,
6 is a true and accurate summary of the facts in this matter.

7 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
8 Respondent also agrees to the Commission imposing upon him an administrative penalty in the amount
9 of \$4,000. One or more cashier's checks or money orders totaling said amount—to be paid to the
10 General Fund of the State of California—is/are submitted with this Stipulation as full payment of the
11 administrative penalty described above, and same shall be held by the State of California until the
12 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
13 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
14 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
15 by Respondent in connection with this Stipulation shall be reimbursed to Respondent. Respondent
16 further stipulates and agrees that in the event the Commission rejects the Stipulation and a full

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

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5 Dated: _____

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

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9 Dated: _____

10 Randy Mark, Respondent

11 **DECISION AND ORDER**

12 The foregoing Stipulation of the parties “In the Matter of Randy Mark,” FPPC No. 12/101,
13 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
14 Practices Commission, effective upon execution below by the Chair.

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16 IT IS SO ORDERED.

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18 Dated: _____

19 Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

At all relevant times, Respondent Randy Mark was the Chief District Operator for the Grizzly Lake Community Services District.

Under the Political Reform Act (the “Act”)¹, public officials, including members of local governmental agencies, are prohibited from making, participating in making, or attempting to use their official positions to influence any governmental decisions in which they have a financial interest.

For purposes of this Stipulation, Respondent’s violation of the Act is set forth as follows:

Count 1: Between approximately June 2010 and January 2011, Respondent Randy Mark, in his capacity as Chief District Operator for the Grizzly Lake Community Services District, participated in making a series of governmental decisions in which he had a financial interest, in violation of Section 87100.

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.

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

When the Political Reform 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 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 public officials are disqualified from certain matters in order that conflicts of interest may be avoided. (Section 81002, subd. (c).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

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.

Conflicts of Interest

The primary purpose of 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).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict-of-interest in a governmental decision.²

First, the individual must be a public official. (Section 87100.) Section 82048 defines “public official” to include an employee of a local government agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. (Section 87100 and Regulation 18700.)

Third, the official must have an economic interest that may be financially affected by the governmental decision. (Sections 87100 and 87103.) A public official has a financial interest in any business entity in which the public official has a direct or indirect investment worth \$2,000 or more—including a spouse’s business with a fair market value of \$2,000 or more—if the business entity does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the events giving rise to the conflict of interest. (See Sections 87103, subd. (a), and 82034.)

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. (Regulation 18704.)

Fifth, it must be determined if the governmental decision has a material financial effect on the economic interest. (Sections 87100 and 87103.) In the case of an economic interest that is a directly involved business entity, the financial effect is presumed to be material. (Regulation 18705.1, subs. (a) and (b).)

Sixth, at the time of the governmental decision, it must have been reasonably foreseeable that the decision would have a material financial effect. (Sections 87100 and 87103.) A material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that

² The two additional steps of the analysis—whether the financial effect is indistinguishable from the effect on the public generally and whether the official’s participation was legally required—are not applicable to this case.

one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision. (Regulation 18706, subd. (a).) Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends upon the facts of each particular case. (Regulation 18706, subd. (b).)

SUMMARY OF THE FACTS

Respondent became the Chief District Operator for the Grizzly Lake Community Services District (the “District”) effective June 16, 2010. His responsibilities included installation, maintenance and repair of water distribution and sewer facilities. Also, his responsibilities included making determinations regarding manpower, materials and equipment required for water and sewer projects.

According to Respondent, his wife, Juliana Mark, worked as an employee of J’s Feather River Rental until January 2009, which is when she bought the business. (At all relevant times, the fair market value of the business was in excess of \$2,000.) The District had a history of renting from J’s Feather River Rental even before Respondent became the Chief District Operator. It was not practicable to rent from any other facility because the next closest equipment rental business was over 40 miles away and out-of-state (in Reno).

Count 1: Conflict of Interest

Between approximately June 2010 and January 2011, Respondent, in his capacity as Chief District Operator for the Grizzly Lake Community Services District, signed or initialed approximately 45 equipment rental contracts between J’s Feather River Rental and the District. The contracts were for equipment rental charges totaling approximately \$11,686.44.³

As an employee of the District, Respondent was a public official. When Respondent signed and initialed the equipment rental contracts between the District and his wife’s business, this amounted to using his official position to participate in the making of governmental decisions in which he had reason to know that he had a financial interest. His wife’s business was directly involved in the governmental decision since the contracts involved payments to her business. At all relevant times, it was reasonably foreseeable that the contracts would have a material financial effect on Respondent’s wife’s business in the form of payments from the District.

In acting as described above, Respondent Randy Mark committed one violation of Section 87100.

³ In February 2011, the District requested legal advice regarding a possible conflict of interest. The District’s attorney advised that Respondent could not participate in the rental process, and the District enacted a new equipment rental procedure to prevent future conflicts of interest.

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 the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, there are recent, comparable stipulations imposing a penalty in the high range. (See *In the Matter of Dendra Dengler*, FPPC No. 09/438, approved Jan. 28, 2011 [\$4,000 penalty imposed against member of the Board of Directors for the Manila Community Services District for conflict of interest that was the culmination of many votes over several months]; and *In the Matter of Louie Martinez*, FPPC No. 09/261, approved Jun. 9, 2011 [\$4,000 penalty imposed against Senior Project Manager for the City of Irvine for conflict of interest involving approval of numerous invoices over several months].)

Participation in the making of a governmental decision in which an official has a financial interest is one of the more serious violations of the Act because it may create the appearance that the governmental decision was made on the basis of the public official's financial interest, especially when the financial interest is a business owned by the public official's spouse. In this case, Respondent initialed or signed dozens of equipment rental contracts with his wife's business over the course of several months, and there was ample opportunity for Respondent to reflect and realize that he had a conflict of interest.

Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$4,000 is justified. A higher penalty is not being sought because Respondent cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, Respondent does not have a history of violating the Act. Additionally, the District had a history of renting from J's Feather River Rental even before Respondent became the Chief District Operator. It was not practicable to rent from any other facility because the next closest equipment rental business was over 40 miles away and out-of-state (in Reno).

PROPOSED PENALTY

Based on the facts of this case, including the factors discussed above, an agreed upon penalty of \$4,000 is recommended.