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

11 In the Matter of:

12 JAMES N. NEIL aka JIM NEIL,

13 Respondent.

FPPC Case No. 2022-00716

14 STIPULATION, DECISION AND ORDER

15 **INTRODUCTION**

16 Respondent James N. Neil aka Jim Neil (“Neil”) is a commercial real estate broker, having
17 worked for CBRE Group, Inc., and Kidder Mathews, Inc. (“Kidder”), specializing in multi-housing real
18 estate. Neil has served as a commercial real estate broker for over 20 years in the private sector. From
19 2010 through 2021, as an independent contractor of Kidder, Neil was a consultant with the City of San
20 Diego Housing Commission as part of his private sector work.

21 This case arose as part of a civil settlement agreement dated September 13, 2022, between the
22 plaintiffs, San Diego Housing Commission (“SDHC”), City of San Diego (“City”), and Housing
23 Authority of the City of San Diego (“HASD”); and the defendants, James N. Neil aka Jim Neil (“Neil”),
24 Kidder Mathews, Inc. (“Kidder”), Kidder Mathews of California, Inc. (“KMCA”), Chatham RIMV, LLC
25 (“Chatham RIMV”), and RT San Diego, LLC (“RT San Diego”).¹ The civil settlement involved a real
26 estate transaction in which Neil served as the commercial broker for a property purchased by SDHC from
27

28 ¹ https://www.sdhc.org/wp-content/uploads/2022/08/HCR22-102-Neil-Settlement_final-1.pdf

1 Chatham RIMV. The total monetary civil settlement paid was \$1,000,000. As a part of the settlement
2 agreement, Neil agreed to enter into a stipulated settlement with the Fair Political Practices Commission
3 (“Commission”) for a violation of the Political Reform Act² (“Act”) that would be approved as to form
4 by the San Diego District Attorney before being presented to the Commission for approval.

5 The Act prohibits public officials from making, participating in making, or attempting to
6 influence governmental decisions in which the official knows or has reason to know they have a financial
7 interest. Neil violated the Act when he participated in making a governmental decision which had a
8 reasonably foreseeable material financial effect on Neil’s financial interest.

9 **SUMMARY OF THE LAW**

10 The Act and its regulations are amended from time to time. All legal references and discussions
11 of law are intended to be citations to statutes and regulations as they existed at the time of the violations
12 in this case.

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

14 When enacting the Political Reform Act, the people of California found and declared that
15 previous laws regulating political practices suffered from inadequate enforcement by state and local
16 authorities.³ Thus, it was decreed that the Act “should be liberally construed to accomplish its
17 purposes.”⁴

18 One purpose of the Act is to ensure that public officials perform their duties in an impartial
19 manner, free from bias caused by their own financial interests or the financial interests of persons who
20 have supported them.⁵ Along these lines, the Act requires that the assets and income of public officials
21 are required to be disclosed and in appropriate circumstances.⁶ Further, the officials should be
22 disqualified from acting in order that conflicts of interest may be avoided.⁷

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24 _____
25 ² The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
26 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission are
27 contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to
28 this source.

³ Section 81001, subdivision (h).

⁴ Section 81003.

⁵ Section 81001, subdivision (b).

⁶ Sections 81002, subdivision (c), 87100, and 87200 et seq.

⁷ Sections 87100, et seq.

1 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will
2 be “vigorously enforced.”⁸

3 **Conflicts of Interest**

4 A public official may not make, participate in making, or attempt to use their official position to
5 influence a governmental decision in which they know, or have reason to know, they have a financial
6 interest.⁹ A public official has a financial interest in a decision if it is reasonably foreseeable that the
7 decision will have a material financial effect, distinguishable from its effect on the public generally, on a
8 business entity in which the public official has a direct or indirect investment worth at least \$2,000.¹⁰ A
9 business entity is defined as any organization or enterprise operated for profit, including but not limited
10 to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, or
11 association.¹¹ “Investment” means any financial interest in or security issued by a business entity,
12 including any parent, subsidiary, or otherwise related business entity.¹²

13 “Public official” means every member, officer, employee, or consultant of a state or local
14 government agency.¹³ “Consultant” means an individual who, pursuant to a contract with a state or local
15 government agency, serves in a staff capacity with the agency and in that capacity participates in
16 making a governmental decision.¹⁴ A public official participates in a governmental decision if the
17 official provides information, an opinion, or a recommendation for the purpose of affecting the decision
18 without significant intervening substantive review.¹⁵

19 For a financial interest explicitly involved in a decision, a financial effect on the financial
20 interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the
21 subject of, a governmental decision before the official or the official’s agency. A financial interest is the
22 subject of a proceeding if the decision involves the approval of any contract with the financial interest.¹⁶

23
24 ⁸ Section 81002, subdivision (f).

25 ⁹ Section 87100.

26 ¹⁰ Section 87103 and Regulation 18700.

27 ¹¹ Section 82005.

28 ¹² Section 82034 and Regulation 18700.2.

¹³ Section 82048.

¹⁴ Regulation 18700.3, subdivision (a)(2).

¹⁵ Regulation 18704, subdivision (b).

¹⁶ Regulation 18701, subdivision (a).

1 **SUMMARY OF THE FACTS**

2 As a result of the state of emergency related to the COVID-19 pandemic, SDHC entered into an
3 Agreement for Real Estate Broker Services with Kidder Mathews of California, Inc. and Neil to provide
4 real estate broker services, including identifying hotel properties for potential purchase and negotiating
5 hotel purchase transactions (“Broker Agreement”) in order to transition hotel properties into homeless
6 shelters.

7 In July 2020, Neil identified the Residence Inn Mission Valley, owned by Chatham RIMV, and
8 several other properties, as potential properties for purchase. Chatham RIMV is a subsidiary of Chatham
9 Lodging Trust. For ease of use, we will call them “Chatham Subsidiary” and “Chatham Parent.”

10 In the course of identifying the Residence Inn Mission Valley as a potential property for
11 purchase, Neil discovered several factors that led him to believe that the stock value of Chatham Parent
12 was undervalued and might be a good investment through the purchase of stock. Based upon publicly
13 available information, Neil believed that the market was undervaluing Chatham Parent, and wished to
14 purchase Chatham Parent stock.

15 On July 27, 2020, Neil and SDHC representatives first toured the Chatham Subsidiary property.
16 At that time, SDHC had two other properties under accepted letters of intent (“LOI”), and several other
17 extended stay properties in early discussions as potential acquisition targets. SDHC expected to acquire
18 one or two properties in total, so at the time of the tour, it was not certain that the Chatham Subsidiary
19 property would be one of those properties. During the July 27 tour, Neil told the most senior SDHC
20 executive staff member of his desire to purchase Chatham Parent stock and explained why he thought it
21 would be a good investment. The executive staff member agreed with Neil’s thought process, but
22 because the executive staff member was a government employee, they couldn’t purchase the stock.
23 However, the executive staff member advised Neil he could do so because Neil was not a government
24 employee. Neil also informed a second senior SDHC executive staff member of his desire to purchase the
25 stock.

26 After this conversation, Neil made three purchases of Chatham Parent stock: one on July 28,
27 2020, for 20,000 shares, one on August 4, 2020, for 10,000 shares, and one on October 21, 2020, for
28 another 10,000 shares. Neil’s purchase of 40,000 shares reflected a 0.085% ownership interest in the

1 company, which was valued at \$2,000 or more. Neil discussed his stock purchase with two SDHC
2 executive staff members with whom Neil had been in regular communication, and neither brought up any
3 concerns.

4 On July 29, 2020, SDHC signed a non-disclosure agreement related to the Chatham Subsidiary
5 property. On July 30, 2020, a LOI was sent by Chatham Subsidiary to SDHC. On August 5, 2020, the
6 purchase price in the LOI was accepted. On August 20, 2020, both parties executed a formal purchase
7 and sale agreement (“PSA”). On September 15, 2020, the SDHC Board of Commissioners recommended
8 the purchase of the property to the San Diego City Council, and on October 13, 2020, the City Council
9 approved the purchase. Between August and October 2020, Neil participated in conference calls where
10 SDHC staff discussed the purchase of the Chatham Subsidiary property in anticipation of the SDHC
11 Board of Commissioners and City Council consideration and approval. However, Neil did not participate
12 in drafting SDHC staff reports, or make recommendations or testimony to the SDHC Board of
13 Commissioners or the City Council, and Neil did not attend any of those hearings.

14 The Chatham Subsidiary property had 192 rooms, which represented just 3.15% of the total
15 Chatham Parent’s 6,092-room portfolio. The net operating income from the property reflected just
16 3.367% of the 2019 Chatham Parent’s total net operating income. Neil received no income, dividends or
17 other payments for the stock purchased.

18 VIOLATION

19 Count 1: Conflict of Interest

20 Neil, as a consultant for SDHC and owning stock valued at \$2,000 or more in Chatham Parent,
21 had a conflict of interest when he participated in a governmental decision regarding SDHC’s purchase of
22 the Chatham Subsidiary property that had a reasonably foreseeable material financial effect on his
23 financial interest, Chatham Parent, in violation of Government Code section 87100.

24 PROPOSED PENALTY

25 This matter consists of one proposed count. The maximum penalty that may be imposed is \$5,000
26 per count.¹⁷ Thus, the maximum penalty that may be imposed for the count charged here is \$5,000.

27 Conflicts of interests violations do not qualify for the Commission’s streamline program.

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¹⁷ See Section 83116, subdivision (c).

1 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
2 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
3 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
4 considers the facts and circumstances of the violation in the context of the following factors set forth in
5 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
6 by the specific violation; (2) The level of experience of the violator with the requirements of the Political
7 Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence
8 or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate,
9 negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission
10 staff or any other governmental agency in a manner not constituting complete defense under Government
11 Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the
12 violator has a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the
13 violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

14 A conflict of interest is a serious violation of the Act with a high degree of public harm. This type
15 of violation undermines public trust in government by creating the appearance that the decision was the
16 product of a conflict of interest. Also, such conduct contradicts the Act's decree that public officials
17 should serve the needs of all citizens in an impartial manner—free from bias caused by their own
18 financial interests. In this matter, once Neil purchased more than \$2,000 worth of Chatham Parent stock,
19 he had a financial interest in Chatham Parent and Chatham Subsidiary. Neil then participated in the
20 decision to purchase the property by participating in conference calls with SDHC staff discussing the
21 purchase.

22 Neil was very inexperienced with the Act. Neil had not previously been, and was not at the time
23 of the events in this matter, a full-time government employee. Neil was an outside contractor, and he has
24 not received or been asked to take any government ethics training. Neil's level of knowledge regarding
25 his ethics obligations as a contractor appeared to be very low.

26 The Commission has previously considered another stipulation involving a conflict of interest: *In*
27 *the Matter of Leticia Perez*, FPPC No. 19/960 (The Commission approved a settlement in this matter on
28 June 18, 2020). The respondent had an economic interest in her spouse's business and through that

1 business, had an economic interest in a cannabis business. The respondent had a conflict of interest when
2 she voted on a decision to ban the sale of cannabis and related products. The Commission imposed a
3 penalty of \$4,000 on one count.

4 Here, a higher penalty is warranted. Neil owned stock in Chatham Parent valued at \$2,000 or
5 more at the time he participated in a decision to purchase property owned by Chatham Subsidiary. In
6 aggravation, Neil purchased the Chatham Parent stock after identifying the Chatham Subsidiary property
7 as a potential acquisition target, and very close in time to when Neil participated in the governmental
8 decision. These actions gave the appearance that Neil purchased the stock to gain a personal advantage
9 related to the purchase of the Chatham Subsidiary property, and that the governmental decision was the
10 product of a conflict of interest. In mitigation, Neil was inexperienced with the Act, was not a full-time
11 government employee, and did not receive any governmental ethics training.

12 There is no evidence that Neil acted with an intent to conceal or deceive. Neil told SDHC staff he
13 planned to buy the stock, and they did not raise any objections.

14 The evidence also supports that this violation was the result of negligence. Neil told SDHC staff
15 he planned to buy the stock, and they did not raise any objections. Neil was inexperienced with the Act
16 having never been a government employee or received ethics training.

17 The Enforcement Division has no evidence to suggest a pattern of violations. Neil has no prior
18 history of violations.

19 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
20 penalty of \$5,000 is recommended.

21 CONCLUSION

22 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
23 Respondent, James N. Neil aka Jim Neil, hereby agrees as follows:

24 1. Respondent violated the Act as described in the foregoing pages, which are a true and
25 accurate summary of the facts in this matter.

26 2. This stipulation will be submitted for consideration by the Fair Political Practices
27 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
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1 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
2 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
3 liability of the Respondent pursuant to Section 83116.

4 4. The Respondent has consulted with their attorney, Gary S. Winuk of Kaufman Legal
5 Group, APC, and understands, and hereby knowingly and voluntarily waives, any and all procedural
6 rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This
7 includes, but is not limited to the right to appear personally at any administrative hearing held in this
8 matter, to be represented by an attorney at the Respondent’s own expense, to confront and cross-examine
9 all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
10 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
11 reviewed.

12 5. The Respondent agrees to the issuance of the decision and order set forth below. Also, the
13 Respondent agrees to the Commission imposing against it an administrative penalty in the amount of
14 \$5,000. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
15 Fund of the State of California—is/are submitted with this stipulation as full payment of the
16 administrative penalty described above, and same shall be held by the State of California until the
17 Commission issues its decision and order regarding the matter.

18 6. If the Commission declines to approve this stipulation—then this stipulation shall become
19 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
20 rejected, all payments tendered by the Respondent in connection with this stipulation shall be reimbursed
21 to the Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
22 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
23 Director, shall be disqualified because of prior consideration of this Stipulation.

24 7. The parties to this agreement may execute their respective signature pages separately. A
25 copy of any party’s executed signature page including a hardcopy of a signature page transmitted via fax
26 or as a PDF email attachment is as effective and binding as the original.

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Dated: _____

Christopher Burton, Acting Chief of Enforcement
Fair Political Practices Commission

Dated: _____

James N. Neil aka Jim Neil

The foregoing stipulation of the parties “In the Matter of James N. Neil aka Jim Neil,” FPPC No. 2022-00716 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: _____

Richard C. Miadich, Chair
Fair Political Practices Commission