

1 GARY S. WINUK
Chief of Enforcement
2 DAVE BAINBRIDGE
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
4 428 J Street, Suite 620
Sacramento, CA 95814
5 Telephone: (916) 322-5660

6 Attorneys for Complainant

7 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

8 STATE OF CALIFORNIA

9 In the Matter of) FPPC No. 12/490
10)
11 HOWARD MISLE) DEFAULT DECISION and ORDER
12 Respondent.) (Gov. Code, §§ 11506 and 11520)
13)

14 Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and
15 Order for consideration at its next regularly-scheduled meeting.

16 Respondent Howard Misle has been provided advice by an attorney of his choosing as to his
17 rights to an administrative hearing under the Political Reform Act, Administrative Procedure Act, and all
18 other relevant laws, and has chosen to waive all such rights to an administrative hearing and to allow
19 this matter to proceed to a default decision. (A true and correct copy of Respondent's written waiver is
20 attached to the supporting declaration of Dave Bainbridge as Exhibit A-1.)

21 In this case, Respondent violated the Political Reform Act as described in Exhibit 1 and the
22 supporting declaration of Lee Myers, which are attached hereto and incorporated by reference as though
23 fully set forth herein. Exhibit 1 is a true and accurate summary of the law and evidence in this matter.

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1 This Default Decision and Order is submitted to the Commission to obtain a final disposition of
2 this case as to the above-named Respondent.

3
4 Dated: _____
5 Gary S. Winuk, Chief of Enforcement,
6 Fair Political Practices Commission

7 **ORDER**

8 The Commission issues this Default Decision and Order and imposes an administrative penalty
9 of \$10,000 against Respondent Howard Misle. This penalty is payable to “The General Fund of the
10 State of California.”

11 IT IS SO ORDERED, effective upon execution below by the Chair of the Fair Political Practices
12 Commission at Sacramento, California.

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14
15 Dated: _____
16 Joann Remke, Chair
17 Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Howard Misle (“Respondent”) is an individual who at all times relevant herein was the owner and president of American Metal Group, Inc. (“AMG”), a California corporation, that operated a metal recycling business in San Jose until April 2011.

The Political Reform Act (the “Act”)¹ requires that political contributions be made in the name of the person actually making the contribution. Respondent violated the Act by having an AMG employee make campaign contributions to city council candidates from her personal checking account, and then reimbursing the employee in cash for those contributions.

In this case, Respondent violated the Act as follows:

COUNT 1: Respondent made a \$250 contribution to the campaign committee “Re-elect Madison Nguyen for City Council” on or about March 12, 2010 in the name of Juana Ponce, rather than his own name, in violation of Section 84301.

COUNT 2: Respondent made a \$350 contribution to the campaign committee “Re-elect Armando Gomez for City Council 2010” on or about September 27, 2010 in the name of Juana Ponce, rather than his own name, in violation of Section 84301.

PROCEDURAL HISTORY

Respondent has been informed of the charges set forth herein. He has consulted with an attorney of his choosing about his rights to an administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws. Respondent has agreed to waive these rights, and is aware that by doing so, the Enforcement Division will proceed with this default recommendation to the Commission. (As stated above, a copy of Respondents’ written waiver in this regard is submitted herewith as Exhibit A-1 and incorporated herein by reference.)

NATURE OF DEFAULT PROCEEDINGS

In this situation, where Respondent has waived his right to an administrative hearing, the Commission may take action based upon the Respondent’s express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the Respondent. (Section 11520, subdivision (a).)

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.

SUMMARY OF THE LAW

Section 81002, subdivision (a) provides that “receipts and expenditures in election campaigns shall be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.” In order to obtain disclosure of the true source of campaign contributions, Section 84301 provides that “no contribution shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes.”

SUMMARY OF THE FACTS AND VIOLATIONS

Campaign Contribution to Madison Nguyen

Madison Nguyen was a member of the San Jose City Council from 2005 through 2014. During Ms. Nguyen’s reelection campaign for the 2010 primary election, her campaign committee, Re-elect Madison Nguyen for City Council 2010 (“Nguyen Committee”), disclosed receiving a \$250 contribution from Respondent. The Nguyen Committee also disclosed receiving contributions from AMG and some of its employees of \$250 each. The contribution limit in San Jose at the time was \$250.

Juana Ponce, an employee of AMG at the time, was one of the persons from whom the Nguyen Committee disclosed receiving a \$250 contribution. According to a sworn statement by Ms. Ponce, in March 2010, Respondent asked Ms. Ponce to write a check in the amount of \$250 from her personal bank account to Nguyen Committee. He told her he would reimburse her for writing the check. She wrote the check, gave it to Respondent, and received a cash reimbursement for the amount of the check.

Based on the evidence available, the FPPC Enforcement Division determined the Nguyen Committee was not aware at the time of receiving the contribution in the name of Ms. Ponce that Respondent was the true source of the contribution.

Campaign Contribution to Armando Gomez

Armando Gomez was a member of the Milpitas City Council from 2002 through 2014. During his re-election bid in 2010, Mr. Gomez’s campaign committee, Re-elect Armando Gomez for City Council 2010 (“Gomez Committee”), disclosed receiving a \$350 contribution from Respondent for the general election. The limit on campaign contributions to candidates for Milpitas City Council was \$350 at that time.

For the general election the Gomez Committee also reported receiving a \$350 contribution from Ms. Ponce on September 27, 2010. According to a sworn statement by Ms. Ponce, she wrote a \$350 check to the Gomez Committee at the request of Respondent, who reimbursed her in cash for the amount of the check.

Based on the evidence available, the FPPC Enforcement Division determined the Gomez Committee was not aware at the time of receiving the contribution in the name of Ms. Ponce that Respondent was the true source of the contribution.

Counts 1 and 2
(Making Contributions in the Name of Juana Ponce)

Respondent was the true source of the contributions made in the name of Juana Ponce to Nguyen Committee and Gomez Committee because Respondent reimbursed Ms. Ponce for writing checks from her personal account. By making these two contributions in the name of Juana Ponce, Respondent violated Section 84301.

CONCLUSION

This matter consists of two counts against Respondent which carry a maximum administrative penalty of Five Thousand Dollars (\$5,000) per count for a total penalty of Ten Thousand Dollars (\$10,000).

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“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.

Making contributions in the name of another person, commonly known as political “money laundering,” is one of the most serious violations of the Act. Money laundering violations typically result in maximum penalties of \$5,000 per count. For example, in the case of *In the Matter of Glen Gerson and Malibu Conference Center, Inc.*, FPPC No. 11/803, the respondents made five campaign contributions, each in the amount of \$1,000, to a candidate for Simi Valley city council in a name other than their own. Simi Valley had a \$1,000 contribution limit. In a default decision on May 17, 2012, the Commission imposed a penalty of \$5,000 per count for five counts of violating Section 84301.

Similarly, the Commission imposed a penalty of \$5,000 per count on 11 counts of violating Section 84301 in *In the Matter of James Larry Minor*, FPPC No. 11/008 (Stipulation approved on April 11, 2011.) In that case, the respondent made contributions to a candidate for state Senate and a candidate for State Assembly in the names of relatives and associates rather than his own name on eleven occasions.

The Commission also imposed a penalty of \$5,000 per count for two counts of making a contribution in the name of another person in *In the Matter of Ana Maria Gonzalez Ibarra*, FPPC No. 11/802. (Default Decision approved on December 13, 2012.) In that case, the respondent reimbursed two co-workers for each making a contribution to a candidate for mayor in the City of Chula Vista. The contributions were for \$300 each, the limit for mayoral elections in Chula Vista.

Most recently, the Commission imposed a penalty of \$5,000 per count for eight counts of violating Section 84301 in *In the Matter of Archway Property Services, LLC, et. al*, FPPC No. 11/1056 (Default Decision approved on October 16, 2014.) In that case, a respondent recruited various individuals to make eight campaign contributions to San Francisco mayoral candidates in the names of the individuals and then reimbursed those individuals for making the contributions. The contributions were for \$500 each, the city's contribution limit.

A central purpose of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that the voters may be fully informed, and improper practices may be inhibited. (Section 81002, subdivision (a).) Disclosure of the source of campaign contributions is an essential part of the Act's mandate. In this case, Respondent sought to avoid accurate disclosure of his contributions by having his employee make contributions that he could not legally make himself and then reimbursing her for those contributions. These are very serious violations of the Act that justify a maximum penalty.

PROPOSED PENALTY

Under these circumstances, it is respectfully submitted that imposition of the maximum penalty of Five Thousand Dollars (\$5,000) per count is justified, for a total penalty in the amount of Ten Thousand Dollars (\$10,000).

EXHIBIT A

1 GARY S. WINUK
Chief of Enforcement
2 DAVE BAINBRIDGE
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
4 428 J Street, Suite 620
Sacramento, CA 95814
5 Telephone: (916) 322-5660

6 Attorneys for Complainant

7 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

8 STATE OF CALIFORNIA

9 In the Matter of) FPPC No. 12/490
10)
11 HOWARD MISLE) DECLARATION OF DAVE
12) BAINBRIDGE IN SUPPORT OF
13) DEFAULT DECISION AND
Respondent.) ORDER
(Gov. Code, §§ 11506 and 11520)

14
15 I, Dave Bainbridge, declare as follows:

16 1. I am employed by, and I represent the Fair Political Practices Commission (“FPPC” or
17 “Commission”) in my capacity as Senior Commission Counsel for the Enforcement Division. My
18 business address is 428 J Street, Suite 620, Sacramento, California.

19 2. I am the attorney assigned to this case. If called as a witness, I competently could and
20 would testify to the truth of the facts contained herein, which is based upon my personal knowledge.

21 3. Attached hereto as Exhibit A-1, is a true and correct copy of Respondent’s waiver of his
22 right to an administrative hearing.

23
24 I declare under penalty of perjury under the laws of the State of California that the foregoing is
25 true and correct. Executed at Sacramento, California, on _____, 2015.

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27
28 _____
Dave Bainbridge
Senior Commission Counsel, Enforcement Division
Fair Political Practices Commission

EXHIBIT A-1



**FAIR POLITICAL PRACTICES COMMISSION
ENFORCEMENT DIVISION**

**WAIVER OF RIGHT TO
ADMINISTRATIVE HEARING**

FPPC Case No. 12/490

1. I, the undersigned, have consulted with an attorney of my choosing, and I understand my rights to an administrative hearing under the Political Reform Act, the Administrative Procedure Act, and all other relevant laws.
2. I hereby waive my rights to an administrative hearing. I understand and agree that this case will proceed to a default recommendation by the Enforcement Division of the Fair Political Practices Commission, and I waive the 15-day notice requirement for defaults. However, this waiver is made with the following conditions:
 - a. This waiver does not constitute an admission of any kind.
 - b. The default recommendation by the Enforcement Division shall be for two counts under Government Code section 84301 with a recommended penalty of \$10,000.
 - c. This represents the final and complete resolution of the matter in question.
 - d. This waiver shall be null and void if any of the foregoing conditions are not met, in which case all payments tendered by the undersigned in connection with this waiver shall be reimbursed. Should this occur, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of the default recommendation.

Dated: _____

Howard Misle, Respondent

EXHIBIT B

1 GARY S. WINUK
Chief of Enforcement
2 DAVE BAINBRIDGE
Senior Commission Counsel
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Sacramento, CA 95814
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6 Attorneys for Complainant

7 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

8 STATE OF CALIFORNIA

9 In the Matter of) FPPC No. 12/490
10)
11 HOWARD MISLE) DECLARATION OF LEE MYERS
IN SUPPORT OF DEFAULT
12 Respondent.) DECISION AND ORDER
13) (Gov. Code, §§ 11506 and 11520)

14 I, Lee Myers, declare as follows:

- 15 1. I am a special investigator for the Fair Political Practices Commission (“FPPC” or
16 “Commission”). My business address is 428 J Street, Suite 620, Sacramento, California.
- 17 2. I am the special investigator assigned to this case. Exhibit 1, which is incorporated by
18 reference as though fully set forth in the Default Decision and Order, accurately states the facts and
19 circumstances present in this case.
- 20 3. If called as a witness, I competently could and would testify to the truth of the facts as
21 stated in Exhibit 1 and in this declaration, which are based on my personal knowledge.

22
23 I declare under penalty of perjury under the laws of the State of California that the foregoing is
24 true and correct. Executed at Sacramento, California, on _____, 2015.

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26
27
28 _____
Lee Myers
Special Investigator, Enforcement Division
Fair Political Practices Commission