BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of	)	
	)	FPPC No. 88/193
Danny Lynn Gamel,	)	
Danny Gamel, Inc., and	)	Decision
Rudy Michael Olmos	)	
	)	
	)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is adopted in its entirety by the Fair Political Practices Commission as its Decision in the above-entitled matter.

This Decision shall become effective on the 14th day of September, 2001.

Dated: Sept. 12, 2001

FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

Karen Getman

Karen Getman
Chairman

BEFORE THE
FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of the Accusation Against: DANNY LYNN GAMEL, DANNY GAMEL, INC., and RUDY MICHAEL OLMOS, Respondents.	Case No. 99/193 OAH No. N2001020159

PROPOSED DECISION

This matter was heard before Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, in Fresno, California, on May 30, 2001.

Mark R. Soble, Senior Commission Counsel, represented Complainant, the Fair Political Practices Commission.

Anthony P. Capozzi, Attorney at Law, represented Danny Lynn Gamel, Dan Gamel, Inc., and Rudy Michael Olmos.

PROCEDURAL FINDINGS

1. After a Probable Cause proceeding and Finding made pursuant to Government Code section 83115.5, Wayne K. Strumpfer made and filed the Accusation in his official capacity as the Executive Director of the Fair Political Practices Commission.

2. Respondents timely filed a Request for Hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et seq.

3. Prior to commencement of the hearing, and again at the hearing, respondents moved for a continuance on the ground that Mr. Gamel was recently diagnosed with a medical problem. The motions were denied. Mr. Gamel failed to show that he was physically unable to proceed with the hearing or that necessary medical treatment precluded him from attending the hearing.

FACTUAL FINDINGS

1. In October of 1996, Kenneth Steitz was a candidate for a seat on the Fresno City Council. He was a "candidate" within the meaning of the Political Reform Act. (Government Code section 82007.)

2. In October of 1996, Danny Lynn Gamel, a Fresno businessman, held a variety of local business interests. Mr. Gamel was the majority shareholder of Dan Gamel, Inc., a company that owns several recreational vehicle dealerships. Mr. Gamel owned the Dan Gamel Health and Racquet Club, and Ad Cetera, a company that did marketing for Dan Gamel, Inc.

3. Sometime prior to the election, Mr. Gamel met Mr. Steitz at a campaign fundraiser. Mr. Gamel expressed an interest in contributing to the Steitz campaign. On October 25, 1996, Mr. Gamel issued a $5,000 check to the Steitz campaign. The Steitz campaign immediately returned the check uncashed due to the fact that the City of Fresno had a local ordinance which limited campaign contributions to $1,000.

4. On October 28, 1996, Mr. Gamel issued a $975 check, drawn on his business account, to the Steitz campaign. On that same day, four of Mr. Gamel's employees issued checks to the Steitz campaign. The employees who made contributions were Frank Kozub ($975), Richard Wright ($975), Rudy Michael Olmos ($975) and David Little ($900).

5. Mr. Gamel testified that he asked several of his employees if they wished to make donations to the Steitz campaign. He testified that he often asked his employees if they wanted to make contributions to charities. He asked them to make this political donation in the same manner he asked them to make charitable contributions. He testified that the four employees offered to make donations and asked what amount would be appropriate. He suggested $975. He testified that he does not remember offering or agreeing to reimburse them for the contributions. He has no recollection of actually reimbursing any employee.

6. Mr. Kozub testified that Dan Gamel employed him as Vice President of RV sales in October of 1996. Mr. Kozub testified that he, Gamel, and Olmos were in the office conducting business when Gamel asked them to make a contribution to the Steitz campaign. At that time, Gamel offered to reimburse them for making the contributions. Both Kozub and Olmos wrote checks for $975 to the Steitz campaign. Mr. Kozub does not recall how soon after they made their contributions they were reimbursed. However, sometime after they made their contributions, Mr. Gamel came into Kozub's office and handed him $975 in

cash, mostly $100 bills. At the same time, Gamel gave Kozub another $975 in mostly $100 bills and asked him to give it to Olmos, as Gamel was going out of town and would not be seeing Olmos. Mr. Kozub complied and gave Olmos his money. Mr. Kozub was a compelling witness.

7. Mr. Olmos is currently employed by Dan Gamel, Inc. in wholesale sales. He was so employed in 1996. He testified that Gamel asked him and several other employees to contribute $975 to the Steitz campaign. Mr. Olmos denied that Gamel told him he would be reimbursed for his contribution or that he was in fact reimbursed. He testified that he often makes charitable contributions at Gamel's request and that this contribution was just a "fun thing" they did as an investment in the community. He viewed the contribution as a long-term investment that would come back to benefit him in that Gamel did business in Steitz's district.

8. Mr. Olmos was not a persuasive witness. It is not probable that he would have made a contribution to the Steitz campaign without pressure from his employer and without promise of reimbursement. He did not live in Steitz's District and he had never met Steitz. When interviewed in February of 2000, by investigator Dennis Pellon, Mr. Olmos admitted that he was ineligible to vote in the Fresno City elections, and that the Steitz contribution was the only campaign contribution he had ever made.

9. Complainant, FPPC, introduced extensive records of Mr. Olmos's banking records. Investigator Pellon attempted to establish that Gamel must have reimbursed Olmos in cash because his pattern of regular ATM withdrawals was interrupted after he made the campaign contribution. This evidence was not persuasive. FPPC also introduced evidence that Mr. Olmos had $1,582.14 in his checking account on the day he wrote the campaign check. His check for $975 represented 61% of his balance. The implication was that Mr. Olmos would not have expended $975 when he had little money. However, Mr. Olmos earned between $6,000 and $7,000 a month in his employment and was expecting a direct deposit early in November. No weight was ascribed to this evidence.

10. The FPPC also introduced evidence that Mr. Gamel withdrew $5,000 in cash from his business checking account on October 28, 1996. He withdrew this money immediately after he wrote his $975 campaign contribution check to the Steitz campaign and on the same day his employees wrote their checks to the Steitz campaign. He withdrew forty-five $100 bills and ten $50 bills. Although Mr. Gamel regularly withdrew cash in the sums of $4,000, $5,000 and $6,000 from his checking account, the inference was drawn that he had the cash on hand to reimburse his employees for their contributions. This evidence supports the testimony of Mr. Kozub, that Gamel gave him cash for himself and Olmos as reimbursement for their contributions.

11. Richard Wright was employed in 1996 as Chief Financial Officer of Dan Gamel, Inc. He testified that Gamel asked him to write a check to the Steitz campaign. He admitted that he had never before made a contribution of more than $200. He does not remember whether he was reimbursed, but he believes that he probably was reimbursed. He

does not believe that Gamel would have "made his employees incur that large of a debt" without reimbursement.

12. When Dennis Pellon first interviewed Mr. Wright, Wright was not certain whether he had been reimbursed. He checked his bank records and could find no evidence of a deposit. The second time he was interviewed, under subpoena, he told Mr. Pellon that he believed he had been reimbursed with cash.

13. David Little was the General Manager of Dan Gamel's Health Club in 1996. In October of 1996, Gamel asked Mr. Little to make a contribution of $900 to the Steitz campaign. Mr. Little had never made a political contribution. He had gone to a few political events with Gamel and because he was new to Gamel's business and wanted to get more involved in the business, he wrote a check for $900. Mr. Little felt that "what he did financially was an investment in his future." He testified that he knew he would recapture these funds and be reimbursed by Gamel. He did not expect a bonus or other reimbursement but Mr. Gamel was always buying him dinner and doing other things for him and he expected a return for the favor. He does not recall Mr. Gamel reimbursing him in any manner for the contribution.

14. Mr. Gamel and his employees all signed and dated their campaign contribution checks on October 28, 1996. On that date, Mr. Gamel called Lee Brand, the manager for the Steitz campaign, and advised him that he could pick up the checks at the Dan Gamel Health Club. When Mr. Brand arrived at the health club the checks were enclosed together in an envelope.

15. Campaign contribution laws require that individual donors provide their names, addresses, occupations and employers' names to the campaign. That information is later included on a Campaign Disclosure Statement which is filed with the FPPC. At some time around the time of their contributions, Mr. Gamel and his four employees filled out forms indicating their occupations. Mr. Gamel listed his occupation as "RV Sales." Richard Wright indicated he was a "CFO." Frank Kozub stated that he was a "Sales Executive." David Little stated that he was a "Health Club Manager." Rudy M. Olmos stated that his occupation was "sales."

16. The Campaign Statement filed by the Steitz campaign, however, lists under the category "Donor Occupation and Employer"; Frank M. Kozub, "Rental Property Investments," David G. Little, "Rental Property Investments," Rudy Olmos "Real Estate Investments."

17. The Campaign Disclosure Statement contains misleading information as to Kozub, Little and Olmos. They are not identified as employees of Dan Gamel, nor are their true occupations listed. The inference was that an effort was made to conceal the connection between Dan Gamel and three of his contributing employees.

18. The evidence is persuasive that Mr. Gamel influenced four of his employees, Wright, Little, Olmos and Kozub, to make political contributions in his stead. He had attempted to make a $5,000 contribution to Steitz but was unable to do so because of the $1,000 limitation. Immediately after his $5,000 contribution was rejected by the campaign, he "raised" $4,800 from his employees by asking each for a specific amount of money and offering to reimburse at least three of the donors. (Mr. Little may not have been offered a cash reimbursement, but he expected to gain his employer's favor).

LEGAL CONCLUSIONS

1. The FFPC is charged with the duty to administer, implement and enforce the provisions of the Political Reform Act of 1974, found in Government Code section 81000 through 91015.

2. The purpose of campaign reporting under the Political Reform Act of 1974 is that receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited. Government Code section 81002(a).

3. Government Code section 84301 prohibits contributions made, directly or indirectly, by any person in a name other than that by which the contributor is identified for legal purposes.

4. Government Code section 84300(c) prohibits making campaign contributions of $100 or more unless the contributions are made by way of a written instrument containing the names of both the actual donor and the real payee.

5. Government Code section 84320 requires a person making a contribution on behalf of another, or while acting as an intermediary or agent of another, to disclose to the recipient of the contribution both his full name and street address, occupation and name of employer, if any, or the principal place of business if he is self employed. The person making a contribution on behalf of another, or as an intermediary or agent of another, is also required to disclose the full name, street address, occupation and name of employer, if any, or the principal place of business if he is self employed, of the person for whom he is acting.

6. Government Code section 83116(c) provides for administrative fines of up to $2,000 for each violation.

7. It has been established by a preponderance[1] of credible evidence that respondents Danny Lynn Gamel and Dan Gamel, Inc. violated Government Code sections 84301and 84300(c), by making a $975 contribution to the Steitz campaign in other than their

[1] Pursuant to Title 2, California Code of Regulations section 18361(e)(3), findings shall be made based upon a preponderance of the evidence.

own legal names, to wit, Rudy Michael Olmos, as set forth in Factual Findings 1 through 10, inclusive, and 14 through 18, inclusive.

8. It has been established by a preponderance of credible evidence that respondents Danny Lynn Gamel and Dan Gamel, Inc. violated Government Code sections 84301and 84300(c), by making a $975 contribution to the Steitz campaign in other than their own legal names, to wit, Frank Michael Kozub, as set forth in Factual Findings 1 through 10, inclusive, and 14 through 18, inclusive.

9. It has been established by a preponderance of credible evidence that respondents Danny Lynn Gamel and Dan Gamel, Inc. violated Government Code sections 84301and 84300(c), by making a $975 contribution to the Steitz campaign in other than their own legal names, to wit, Richard A. Wright, as set forth in Factual Findings 1 through 5, inclusive, and 11 through 18, inclusive.

10. It has been established by a preponderance of credible evidence that respondent, Rudy Michael Olmos, violated Government Code section 84302and 84300(c), by making a $975 contribution to the Steitz campaign without disclosing the true source of the monies, as set forth in Factual Findings 1 through 10, inclusive, and 14 through 18, inclusive.

11. In order to determine the penalty to be imposed, if any, for a violation of Government Code section 83116, the circumstances of the violation must be considered. Title 2, California Code of Regulations section 18361(e)(4) sets forth the following factors, which must be considered in making this determination.

(A) The seriousness of the violation;

(B) The presence or absence of any intention to conceal, deceive or mislead;

(C) Whether the violation was deliberate, negligent or inadvertent;

(D) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code Section 83114(b);

(E) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and

(F) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Seriousness of the Violation

12. Respondents violations were serious. One of the primary purposes of the Political Reform Act is to ensure that the true source of a campaign contribution is disclosed. Government Code sections 81002(a). Concealing the source of a donation by routing that donation through other "donors" defeats the requirement of full and truthful disclosure. The public is entitled to know what persons and entities are supporting the election of a candidate. Danny Lynn Gamel controlled several high profile local businesses. Forty eight hundred dollars was a significant donation in this local City Council election. By making his political contributions through his employees, Danny Lynn Gamel concealed from the public the fact that he contributed significantly to the Steitz campaign. Rudy Michael Olmos assisted in this deception.

13. Mr. Gamel also violated Fresno Municipal Code section 2-2208 by giving more than $1,000 to the Steitz campaign. He exceeded the local contribution limit by $3,800. The fact that Mr. Gamel funneled donations through his employees also made it impossible for the Steitz campaign to properly report its regular campaign contributions. Mr. Gamel's actions also made it impossible for the campaign to report late contributions under Government Code sections 82036 and 84203. These sections require candidates for public office to report contributions of $1,000 or more, made during the last two weeks of a campaign.

Intent to Deceive

14. Mr. Gamel was aware of the local $1,000 contribution limit at the time the campaign returned his initial $5,000 donation. He intentionally circumvented the law by persuading his employees to donate in his stead. He reimbursed his employees in cash to avoid creating a paper trail.

15. Mr. Olmos may not have been aware of the $1,000 campaign contribution limit. However, a reasonable person would have known that something untoward was taking place when he was reimbursed for a campaign contribution. A reasonable person would have concluded that, if everything was being done legally, Mr. Gamel could have simply made the contribution himself rather than reimbursing his employees for making contributions.

Whether the violation was deliberate, negligent or inadvertent

16. The violations of all respondents were deliberate and not the result of negligence or inadvertence.

Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b)

17. Respondents did not consult with the Commission staff as to whether their actions were legal.

Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure

18. Respondents' conduct appears to have been an isolated incident limited to the Steitz election. Respondents do not have a prior record of violations of the Act and upon learning of the violations found herein, were not required to file amendments to provide disclosure.

19. Respondents argue that they were improperly charged with violations of Government Code sections 84301 and 84300(c). They argue that those statutes prohibit contributions made directly or indirectly in the names of others. They argue that Danny Lynn Gamel and his employees made their contributions in their own names, not in the names of others. They argue that the proper charging allegation would have been Government code section 83116.5 which imposes liability on those who aid and abet others in violating provisions of this title.

20. Respondents' argument is without merit. Danny Lynn Gamel used the identities of others, his employees, to make his contributions. The fact that they each signed their own contribution checks and were complicit in the scheme does not transform the employees into donors. Rudy Olmos represented that he was the donor when he was not, and he failed to disclose the true donor. These statutes are clear on their face; each donor should disclose his identity, and each intermediary or agent should disclose his principal.

21. Appropriate monetary penalties for the violations found herein are as follows:

Against Danny Lynn Gamel and Dan Gamel, Inc. the following sums:

- $2,000 for violation of Government Code sections 84301 and 84300(c), in respect to the campaign contribution made in the name of Frank Michael Kozub.

- $2,000 for violation of Government Code sections 84301 and 84300(c), in respect to the campaign contribution made in the name of Richard A. Wright.

- $2,000 for violation of Government Code sections 84301 and 84300(c), in respect to the campaign contribution made in the name of Rudy Michael Olmos.

Total monetary penalty is $6,000.

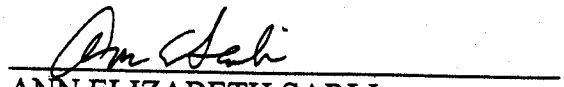
22. As against Rudy Michael Olmos, the appropriate monetary penalty for violation of Government Code section 84302 is $2,000.

ORDER

1. Respondents Danny Lynn Gamel and Dan Gamel, Inc. shall pay $6,000 to the General Fund of the State.

2. Respondent Rudy Michael Olmos shall pay $2,000 to the General Fund of the State.

DATED: June 25, 2001



ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings