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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of ADRIENNE LAUBY, Respondent.	FPPC No.: 10/116 DEFAULT DECISION AND ORDER (Government Code Sections 11506 and 11520)

Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission, hereby submits this Default Decision and Order for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

Pursuant to the California Administrative Procedure Act,[1] Respondent Adrienne Lauby ("Respondent") has been served with all of the documents necessary to conduct an administrative hearing regarding the above-captioned matter, including the following:

1. An Order Finding Probable Cause;
2. An Accusation;
3. A Notice of Defense (Two Copies);
4. A Statement to Respondent; and,
5. Copies of Sections 11506, 11507.5, 11507.6 and 11507.7 of the Government Code.

[1] The California Administrative Procedure Act, which governs administrative adjudications, is contained in sections 11370 through 11529 of the Government Code.

Government Code section 11506 provides that failure of a respondent to file a Notice of Defense within fifteen days after being served with an Accusation shall constitute a waiver of respondent's right to a hearing on the merits of the Accusation. The Statement to Respondent, served on Respondent, explicitly stated that a Notice of Defense must be filed in order to request a hearing. Respondent failed to file a Notice of Defense within fifteen days of being served with an Accusation.

Government Code Section 11520 provides that, if the respondent fails to file a Notice of Defense, the Commission may take action, by way of a default, based upon the respondent's express admissions or upon other evidence, and that affidavits may be used as evidence without any notice to the respondent.

Respondent Adrienne Lauby violated the Political Reform Act as described in Exhibit 1, which are attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the law and evidence in this matter. This Default Decision and Order is submitted to the Commission to obtain a final disposition of this matter.

Dated: 10/29/10

Roman G. Porter
Executive Director
Fair Political Practices Commission

ORDER

The Commission issues this Default Decision and Order and imposes an administrative penalty of $4,500 (Four Thousand Five Hundred Dollars) upon Respondent Adrienne Lauby, payable to the "General Fund of the State of California."

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

Dated: Nov 15, 2010

Dan Schnur, Chairman
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

At all relevant times, Respondent Adrienne Lauby ("Respondent") was a campaign volunteer in Cotati City Council Member John Guardino's November 7, 2006 campaign. John Guardino was a candidate for Cotati City Council in the November 7, 2006 election. The controlled committee for John Guardino's November 7, 2006 campaign was Friends of John Guardino ("Committee"). In this matter, Respondent was given $300 in cash by another volunteer of the Committee and asked to make a contribution in this amount in her name. On or about September 4, 2006, Respondent contributed this $300 to the Committee. Respondent failed to disclose that the money used to pay for this contribution had been received from another person.

This matter arose out of a pro-active investigation by the Fair Political Practices Commission ("Commission"). This matter relates to Commission case numbers 09/739, 09/774, 10/115, 10/117, and 10/505.

For the purposes of this Default, Decision and Order, Respondent's violation of the Political Reform Act (the "Act")[1] is stated as follows:

COUNT 1: Respondent Adrienne Lauby, acting as an agent or intermediary, made a contribution on behalf of another person, such that the identity of the donor was not reported, in violation of sections 84301 and 84302 of the Government Code.

PROCEDURAL HISTORY

When the Fair Political Practices Commission (the "Commission") determines that there is probable cause for believing that the Act has been violated, it may hold a hearing to determine if a violation has occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the "APA").[2] (Section 83116.) A hearing to determine whether the Act has been violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules which the respondent is alleged to have violated. (Section 11503.)

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation's form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matter by way of a defense. (Section 11506, subd. (a)(1)-(6).)

[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.

[2] The Administrative Procedure Act is contained in Government Code Sections 11370 through 11529.

The APA provides that a respondent's failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent's right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

A. Initiation of the Administrative Action

Section 91000.5 provides that "[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action." (Section 91000.5, subd. (a).) Section 83115.5 provides in pertinent part:

> No finding of probable cause to believe this title has been violated shall be made by the Commission unless, at least 21 days prior to the Commission's consideration of the alleged violation, the person alleged to have violated this title is notified of the violation by service of process or registered mail with return receipt requested .... Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of the Act, shall be commenced more than five years after the date on which the violation occurred. In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondent in this matter by serving her with a Report in Support of a Finding of Probable Cause (the "Probable Cause Report") on July 12, 2010. (See Certification of Records ("Certification") filed herewith, Exhibit A, and incorporated herein by reference.)[3] The Probable Cause Report was served by certified mail. (See Certification, Exhibit A - 1.) Therefore, the administrative action commenced on July 12, 2010, the date Respondent was served the Probable Cause Report, and the five year statute of limitations was effectively tolled on this date. (Sections 83115.5; 91000.5.)

As required by Section 83115.5, the packet served on Respondent contained the cover letter to the Probable Cause Report, advising that Respondent had 21 days in which to request a probable cause conference and/or to file a written response to the Probable Cause Report. (See Certification, Exhibit A - 2.) Respondent neither requested a probable cause conference nor submitted a written response to the Probable Cause Report.

[3] On June 15, 2010, the Enforcement Division was informed that the Respondent had retained counsel. All documents herein were served on the Respondent through her attorney.

B. Ex Parte Request for a Finding of Probable Cause

Since Respondent failed to request a probable cause conference or submit a written response to the Probable Cause Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to Executive Director Roman G. Porter. (See Certification, Exhibit A - 3.) Respondent was sent copies of these documents via U.S. Mail.

On August 11, 2010, Executive Director Roman G. Porter issued an Order Finding Probable Cause. (Certification, Exhibit A - 4.)

C. The Issuance and Service of the Accusation

Under the Act, if the Executive Director makes a finding of probable cause, he or she must prepare an accusation pursuant to Section 11503 of the APA, and have it served on the subject of the probable cause finding. (Regulation 18361.4, subd. (e).) Section 11503 provides:

> A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a) requires that, upon the filing of the accusation, the agency shall: 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b) set forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c) provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On August 11, 2010, the Executive Director issued an Accusation against the Respondent in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506 through 11508, were personally served on Respondent through her attorney on August 30, 2010. (See Certification, Exhibit A - 5.)

Along with the Accusation, the Enforcement Division personally served Respondent with a "Statement to Respondent" which notified her that she could request a hearing on the merits and warned that, unless a Notice of Defense was filed within fifteen days of service of the Accusation, she would be deemed to have waived the right to a hearing. Respondent did not file a Notice of Defense within the statutory time period.

As a result, on October 19, 2010, Commission Counsel Bridgette Castillo sent a letter to Respondent advising that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for November 12, 2010. A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter. (See Certification, Exhibit A - 6.)

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Section 81002, subdivision (a) of the Act 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." Timely and truthful disclosure of the source of campaign contributions is an essential part of the Act's mandate.

Section 84301 provides that no contribution shall be made by any person in a name other than the name by which such person is identified for legal purposes. Section 84302 provides that no person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing both the name of the intermediary and the contributor. (Section 84302; regulation 18432.5.) Regulation 18432.5 states that a person is an intermediary for a contribution if the recipient of the contribution "would consider the person to be the contributor without the disclosure of the identity of the true source of the contribution."

SUMMARY OF THE FACTS

Michelle Berman, a volunteer for the Committee, received a $1,000 cash contribution for the Committee from George Barich. At all relevant times, a City of Cotati local ordinance

imposed a $350 contribution limit on campaign contributions made to candidates for elected office. Ms. Berman divided the $1,000 cash contribution between several intermediaries. Respondent was one of the intermediaries.

Respondent was given $300 cash of the $1,000 cash contribution and asked by Ms. Berman to use this money to make a contribution to the Committee in her own name. Respondent made a $300 contribution in the form of a personal check to the Committee in her name without disclosing that the money had been received from another source. Respondent did not report either Michelle Berman or George Barich as the donor of the contribution to the Committee. A contribution of $300 was reported, on a campaign contribution ledger maintained by the Committee, as having been received on September 4, 2006, from Respondent.

The Committee later filed an amendment to the above mentioned statement covering the period of August 11, 2006, through September 30, 2006, which indicates that Mr. Barich was the true source of the $1,000 contribution received on September 4, 2006. This amendment named the Respondent as an intermediary.

Respondent, acting as an agent or intermediary, made a contribution on behalf of another person, such that the identity of the donor was not reported, in violation of Sections 84301 and 84302.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars ($5,000) per count.

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 demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Campaign money laundering is one of the most serious violations of the Act, as it denies the public of information about the true source of a candidate's financial support. Therefore, the typical administrative penalty in a campaign laundering case has historically been at or near the maximum penalty per violation, depending on the circumstances of the violation.

Aggravating Factors

The City of Cotati campaign contribution limit is $350. Respondent intentionally violated the Act by concealing from the public knowledge of the true source of contribution, and helped willfully violate local campaign contribution limits.

Mitigating Factors

None.

Penalty

Therefore, based on the particular facts and circumstances of this matter, an administrative penalty of Four Thousand Five Hundred Dollars ($4,500) is appropriate.