

BEFORE THE
FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

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In the Matter of the Accusation Against:

Case No. 09/773

CHRIS NORBY, NORBY FOR
SUPERVISOR, and BETTY PRESLEY,
Treasurer of Norby for Supervisor,

OAH No. 2011050957

Respondents.

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter on December 8, 2011, at Los Angeles, California.¹

Luisa Menchaca, Senior Commission Counsel, and Milad Dalju, Commission Counsel, represented Complainant.

Darryl R. Wold, Attorney at Law, represented Chris Norby (Norby), Norby for Supervisor (the committee), and Betty Presley (Presley), the treasurer of the committee (collectively Respondents).

The record was left open until January 6, 2012 for Complainant to submit 13 "Advice Letters" for which request for official notice (Exhibit 24) had been made, and for the filing of closing and reply briefs. The advice letters were received, marked as Exhibit 26, and admitted in evidence. The parties timely filed closing briefs. Complainant's closing brief was marked for identification only as Exhibit 27; Respondents' closing brief was marked for identification as Exhibit L. The parties jointly requested an extension of time, which was granted, to file their reply briefs, both of which were received by the Office of Administrative Hearings on January 13, 2012. Complainant's reply brief was marked for identification as Exhibit 28; Respondents' reply brief was marked for identification as Exhibit M.

On February 6, 2012, the Office of Administrative Hearings received a stipulation of the parties, marked for identification and admitted in evidence as Exhibit 29, whereby the Accusation was amended at paragraph 9, lines 1 and 2, changing the name of the respondent identified as "Friends of Chris Norby" to "Norby for Supervisor" and further stipulating that,

¹ The Administrative Law Judge, as part of the proceedings and, by stipulation, without the presence of the parties, conducted a site inspection of the Fullerton A Inn in Fullerton, California, on December 9, 2011.

at all relevant times, Presley was the treasurer of that committee. The matter was deemed submitted on February 6, 2012.

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. Roman G. Porter made the Accusation in his official capacity as the Executive Director of the Fair Political Practices Commission (FPPC).

2. At all times pertinent hereto: Norby was an elected official within the meaning of the Political Reform Act (Government Code section 81000, et sq. (the Act)); the committee was an entity defined in section 82013 of the Act; and, Presley was the treasurer of the committee.

3. The issue in this matter is whether, under the Act, the committee properly reimbursed Norby the sum of \$361.48 for out-of-pocket expenses Norby incurred during his stay at the Fullerton A Inn (motel) for the period August 1, 2007 to August 7, 2007. As more fully set forth in the Legal Conclusions below, under the Act, Norby's initial reimbursement of \$340 for his stay at the motel is deemed to be a "substantial personal benefit." As such, the reimbursement violates the Act unless the funds reimbursed were "directly related" to a political, legislative, or governmental purpose. Complainant contends Respondent's stay at the motel was not directly related to a political, legislative or governmental purpose. Rather, Complainant contends, Norby stayed at the motel because he had just separated from his now ex-wife. Norby contends his stay at the motel was part of his study into the homeless and transient-hotel residents in Orange County and thus was for a government purpose.

4. The parties entered into a Stipulation of Facts (Exhibit 23) whereby the following facts were deemed established:²

a. At all times alleged, namely August 1, 2007, to July 31, 2008, Norby was a member of the Orange County Board of Supervisors.

b. At all times alleged, namely August 1, 2007, to July 31, 2008, Norby was a "candidate" as defined in section 82007 of the Act.

c. At all times alleged, namely August 1, 2007, to July 31, 2008, Norby "controlled" the committee within the meaning of section 82016 of the Act.

² Part of the stipulated facts has been omitted as they deal with jurisdictional issues not relevant here.

d. At all relevant times, the committee was a “recipient committee” within the meaning of section 82013, subdivision (a) of the Act, with a Secretary of State Identification Number of 1237231.³

e. At all relevant times, Presley was the treasurer of the committee.

f. On or about August 1, 2007, Norby made an out-of-pocket cash payment of \$340 for lodging at the Fullerton A Inn in Fullerton, California, covering the period August 1, 2007, to August 7, 2007. During or shortly after the period August 1 through August 7, 2007, Norby sent a receipt from the Fullerton A Inn for his \$340 payment to Presley, requesting reimbursement from the committee account. Before sending the receipt, Norby wrote on it, “\$340 cash out-of-pocket reimbursement. Fullerton Inn. 1-week stay to study homeless/motel residents & children in 4th district.”

g. On or about August 14, 2007, Norby was reimbursed \$361.48 from the committee’s bank account by Presley for Norby’s cash out-of-pocket expense at the Fullerton A Inn for the period August 1, 2007, to August 7, 2007, totaling \$340, plus miscellaneous expenses totaling \$21.48.

h. On or about March 7, 2008, Norby refunded by check \$340 to the committee for the “Fullerton Lodge Reimbursement.”

i. Presley accepted a check from Norby on or about March 8, 2008, as a “refund” or “reimbursement” to the committee and deposited it in the committee bank account.

j. On August 7, 2007, Norby attended the Orange County Board of Supervisors meeting, from on or about 9:30 a.m. to 2:45 p.m.

k. On or about April 15, 2008, Norby published an article about issues of homelessness in “Norby Notes,” Volume 6, Issue 3.

l. In February or March 2008, Norby filed for divorce from his then wife Marsha Norby [SEPARATION DATE ISSUE IN PROPERTY SETTLEMENT AGREEMENT]. The Orange County Superior Court acquired jurisdiction over the parties on or about March 17, 2008.

m. On or about November 24, 2008, Norby’s divorce from Marsh Norby was final.

³ In Exhibit 23, the Secretary of State Identification Number is referenced as 123723. However, other Exhibits, such as Exhibit 21, the Recipient Committee Committee Statement (Form 460), references the identification number as set forth in the Finding.

5. It is Complainant's contention that Norby stayed at the motel because he was having marital problems and thus the stay was for a "personal" and not a "governmental" purpose. In support of Complainant's contention regarding the purpose of Norby's visit, Complainant relied chiefly on an article that appeared in the Los Angeles Times on March 8, 2008.⁴ The relevant portions of that article are as follows:

Orange County Supervisor Chris Norby acknowledged Friday that he spent committee funds to pay for a one-week stay at a Fullerton Hotel last August because of marital problems, an expense he labeled a "study of homeless and motel families" on financial disclosure forms.

"I'm surprised it was on the committee [account]; it should not have been." Norby said. "And I'm going to reimburse the committee because I was there for a personal stay."

Rumors have abounded about the colorful supervisor of the 4th District for the last several months as his marriage to his third wife, Marsha, came to an end. He spent a few days sleeping in his office, then one well-remarked-upon episode in a park, before checking into the Fullerton A Inn. He paid \$340 for the room at the bed and breakfast, according to his disclosure forms.

"Ever heard of the term the doghouse?" Norby said. "I mean, sometimes people need to reassess and look at things a different way. So that was a resident motel; they charge by the week."

He stayed from Aug. 1 to Aug. 7. On Aug. 6, Norby, whose personal life had already generated a fair amount of gossip, took a rest on a bed of grass in front of the Old Orange County Courthouse in Santa Ana and was roused by deputies. Rumors circulated that he had spent the night in a park because he had no place else to go.

Marsha Norby, who said she never told her husband to leave, expressed surprise Friday at his use of committee funds for the hotel stay. "For as much as I've been through, he's not one to mismanage funds and do something inappropriate," she said.

About an hour after he talked to The Times, Norby delivered a check to his treasurer, Betty Presley, to reimburse the committee.

"It was a mistake, but it was hardly a junket to Paris," he said.

⁴ The Times' reporter refused to testify at the hearing to corroborate statements she attributed to Norby and others. Accordingly, the entirety of the article was admitted in evidence as administrative hearsay only. (See, Legal Conclusion 6.)

“But it was personal, and the committee should not have been involved in it. I take fully responsibility for this snafu, and [the committee] has been reimbursed,” Norby said. “People make mistakes and these things happen, and it’s been taken care of.”

But local government watchdog Shirley Grindle said Norby’s misuse of committee funds showed “incredibly poor judgment. He even tried to cover this up by claiming it was studying homeless people,” Grindle said. “I mean it’s only \$340; he should never have tried this.”

Norby said that though the use of the funds was “mostly personal” he had also learned a lot about the homeless and motel families during his “informal study.”

6. Other than the Times article, Complainant offered only circumstantial evidence to prove the purpose of Norby’s motel stay.⁵ In essence, the circumstantial evidence was as follows: Norby separated from his wife on August 1, 2007, the same date he began his motel stay. Exhibit 11 contains court documents from Norby’s divorce from his wife Marsha. In the “statistical facts” section of the Marital Settlement Agreement, Norby and Marsha agreed they separated on August 1, 2007. Norby testified that the August 1 date was used as the date of separation because “[Marsha’s] lawyer wanted that date.” He further testified that he slept at the marital home after August 1, 2007, while he and Marsha “were trying to work things out.” The home actually belonged to Norby. He had acquired it prior to marrying Marsha, a marriage which lasted 11 months. In fact, the Times article quoted Marsha as saying she had not asked Norby to leave the house.

7. The second “circumstance” in evidence was the timing of Respondent’s reimbursement to his committee. Respondent spoke to the Times reporter on Friday, March 7, 2008. According to Presley, Respondent called her on that afternoon and asked her to meet him so he could give her a check reimbursing the committee account for his motel stay. Respondent met Presley, gave her the reimbursement check, then asked Respondent to call the Times reporter to let her know of the reimbursement. Presley spoke with the reporter and confirmed the reimbursement. In the article, which appeared the next day, the reporter noted that Norby reimbursed the committee, “About an hour after he talked to The Times”

8. At hearing, Norby testified that his stay at the motel had nothing to do with his marital difficulties and he had no “personal” reason to stay there. Had he wanted to stay at a hotel, he could have afforded nicer accommodations than the motel offered. He stated that during the first week of August 2007, he had no “domestic obligations,” thus freeing himself

⁵ Circumstantial evidence is used to prove a fact by requesting the trier of fact to make an inference from the circumstances presented. Circumstantial evidence may, by itself, be sufficient to support a finding of fact.

to conduct his study of homeless and motel-resident families. He explained that during that week, Marsha was out of town “on a four-day women’s retreat” and his son from his prior marriage (to Charlotte Chai) were both out of town, as was Ms. Chai; he therefore had time to spend on his investigation of the homeless and those on the verge of homelessness in Orange County.

9. Although Norby had paid for a week’s stay at the motel, he actually spent only three nights there. During that week he also stayed several nights at the home of his ex-wife, Ms. Chai, with whom he remains on very good terms. He testified that his stay at Ms. Chai’s house was far more comfortable than staying at the motel, and he could have stayed at her house for the whole month of August had he so desired.⁶ Ms. Chai testified that she and their son travelled out of the country for the entire month of August 2007. Norby took her and their son to the airport where she gave Norby the key to her house and the garage door opener. According to Ms. Chai, Norby “house-sat” for her every summer while she traveled. When asked whether she had any knowledge that Norby had actually stayed at the house in August 2007, she commented that on her return she found the condition of the cleanliness of the bathroom “not up to [her] standards.”

10. The third “circumstance” in evidence was the timing of the dissemination of an article Norby wrote. Norby writes a newsletter entitled “Norby Notes” which he sends via email to his constituents, and other interested parties, on a monthly basis. In the April 15, 2008 edition of Norby Notes (Volume 6, Issue 3), Norby set forth some of his findings from his study of homelessness and the transient-motel lifestyle during his stay at the motel. He used notes he took during his stay at the motel in the preparation of this article. His testimony offered much the same information as that contained in the article he wrote. Accordingly, the article is set forth in part, as it explains well the “governmental purpose” to which Norby attributed his motel stay:⁷

OC Homeless

I've spent the better part of the past two years trying to get a grip on Orange County's homeless challenge, how it impacts those who call our streets their home, those communities who must cope with them and the County's challenge to serve them.

⁶ As noted above, the Administrative Law Judge visited the motel to ascertain its character. This was prompted by the Times article description of the motel as a “bed and breakfast,” a term which evokes a far different mental image than “transient motel.” The motel is, in fact, a home for transients, and the description of it that is contained in Finding 10 is accurate.

⁷ The portion of the article not quoted deals with additional investigative steps Norby took regarding the homeless, including his staying one night at a homeless shelter.

As I've seen it, the homeless roughly are made up of three groups: 1) able-bodied transients from other states or countries looking for work; 2) women and children fleeing abusive home situations; and 3) the severely mentally ill. The first group will help themselves, adjust and move upward. The second group needs temporary help to make up for poor life choices. The third group needs permanent help through conditions beyond their control.

OC CIVIC CENTER: Every day in the Orange County Civic Center, I confront the approximately 100 people who hang out all day on our benches, lawns and pathways. They can be an intimidating sight for those who need the occasional County service like a birth certificate, marriage license, tax information or property records.

Every night, various charitable groups will bring free food, and the numbers swell. Nighttime will find them bundled up in doorways of public buildings, under trees or in the shrubbery. The Board has formed a committee to look at the issue, but answers are tough. It is no crime to hang out in a public place, but the free food has made the Civic Center a haven for those who should be cared for in a better setting. The Civic Center should be a welcoming place for those seeking County services-not a campground for those who have no place else to go.

RESIDENCE MOTELS: To learn more about those on the verge of homelessness, I spent a week last summer observing conditions at a typical residence motel on West Orangethorpe in Fullerton. Weekly rates were prominently posted, and casual daily tourists were few. There were children playing in the parking lot all day, and into the night, supervised by a number of women sitting just outside their doors.

There were some working poor residents who would leave in the morning and return in the evening in pick-up trucks or who took the bus to job centers. I spoke with one woman fleeing domestic abuse. Another man had left Oregon for a rumored job that still hadn't materialized. I had conversations in Spanish with a couple of men engaged in day labor.

One man simply sat most of the day chain-smoking at the end of the upstairs walkway. He always greeted me with a friendly "hello" next to an open door of a room occupied by several other people.

Loud music and conversations could be heard through the thin walls. There was a small pool, but it was locked with no sign as to how it could be accessed. The rooms had no kitchen facilities or any way of safely preparing food, but the aroma of cooking food could be detected, doubtless from hot plates or crock pots.

This motel is typical of several dozen in Southwest Fullerton, and in West Anaheim and Stanton where many are concentrated along Beach Blvd. With fanciful names such as the Robin Hood, Tropics, Starlight and Grand Inn, they evoke the hope of attracting Disney/Knott's bound tourists. But that day is long past. Neglect had transformed 60's-tourist destinations into dead-ends for many on (sic) those on the verge of homelessness. The motel where I'd booked a room had tourist reviews posted on the TripAdvisor.com website. One was entitled "Like a Motel Out of a Horror Movie," the other "Loved the Bullet-Proof Glass."

The County and the Cities of Anaheim and Fullerton have dealt directly with issues from people living in motels. My ride-alongs with Fullerton police officers included numerous stops at such places. School districts must track motel kids whose lifestyle and environment make academics a challenge.

Rents range in the \$250-350 per week range, with summers typically higher. There are apartments available in that range, but they require hefty security deposits and credit checks which those on the edge cannot meet.

Typically, these motels begin to empty out toward the end of the month as support checks run out. Many can only afford to stay a few weeks a month. The County works with a number of charitable organizations dealing with motel people. And we also support two homeless shelters that take those who can no longer afford to live in them.

The motel owners are not getting rich themselves. Most are recent immigrants from South or East Asia for whom running the motel involves the whole family and they typically live on-site. But they must be held to American standards of maintenance and safety.

11. The remaining circumstantial evidence was all documentary. It consisted of Norby's receipts for meals he ate during the first week of August (part of Exhibit 13) and the various committee financial statements Presley filed with the FPPC (Exhibit 21 and Exhibit C). The meal receipts shed no light on the issue at hand as they went unexplained. As for the financial documents, the statement for the period July 1 through December 31, 2007, describes the motel expense as being for "1 Week Stay in Motel - Study Homeless & Motel Families." The statement for the period January 1, 2008 through May 17, 2008 describes Norby's repayment to the committee as "Refund for Stay at Fullerton Inn." One inference that may be drawn from this evidence is that Norby believed the reimbursement to him for his stay at the motel was not a legitimate committee expense. Another inference that may be drawn is that the amount in question was so small that, as Norby testified, it was easier for him to reimburse the committee than defend his receipt of committee funds.

12. Norby testified about his contact with the Times reporter. She told him she was calling about the motel expense and rumors about things in his personal life. Norby was

well aware of the rumors and was extremely embarrassed by them. Apparently, Marsha was not happy about the rumors either and Norby wanted to protect her from further embarrassment. The reporter told him that she "had a source" that said the motel expense was personal. He told the reporter that if anyone thought there was a relationship between the motel and the divorce he would be happy to refund the money. Norby did "not remember" if he told the reporter that he "was there [at the motel] for personal stay" as the article quoted him as saying. Nor did he remember using the word "doghouse" with the reporter. Norby confirmed that he talked to the report about his homeless study.

13. The allegations as to Presley are all derived from Norby's conduct. Presley is a "professional treasurer" employed by over 100 entities including candidates, committees, and political action committees. She has been doing this work, full time, since 1984. She currently has one full-time and two part-time employees. While her duties are essentially those of a bookkeeper, she is very conversant with the Act and its reporting requirements. If she is unsure about any particular issue, she will call another treasurer who is, as is she, a member of California Political Treasurers Association or a "political lawyer."

14. Presley did not question, nor did she have reason to question, Norby's request to be reimbursed for his motel expense. She received Norby's request (Exhibit B) shortly after Norby completed his stay. Attached to his request was a receipt for Norby's cash outlay at the motel (\$340) with the note set forth in Finding 3j above. Based on her training and experience, she ascertained that Norby's expenditure was "clearly governmental" and there was no reason to deny reimbursement. Presley duly reported, on the appropriate governmental forms, both Norby's reimbursement and his later repayment of that reimbursement.

15. In light of the below Order, no Findings are made with respect to the allegations in the Accusation concerning "Factors in Aggravation" and "Factors in Mitigation."

* * * * *

CONCLUSIONS OF LAW

1. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) The burden of proof in this proceeding is thus on Complainant.

2. The standard of proof in this proceeding is a preponderance of the evidence. (Evid. Code, § 115.) "The phrase 'preponderance of evidence' is usually defined in terms of probability of truth, e.g., 'such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.' (BAJI (8th ed.), No. 2.60.)" (1 Witkin, Evidence, Burden of Proof and Presumptions § 35 (4th ed. 2000).)

3. Section 89510, subdivision (b) of the Act provides, "All contributions deposited into the committee account shall be deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office."

4. Section 89511, subdivision (b)(3) provides:

For purposes of this chapter, "substantial personal benefit" means an expenditure of committee funds which results in a direct personal benefit with a value of more than two hundred dollars (\$200) to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of committee funds held by a committee.

5. Section 89512 of the Act provides:

An expenditure to seek office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a political purpose. An expenditure associated with holding office is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a legislative or governmental purpose. Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.

6. The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a finding. Administrative hearsay, coupled with circumstantial evidence, may be sufficient to support a Finding of Fact. As an example, in *Komizu v. Gourley* (2002) 103 Cal.App.4th 1001, a report of blood alcohol content did not qualify for an exception to the hearsay rule but was admitted subject to Government Code section 11513, subdivision (d). It was properly used to explain and supplement a police officer's report, which contained circumstantial evidence of the driver's blood alcohol level. Combined, these two sources provided the trial court with substantial evidence sufficient to support a finding.

7. One must distinguish between the admissibility of evidence and the weight to be given that evidence. The following excerpt from an article published by the *Loyola of Los Angeles Law Review* is instructive:⁸

California statutory law expressly provides that all agencies affected by the APA are not bound by "the technical rules relating to evidence."

The foregoing practice necessarily permits the *admission* of hearsay evidence. "There [being] no reason for administrative bodies to be more restrictive than

⁸ All footnotes have been omitted.

courts . . . , evidence competent in judicial proceedings, including hearsay with an exception, is generally held competent in administrative proceedings.” Even incompetent hearsay is admissible. The question turns on whether incompetent hearsay, without more, is sufficient to satisfy the moving party's burden and thereby support the agency's findings. In order to avoid confusion, it is important that the “admissibility” issue not be viewed in the same light as the “sufficiency” standard; they are different creatures. Admissibility is not the equivalent of evaluation; the former makes certain concessions in the interest of full and complete discovery while the latter, in the interest of fairness, withholds legal sanction to evidence found not to be trustworthy. Unlike the common practice in judicial proceedings, the fact that evidence may be admissible does not therefore guarantee the sufficiency of such evidence to sustain a finding. Consequently, evidence which is deemed *admissible* is generally considered to be “*competent*.” On the other hand, evidence once admitted which is *capable of sustaining a finding* will amount to “*sufficient*” evidence. Finally, determining what constitutes sufficient evidence will depend upon the applicable judicial or statutory rule. (Italics in original.)

(Ronald Kenneth Leo Collins, *The Sufficiency of Uncorroborated Hearsay in Administrative Proceedings: The California Rule*, 8 Loy. L.A. L. Rev. 632, 642 (1975).)

8. The only direct evidence of the **purpose** of Norby's stay at the motel was the explanatory note attached to Norby's request for reimbursement (Exhibit B) and Norby's testimony. All other evidence regarding the purpose of the motel stay was either administrative hearsay, such as the Times article, or evidence from which inferences must be drawn, such as the date of Norby's separation from his wife coinciding with his motel stay, or the fact that Norby reimbursed the committee after being interviewed by the Times reporter.

9. Little weight is given to the contents of the Times article. The reference to the motel as a “bed and breakfast,” coupled with the reporter's rehashing of rumors derogatory to Norby, lead to the distinct impression that the reporter was less interested in the facts than in somehow implicating a public figure as having committed illegal activity. In any event, even if Norby's entire testimony was disbelieved, that does not mean that other evidence is true or inferences appropriately drawn. “Disbelief does not create affirmative evidence to the contrary of that which is discarded. The fact that [the trier of fact] may disbelieve the testimony of a witness who testifies to the negative of an issue does not of itself furnish any evidence in support of the affirmative of that issue and does not warrant a finding in the affirmative thereof unless there is other evidence in the case to support such affirmative.” (*Hutchinson v. Contractors' State License Bd. of Cal.* (1956) 143 Cal.App.2d 628, 632, citing *Marovich v. Central Cal. Traction Co.* (1923) 191 Cal.295, 304.)

10. In this matter, the credibility of the witnesses has been evaluated pursuant to the factors set forth in Evidence Code section 780: the demeanor and manner of the witness

while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceeding in which the testimony has been given.⁹

“On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted -- but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability.” (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.)

The trier of fact may “accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted.” (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 777.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) The testimony of “one credible witness may constitute substantial evidence.” (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.)

11. With the foregoing in mind, the testimony of Ms. Chai, as noted in Finding 9, is given great weight as it supports Norby’s testimony recounted in Finding 8. Thus, it is concluded that, during the first week of August 2007, Respondent had available to him both his own home and Ms. Chai’s home in which to reside. As noted in Finding 10, including footnote 6, the motel was not the “bed and breakfast” described in the Times article but rather a refuge for the transient and homeless. One would be hard-pressed to find any “personal” reason to stay there if it was not necessary to do so. The only reasonable conclusion to be reached, based on all of the evidence, is that Norby’s stay of a few nights at the motel was for the purpose he claimed it to be, as expressed both in his testimony and in the Norby Notes quoted in Finding 10. Based on that evidence, Norby’s stay at the motel

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⁹ The manner and demeanor of a witness while testifying are the two most important factors a trier of fact considers when judging credibility. (See Evidence Code section 780.) The mannerisms, tone of voice, eye contact, facial expressions and body language are all considered, but are difficult to describe in such a way that the reader truly understands what causes the trier of fact to believe or disbelieve a witness.

was for a governmental purpose and not for his personal benefit. Thus, the committee's reimbursement to Norby for the motel expense does not constitute a violation of the Act.

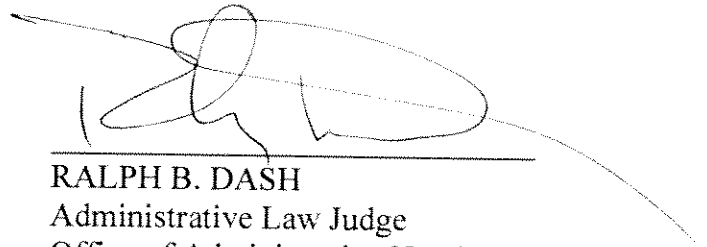
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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Accusation is dismissed.

Date: 2-14-12



RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings