

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

6
7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11
12 In the Matter of) FPPC No. 14/329
13)
14) STIPULATION, DECISION and
ANDREW M. COHEN, and ELECT ANDY)
COHEN FOR SUPERVISOR 2012,)
15 Respondents.)
16)
17)

18 Complainant, the Fair Political Practices Commission, and respondents Andrew M. Cohen and
19 Elect Andy Cohen for Supervisor 2012 (collectively “Respondents”) agree that this Stipulation will be
20 submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled
21 meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
23 matter and to reach a final disposition without the necessity of holding an administrative hearing to
24 determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
27 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
28 the right to personally appear at any administrative hearing held in this matter, to be represented by an

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondent Andrew M. Cohen and Respondent Elect
5 Andy Cohen for Supervisor 2012 failed to maintain accounts, records, bill, and receipts that were
6 necessary to prepare campaign statements for the January 1 through June 30, 2012, reporting periods, in
7 violation of Government Code section 84104 (1 count). All counts are described in Exhibit 1, which is
8 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
9 accurate summary of the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondents also agree to the Commission imposing on them an administrative penalty in the amount of
12 \$1,000. A cashier's check from Respondents in said amount, made payable to the "General Fund of the
13 State of California," is submitted with this Stipulation as full payment of the administrative penalty, to
14 be held by the State of California until the Commission issues its decision and order regarding this
15 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
16 become null and void, and within fifteen business days after the Commission meeting at which the
17 Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall be
18 reimbursed to Respondents. Respondents further stipulate and agree that in the event the Commission
19 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
20 any member of the Commission, nor the Executive Director, shall be disqualified because of prior
21 consideration of this Stipulation.

22 Dated: _____
23 Gary Winuk, Enforcement Chief,
24 On behalf of the
25 Fair Political Practices Commission

26 Dated: _____
27 Andrew M. Cohen, Respondent,
28 Individually and on behalf of
Elect Andy Cohen for Supervisor 2012

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Andrew M. Cohen and Elect Andy
3 Cohen for Supervisor 2012” FPPC No. 14/329, including all attached exhibits, is hereby accepted as the
4 final decision and order of the Fair Political Practices Commission, effective upon execution below by
5 the Chair.

6
7 IT IS SO ORDERED.

8 Dated: _____

9 _____
10 Joann Remke, Chair
11 Fair Political Practices Commission
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

INTRODUCTION

Respondent Andrew M. Cohen (“Respondent Cohen”) was an unsuccessful candidate for San Mateo County Board of Supervisors in the June 5, 2012, election, and Elect Andy Cohen for Supervisor 2012 (“Respondent Committee”) was his candidate-controlled committee at all relevant times. Respondent Cohen was Respondent Committee’s treasurer at all relevant times.

This matter was referred to the Fair Political Practices Commission (the “Commission”) by the Franchise Tax Board (the “FTB”). An investigation by the Commission’s Enforcement Division (the “Enforcement Division”) revealed that Respondent Cohen and Respondent Committee (collectively “Respondents”) failed to maintain detailed accounts, records, bills, and receipts that were necessary to prepare campaign statements, in violation of the Political Reform Act (the “Act”).¹

For the purpose of this Stipulation, Respondents’ violation of the Act is stated as follows:

COUNT 1: Respondents Andrew M. Cohen and Elect Andy Cohen for Supervisor 2012 failed to maintain accounts, records, bills, and receipts that were necessary to prepare campaign statements for the January 1 through March 17, 2012, March 18 through May 19, 2012, and May 20 through June 30, 2012, reporting periods, in violation of Government Code section 84104.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations.

Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

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.

Duty to File Campaign Statements

The Act includes within the definition of “committee” any person or combination of persons who receives contributions of \$1,000 or more during a calendar year. (Section 82013, subd. (a).) A controlled committee is a committee that is controlled directly or indirectly by a candidate. A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions of the committee. (Section 82016, subd. (a).) Committees are required to file two preelection statements before an election and two semiannual statements each year. (Section 84200.5.)

For all candidates being voted upon the first Tuesday after the first Monday in June or November of an even-numbered year, one preelection statement for the reporting period ending 17 days before the election must be filed no later than 12 days before the election.² (Sections 84200.5, subd. (b), 84200.7, subd. (a)(2).) Additionally, a semiannual statement must be filed by July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. (Sections 84200, subd. (a).)

Duty to Maintain Records

To ensure accurate campaign recording, Section 84104 imposes a mandatory duty on each candidate, treasurer, and elected officer to maintain detailed accounts, records, bill, and receipts that are necessary to prepare campaign statements, and to comply with the campaign reporting provisions of the Act. Under Regulation 18401, this duty includes maintaining detailed information and original source documentation for all contributions received and expenditures made for a period of four years following the date the campaign statement to which they relate is filed.

SUMMARY OF THE FACTS

Respondent Committee qualified as a recipient committee on or about February 24, 2012, and terminated on or about June 14, 2012. During that period, Respondent Committee received approximately \$10,086 in contributions, including contributions totaling \$2,521.18 from Respondent Cohen, and spent approximately \$10,086. On or about March 22, 2012, Respondents filed a campaign statement with the San Mateo County Clerk for the January 1 through March 17, 2012, period. On or about May 24, 2012, Respondents filed a campaign statement with the San Mateo County Clerk for the March 18 through May 19, 2012, reporting period. On or about July 13, 2012, Respondents filed a campaign statement with the San Mateo County Clerk for the May 19 through June 30, 2012, reporting period.

In 2014, the FTB attempted to audit Respondent Committee for the January 1 through June 30, 2012, period, but was unable to because Respondents refused to provide any records.

² Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a late in-kind contribution required by Section 84203.3) be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day.

On or about March 28, 2014, the FTB referred the matter to the Enforcement Division due to Respondents' failure to provide records for the January 1 through June 30, 2012, audit period.

Subsequently, the Enforcement Division conducted an investigation into Respondents' financial activities during the January 1 through June 30, 2012, period. The Enforcement Division's investigation found that Respondents failed to maintain original source documentation for contributions received and expenditures made during the three reporting periods between January 1 and June 30, 2012. According to Respondent Cohen, he destroyed all of Respondent Committee's records soon after he lost the June 5, 2012, election.

Accordingly, Respondents committed the following violation of the Act:

Count 1
Failure to Maintain Campaign Records

Pursuant to Section 84104 and Regulation 18401, Respondents had a duty to maintain original source documentation for all contributions received and expenditures made during the January 1 through March 17, 2012, March 18 through May 19, 2012, and May 20 through June 30, 2012, reporting periods, until March 22, 2016, May 24, 2016, and July 13, 2016, respectively.

Respondents failed to maintain original source documentation for contributions received and expenditures made during the January 1 through March 17, 2012, March 18 through May 19, 2012, and May 20 through June 30, 2012, reporting periods, until March 22, 2016, May 24, 2016, and July 13, 2016, respectively, in violation of Section 84104.

CONCLUSION

This matter consists of a single count of violating the Act, which carries a maximum administrative penalty of \$5,000.

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(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

The failure to maintain campaign records is a serious violation of the Act because it impedes the Commission's ability to inhibit improper practices and ensure full disclosure of receipts and expenditures, making it difficult or impossible to ascertain the accuracy of campaign statements.

In November 2014, the Commission imposed a \$2,000 fine on a candidate for city council and county supervisor and his candidate-controlled committees for failing to properly maintain records for reporting periods spanning three years. (*In the Matter of Arthur "Art" C. Brown, et. al*, FPPC No. 12/224.)

Also in November 2014, the Commission imposed a \$1,500 fine on a successful candidate for city council for failing to properly maintain records for reporting periods spanning two years. (*In the Matter of Xavier Campos, et. al*, FPPC No. 13/177.)

In this matter, Respondents destroyed records of contributions received and expenditures made during the six month period in which they were active. However, Respondents have no history of enforcement actions, cooperated with the Enforcement Division's investigation, and have agreed to an early resolution of this matter.

PROPOSED PENALTY

Accordingly, the imposition of a \$1,000 administrative penalty is recommended.

* * * * *