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

10
11 In the Matter of:

12 **RICHARD ROSS**

13 Respondent.

FPPC No. 14/353

14 **STIPULATION, DECISION, AND ORDER**

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17 **STIPULATION**

18 Complainant, the Fair Political Practices Commission (Commission), and respondent Richard
19 Ross (Respondent) hereby agree that this Stipulation will be submitted for consideration by the Fair
20 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 by this
22 matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Respondent.

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

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

3 It is further stipulated and agreed that Respondent, a registered lobbyist, violated the Political
4 Reform Act by not sufficiently attempting to collect debts owed to him by elected state officers for the
5 purpose of placing the elected state officers under personal obligation to him in violation of Government
6 Code section 86205, subdivision (a) as described in Exhibit 1. Exhibit 1 is attached hereto and
7 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
8 the facts in this matter.

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
10 Respondent also agrees to the Commission imposing an administrative penalty in the total amount of
11 Five Thousand Dollars (\$5,000). Respondent submitted with this Stipulation a cashier's check from
12 Respondent in said amount, made payable to the "General Fund of the State of California," as full
13 payment of the administrative penalty that shall be held by the State of California until the Commission
14 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
15 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
16 after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent
17 in connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates
18 and agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before
19 the Commission becomes necessary, neither any member of the Commission, nor the Executive
20 Director, shall be disqualified because of prior consideration of this Stipulation.

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23 Dated: _____
24 Gary S. Winuk, on behalf of the Enforcement Division
25 Fair Political Practices Commission

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27 Dated: _____
28 Richard Ross

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Richard Ross,” FPPC No. 14/353,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

_____ Joann Remke, Chair

9 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Richard Ross (“Respondent”) is, and at all times relevant in this matter was registered to lobby the California State Legislature.¹ He also operated a political consulting business known as Ross Communications and Management, Inc. through which he provided campaign consulting services to candidates for state and local offices. The Political Reform Act (the “Act”)² prohibits lobbyists from doing anything with the purpose of placing an elected state officer under personal obligation to the lobbyist. Respondent violated this provision of the Act by contracting with candidates for the State Legislature to provide consulting services for which the candidates agreed to pay, resulting in debts owed to Respondent that Respondent did not sufficiently attempt to collect from those legislators who failed to pay him the full amount owed after getting elected.

For the purposes of this Stipulation, Respondent’s violations of the Act are as follows:

- Count 1: Respondent did not sufficiently attempt to collect payment from Assembly Member Paul Fong for a debt his campaign owed to Respondent for campaign consulting services with the purpose of placing the Assembly Member in a position of personal obligation to Respondent in violation of Section 86205, subdivision (a).

- Count 2: Respondent did not sufficiently attempt to collect payment from Assembly Member Ricardo Lara for a debt his campaign owed to Respondent for campaign consulting services with the purpose of placing the Assembly Member in a position of personal obligation to Respondent in violation of Section 86205, subdivision (a).

SUMMARY OF THE LAW

A central purpose of the Act is the regulation of lobbyists and disclosure of lobbyists’ finances so that improper influences will not be directed at public officials. (Section 81002, subd. (b).) To that end, Section 86205, subdivision (a) prohibits lobbyists from doing anything with the purpose of placing an elected state officer, legislative official, agency official, or state candidate under personal obligation to the lobbyist or the lobbyists employer.

¹ Respondent was not registered to lobby the State Legislature from January 1, 2010 to March 15, 2010 but that does not impact the violations discussed herein.

² 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 FACTS

Background

Respondent has lobbied the State Legislature, Governor's Office, and State agencies on behalf of a variety of clients for a number of years. Respondent also has provided campaign consulting services to many candidates for the State Legislature, as well as other offices. On occasion, Respondent's two businesses resulted in him lobbying, on behalf of clients of his lobbying practice, elected officials who had been clients of his political consulting business.

Respondent's contracts with legislative candidates typically called for compensation in the form of monthly payments over a set period of months. In many cases, the contract provided that most, or even all of the consulting fees, would only be owed to Respondent if the candidate won the election. These "win bonuses" ranged in amount from tens of thousands of dollars to over one hundred thousand dollars. A win bonus would typically be payable in equal monthly payments over a number of months beginning after the election. Generally, Respondent sent monthly invoices to the successful candidates whom owed him a win bonus. As discussed below, on two occasions, Respondent failed to send invoices and the elected officials failed to pay Respondent the full amount owed per the parties' contract. There were numerous other instances where Respondent did, however, continue to send bills on a monthly basis to state legislators with similar arrangements, and the vast majority of such clients paid Respondent in full.

Contract with Assembly Member Paul Fong

Respondent and Paul Fong entered into a contract on April 12, 2007. The contract called for Respondent to provide Mr. Fong with consulting services for his campaign for State Assembly in the 2008 election. Mr. Fong agreed to pay a \$125,000 win bonus in 20 equal monthly payments beginning in February of 2009. The contract also called for a 10% penalty on any amount not paid when due. Mr. Fong won the election. Respondent sent Mr. Fong an invoice in March and April of 2009. He sent no further invoices. Mr. Fong paid a total of \$25,000 on the debt in the first half of 2009. He made no subsequent payments on the debt. Respondent did not send any additional invoices or charge Mr. Fong interest on the unpaid debt.

Contract with Assembly Member Ricardo Lara

On January 24, 2009, Respondent entered into a contract with Ricardo Lara for consulting services. Mr. Lara was running for State Assembly in 2010. The contract called for Mr. Lara to pay a win bonus of \$90,000 in ten equal monthly installments commencing on January 1, 2011. The contract also called for a 10% charge for late payments. Mr. Lara paid respondent \$30,000 before the election, leaving \$60,000 due in ten monthly installments beginning on January 1, 2011. Mr. Lara won the election. Respondent sent Mr. Lara an initial invoice in December 2010. In 2011, Respondent sent Mr. Lara invoices in February through April, June, July, September, October, and December. He sent additional invoices in April and May of 2012 but did not send any invoices after that. Mr. Lara did not make any payments in

response to the invoices. After the May 2012 invoice, Respondent sent no further invoices despite Mr. Lara still owing \$60,000 on the contract.

VIOLATIONS

Respondent believed that his dual professions as a political consultant and lobbyist did not violate the prohibition in Section 86205, subdivision (a) against intentionally placing an elected official in a position of personal obligation based on a Commission opinion from 1977 called *In re Reinhardt*, 3 FPPC Ops. 83, 76-091. The Commission in *In re Reinhardt* concluded that a firm that had a partner who was a registered lobbyist could employ staff to work as campaign managers for candidates for elected state office without necessarily violating Section 86205, subdivision (a). However, the Commission's conclusion that the business arrangement in *In re Reinhardt* did not violate Section 86205, subdivision (a) was based largely on the fact that the firm received "full and adequate consideration for the services it renders to campaigns." (*Id.* at p.9.) Further, the Commission opined that "(i)f services were provided at a discount, on the other hand, questions could be raised about the firm's "purpose" for doing so and, hence, Section 86205(a) as well as Section 86202 might be implicated." (*Id.* at p. 11.) While Respondent may have believed his conduct did not violate the Act based on *In re Reinhardt*, that conclusion was incorrect because Respondent did not make adequate efforts to collect debts owed to him and therefore did not receive full and adequate consideration for his services.

Respondent was also the subject of a previous complaint to the FPPC Enforcement Division regarding his business arrangements in 2006. This complaint was not opened for investigation by the Division at that time because the facts as presented were determined to constitute reasonable efforts to collect the debt. Specifically, Mr. Ross was in regular communication with his client about the outstanding debt. In the present case, however, Respondent allowed these debts to go without collection efforts for more than four months with regard to two of his legislator clients.

By not continuing collection efforts on this debt, we infer that Respondent's purpose was to place the legislators under personal obligation to him for the debt.

As a result, Respondent violated the Act as follows:

Count 1

Placing an Elected State Officer Under Personal Obligation to a Lobbyist

Respondent did not make sufficient attempts to collect payment from Assembly Member Paul Fong for a debt his campaign owed to Respondent for campaign consulting services with the inferred purpose of placing the Assembly Member in a position of personal obligation to Respondent in violation of Section 86205, subdivision (a).

Count 2
Placing an Elected State Officer Under Personal Obligation to a Lobbyist

Respondent did not make sufficient attempts to collect payment from Assembly Member Ricardo Lara for a debt his campaign owed to Respondent for campaign consulting services with the inferred purpose of placing the Assembly Member in a position of personal obligation to Respondent in violation of Section 86205, subdivision (a).

CONCLUSION

This matter consists of two counts, which carry a maximum administrative penalty of \$5,000 per count for a total maximum penalty of \$10,000.

In determining the appropriate penalty for a particular violation of the Act, the Commission 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 the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

The Act's provisions prohibiting certain activities by lobbyists are aimed at preventing lobbyists from influencing state officials through means other than legitimate advocacy. A situation where a lobbyist holds the legal right to collect a significant debt from a legislator, or take no action on the debt, creates an obvious opportunity for improper influence by the lobbyist over the legislator, although there is no evidence before us that such improper influence occurred here.

The Commission has not considered a similar case involving a violation Section 86205, subdivision (a) in recent years so there are no comparable penalties. But a central purpose of the Act is the regulation of lobbyists so that improper influences will not be directed at public officials. (See Section 81002, subd. (b).) Respondent's violations are potentially very serious because of the opportunity for improper influence inherent in the situation where a state legislator owes a large debt to a lobbyist. However, Respondent was under the belief that his conduct was consistent with Commission opinions and advice letters, and with Enforcement Division correspondence to him regarding his business arrangements. Respondent also points out that nothing in the law dictates the manner in which a political consulting business goes about collecting an unpaid debt. There are clearly several terms in the Statute and regulations which are in need of further clarification to assist in future compliance. Additionally, according to Respondent, he was successful 92% of the time during the relevant period of time in collecting debt from his clients, even though he did not always invoice each of the clients on a regular basis. Also, his clients continued to report the outstanding amount of debt on their campaign

reports, which were verified under penalty of perjury, so there was no question they were acknowledging the debt owed and continuing to hold out the possibility of payment. Respondent further claims that in those cases where he was not successful in collecting the entirety of the debt owed, he was exercising business judgment in making the decision not to engage in legal action against the clients because, in his experience, clients are honorable people who always do their best to meet their obligations.

While Respondent may have believed his business practices did not violate the Act, that belief was ultimately incorrect. To his credit, Respondent has acknowledged that his conduct in fact did violate the Act and has agreed to write off the debt owed to him by the legislator clients covered by this stipulation. Respondent also cooperated fully with the Commission's investigation in this case and, upon realizing his business activities resulted in violations of the Act, agreed to a stipulated decision without requiring any additional administrative proceedings.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, the imposition of a penalty of \$2,500 per count for a total penalty of \$5,000 is recommended.