

STATE OF CALIFORNIA
FAIR POLITICAL PRACTICE COMMISSION

In the Matter of the Accusation Against:) Case No. 10/449
) OAH No. 2011030835
)
SHONG-CHING TONG,) **RESPONDENT’S OPENING BRIEF**
)
) (Exhibits Filed Concurrently Herewith
) The Respondent’s Opening Brief)

RESPONDENT’S OPENING BRIEF

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Respondent in Pro Per

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INTRODUCTION

This case involves 1) a candidate, Paul P. Cheng ("Cheng"), who has been an attorney, 2) the Chinese news media (Newspapers, TV, and Radio Stations), and 3) respondent.

Cheng had falsified his campaign resume and had sued people frivolously and maliciously, and had used his money to use Chinese Media outlets to publish and broadcast defamations against respondent and to mislead the City of Arcadia's Chinese/American voters/citizens.

Because respondent mailed out facts and evidence showing Cheng's dishonesty in attacking respondent personally and in misleading the Chinese/American Voters in Cheng's campaign ads, the complainant, Fair Political Practice Commission ("FPPC"), accused respondent of violating of the law.

Because the Office of Administrative Hearing's ("OAH") ignorance of the law, facts, and evidence and had not acted impartially and was biased, OAH, after limiting respondent's ability

to present facts, evidence, and witnesses at the 9/13/11 and 9/14/11 limited time hearings, ordered respondent to pay a total monetary penalty of \$5,250 to FPPC pursuant to Government Code Section 83116(c).

Because the FPPC and OAH had failed to obey the law cited herein and the Administrative Law Judge Eric Sawyer (“ALJ”) “Proposed Decision” was not based on the evidence and facts presented at the Formal Hearing, respondent hereby submits the “Respondent’s Opening Brief” in opposition to the OAH’s “Proposed Decision”.

THE HISTORY OF THE CASE

1. On 12/21/09, respondent applied for a Business License to distribute Election Fliers with the City of Arcadia (Exs. A, B, to Exhibit 103; Exs. A, B, to Exhibit 6) and received a Business License from the Business License Department and a “Refusal Register” from the City Clerk.

On the same day at the same time, there were several reporters from the “Singtao Daily”, a TV station, and the “Chinese Daily News – World Journal” covering Cheng’s Application for a Arcadia City Council seat.

2. On 12/22/09, the “Singtao Daily’s” reporter published a news report attacking respondent’s displaying of the Flier and the reporter’s failure to appear at the scheduled news conference, respondent sent a letter to the “Singtao Daily’s” management to inform them that their news reports were inadequate and unprofessional (Exs. C, D to Exhibit 103; Exs. C, D to Exhibit 6). The “Singtao Daily’s” news reporter was fired later.

3. From 12/22/09 to 4/8/10, the Chinese news media, in failing to report the Arcadia City Council’s election impartially, openly implied to Arcadia voters and citizens that Cheng had been a federal, state, and city “Prosecutor” (Exs. F, G, H, I, J, K, L, M, N, O to Exhibits 6, 103). The ALJ refused respondent’s requests to display the recordings of the numerous calls Cheng

had left on respondent's answering machine, the 4/2/10 recording in which Radio 1300 offered its air time to Cheng only in her program named "Rush Hour" (Exhibit 107), and the recordings left by Paul A Rasey ("Rasey") and Neal P. Bucknell ("Bucknell"), employees of FPPC (Exhibits P, R).

4. From 12/21/09 to 4/8/10, Cheng had used the money he solicited to place advertisements in newspapers, radio stations, and TV stations to buy the Arcadia Election (Exs. 4, 5, 6 to Exhibit 104; Exhibit 105 #1, #2, Exhibits 106, 107, 108, 109, 110, 111, 112, 113, 114, 115).

5. In March 2010, after Cheng had repeatedly defamed respondent and mislead the City of Arcadia's voters, respondent mailed a Flier to voters of Arcadia requesting that the voters not vote for Cheng (Attachment 1 to Exhibit 1).

6. On or about 4/8/10, after 1) the "Arcadia Weekly" refused to respond to respondent's 3/25/10 letter regarding the "Arcadia Weekly's" false statements, quoted from Cheng, 2) the El Monte Mayor, Andre Quintero, refused to respond to respondent's letter proving that he had been a city attorney of Hesperia, CA and Cheng had been a city prosecutor of Hesperia, CA, 3) the "Chinese L.A. Daily News" refused to respond to respondent's question regarding a published photo showing Andre Quintero endorsing Cheng's campaign for an Arcadia City Council seat, and 4) respondent's friends advised respondent that respondent should tell the voters and citizens of Arcadia that Cheng's allegations against respondent were false and meritless, respondent mailed a Flier to Arcadia voters and citizens (Attachment 2 to Exhibit 1).

7. On 4/13/10, the Arcadia voters refused to give Cheng a chance to win a City Council seat (Exhibit 1).

8. On 5/11/10, respondent responded to FPPC's 5/4/10 letter regarding a complaint filed by Cheng's employee, Crystal Tran, for Cheng's loss of the Arcadia election (Exhibit 1). At the

same time, respondent attached documents showing Cheng and his people had violated the laws. But, the FPPC, Rasey and Bucknell had ignored respondent's complaint.

9. On or about 6/20/10, respondent received a call from Rasey telling respondent to file California Forms 461, 465, and 496 for money used in mailing the Attachments 1 and 2 (Exhibit 1). Respondent mailed the Forms as Rasey requested to Rasey (Exhibit 2).

10. On 7/21/10, after Rasey and Neal P. Bucknell ("Bucknell") asked respondent to prove their allegations that respondent had violated the law, Bucknell sent his letter, together with Roman G. Porter's "Stipulation, Decision and Order", to respondent suggesting that respondent should settle with the FPPC (Exhibit 3).

11. From 7/21/10 to 10/7/10, Rasey and Bucknell had repeatedly called respondent to harass and to threaten respondent after respondent refused to deal with them by telephone (Exhibit 4). The ALJ had refused respondent's offer to play the numerous phone calls left on respondent's answering machine by Rasey and Bucknell at the 9/13/11 and 9/14/11 hearings (Exhibit R).

12. On 10/7/10, respondent sent a letter to Roman G. Porter asking him who was representing him in the instant case after Rasey wanted to subpoena respondent for matters already known to Rasey (Exhibits 3, 4).

13. On 10/27/10, FPPC sent a letter and attachments to respondent again for matters that had already been known as displayed in Roman G. Porter's "Stipulation, Decision and Order" (Exhibits 3, 5) and Forms had already filed (Exhibit 3)..

14. On 11/18/10, respondent filed his Opposition to FPPC's, attachments included, "Report in Support of a finding of Probable Cause" (Exhibit 6).

15. On 2/2/11, FPPC sent a "Finding of Probable Cause and Order to prepare and serve an Accusation" to respondent (Exhibit 7).

16. On 2/10/11, FPPC's "Statement to Respondent" was received by respondent (Exhibit 8).
17. On 2/19/11, respondent's "Notice of Defense" was mailed back to FPPC (Exhibit 9).
18. On 3/11/11, Bucknell made an Ex Parte contact with the OAH's Brenda Manalo requesting that OAH set a hearing (Exhibit 10).
19. On 3/17/11, respondent sent a letter to OAH's Brenda Manalo requesting that Manalo consider respondent's availability when Manalo was setting the Hearing time (Exhibit 10).
20. On 3/22/11, FPPC sent a "Request for a Prehearing Conference and response to Respondent's counter request to set a hearing" to OAH (Exhibit 11).
21. On 3/29/11, OAH sent a "Notice of Telephonic Trial Setting Conference" (Exhibit 12) to respondent.
22. On 4/2/11, Respondent submitted a "Request for Continuance of Telephone Conference" to OAH (Exhibit 13).
23. On 4/11/11, OAH issued a "Telephonic Trial Setting Conference Order" (Exhibit 14).
24. On 4/15/11, OAH, refused respondent's requests to set a hearing date after September, 2011 for respondent's left shoulder treatments and to schedule a five-days hearing, because respondent has many documents to present and many witnesses to testify at the hearing, sent OAH's Notice to respondent (Exhibit 15).
25. On 8/14/11, respondent, after Bucknell failed to follow the OAH's requirements to provide FPPC's Hearing Exhibits to respondent, sent a letter to Bucknell asking Bucknell to inform respondent the documents FPPC intended to use at the Hearings. Bucknell ignored respondent's Letter (Exhibit 17).
26. On 8/16/11, respondent sent a Notice, based on Government Code §11450.50, requesting Roman G. Porter to attend the Hearing scheduled on 9/13/11 and 9/14/11 to FPPC (Exhibit 19),

because respondent would like to ask Roman G. Porter that what's the facts and evidence the FFPC had when he/she asked respondent to sign the "Stipulation, Decision and Order" and what's the facts and evidence the FPPC based in asking the maximum penalty of \$30,000.00 in its Accusation (Ex. A to Exhibit 10).

27. On 8/23/11, Bucknell filed a "Motion to quash and for a protective order" to respondent's request that Roman G. Porter, as a witness, to testify at the hearing the facts and evidence upon which he based his "7/21/11 Stipulation, Decision, and Order" and in his "Accusation" (Exhibit 21). Bucknell's absurd excuses were that respondent was to harass Roman G. Porter.

28. On 9/6/11, after the FPPC failed to have the Arcadia City Clerk to testify, respondent sent a Notice, based on Government Code §11450.50, requesting the Arcadia City Clerk, as a filing officer, to attend the 9/13/11 and 9/14/11 hearing (Exhibit 23). The City Clerk failed to appear to support Bucknell's allegations. The Arcadia City Clerk left a message on respondent's answering machine and the ALJ refused to let respondent play the recording at the 9/14/11 Formal Hearing (Exhibit R).

29. On 9/6/11, respondent filed an "Opposition to Complainants, Fair Political Practice Commission, Motion to Quash and for a Protective Order to Respondent's Requests that the Executive Director, Ramon G. Porter, as a Witness Attend the Formal Hearing of the Within Matter, Memorandum of Points and Authorities and Declaration of Shong-Ching Tong in Opposition to Neal P. Bucknell's, Sr. Commission Counsel of FPPC's, Enforcement Div., Motion;

Request for Judicial Notice;

Request for 'Statements of Findings of Facts and Conclusions of Laws' in OAH's Rulings

(Respondent's Objection to Exhibit 3 Contained in Neal P. Bucknell's Motion is filed Concurrently Herewith Respondent's Opposition)" (Exhibit 24).

30. On 9/9/11, the OAH's ruling was sent by FPPC and the ALJ did not give any authority supporting the ALJ's ruling as requested by respondent (Exhibits 24, 25).

31. On 11/8/11, the OAH's "Proposed Decision", in violation of California Code of Regulation §18361.9, and FPPC's "Opening Brief" were received by respondent and attorney Stefan Robert Pancer.

32. Because the OAH's "Proposed Decision" contains erroneous facts and evidence in support of OAH's rulings and the FPPC's "Opening Brief", respondent hereby submits the "Respondent's Opening Brief" and "List of Exhibits" to prove the OAH's bias and prejudice toward respondent and the FPPC's "Accusation" was taking revenge on respondent after respondent refused to surrender to Bucknell's and Rasey's unethical, unprofessional, and unlawful acts and conduct as displayed in the instant case.

DISCUSSION

I. The OAH Was Not Impartial In the Instant Case

The following facts and evidence would show that the OAH was biased and prejudiced towards Respondent:

1. The ALJ's "Proposed Decision" was served with FPPC's "Opening Brief" ("OB") on the same date. The OAH had violated Code of Reg. §18361.9 (a) - Service of Process: Within 14 days of receipt of a proposed decision by an administrative law judge following a hearing held pursuant to Government Code section 83116, the Executive Director shall serve a copy of the proposed decision on the Commission's Enforcement Division and the respondent(s)", which requires that the ALJ's "Proposed Decision" be served on respondent as well as FPPC on the

same date when OAH served its “Proposed Decision” on FPPC.

Further, respondent should have 14 days to file the “Respondent’s Opening Brief” after served with the FPPC’s “OB”. Thus, respondent was not given an adequate amount of time to respond, i.e. OAH conspired with FPPC to deprive respondent’s right of Due Process of Law.

2. The OAH failed to respond in writing, as requested by the respondent, with the fact and law used in denying Respondent’s Subpoena that Roman G. Porter should not appear at the hearing regarding his/her involvement in “7/21/10’s Stipulation, Decision and Order”.

3. The OAH failed to sanction the FPPC’s failure to provide adequate Hearing Record as the ALJ ordered (Exhibits 17, 18).

On 8/14/11, after reviewing FPPC’s copies of documents FPPC intended to use at the 9/13/11 and 9/14/11 hearings, respondent sent a letter to Bucknell asking Bucknell to respond to respondent whether the documents sent by him were true and correct documents the FPPC would present at hearings (Exhibit 17). Bucknell ignored respondent’s letter and the ALJ, at the hearing and in the ALJ’s “Proposed Decision”, ignored FPPC’s violation of his order.

In California Administrative Hearing Practice (CEB), Pages 291-292, §6.40 2 - Documents Required to be Considered or Exchanged at Hearing, It states: Note> In matters brought before the Medical Board of California, a party may use expert testimony only if, under an order issued by the OAH, the following information is exchanged in writing with opposing counsel: (1) a curriculum vitae setting forth the expert’s qualifications; (2) a brief narrative statement of the general substance of the expert’s expected testimony, including any opinion testimony and its basis; (3) a representation that the expert has agreed to testify at the hearing; and (4) a statement of the expert’s hourly and daily fee for providing testimony and for consulting with the party who retained his or her services. Bus & P C §2334.

Bucknell's "Complainant's Prehearing Conference Statement" had violated this case law (Exhibit 16) and the ALJ had erroneously overruled respondent's objection at the hearing to allow FPPC's Expert, Lynda Cassady, to testify.

4. The ALJ refused Respondent's requests to play the recordings left on the Answering Machine by Paul P. Cheng, Paul A. Rasey, and Neal P. Bucknell.

Paul P. Cheng, aka Paul Cheng, has been an attorney and was in violation of the State Bar's rule in negotiating a settlement with respondent when Cheng was representing the plaintiffs in two Los Angeles Superior Court cases and when the defendants had their own counsel (Ex. 1 to Exhibit 1).

From 1/5/10 to 1/21/10, Cheng had called respondent numerous times to settle the aforementioned cases. Cheng's calls were left on respondent's Answering Machine.

Paul A. Rasey and Neal P. Bucknell had called respondent numerous times and left messages on respondent's Answering Machine after respondent found out that Rasey and Bucknell had taken advantage of respondent in respondent's corporation when Rasey was asking respondent to mail the forms to Rasey and in asking respondent to settle their alleged violations by respondent (Exhibits 1, 2, 3, 4, P, R).

Chinese Radio Station 1300, on 4/2/10, provided free air time to Cheng and ignored respondent's request to participate. During the "Rush Hour" program time, respondent recorded the questions and Answers between Cheng and reporter Zhao (Exhibit 107).

On 9/14/11, the ALJ refused respondent's request to play the afore-mentioned recordings.

In California Administrative Hearing Practice (CEB), Page 308, §6.70 d. If Witness Fails to Appear, It states A party may request a continuance based on the failure of a witness to appear at the time and place required for the appearance or testimony as stated in a subpoena. Govt C

§11450.20(b). If the subpoena was served on the witness by certified mail or messenger, the party must show that he or she has complied with Govt C §11450.20. See §6.108. The continuance will be granted only for a sufficient period to allow personal service of a subpoena, and in no event for longer than allowed by law. Govt C §11450.20(b).

In the instant case, the Arcadia City Clerk failed to appear at the Formal Hearing. The City Clerk did call respondent and left a message which would prove the City Clerk did not object the service. Thus, the ALJ's refusal to allow respondent to play the recording was an abuse of discretion and had prejudiced respondent's effort to prove that the Arcadia City Clerk's failure was the result in respondent's not being able to file the Forms as requested.

5. Accepted Neal P. Bucknell's Ex Parte Communications to set the Telephonic Trial Setting Conference date, the Prehearing Conference date, and the Formal Hearing dates.

In California Administrative Hearing Practice (CEB), Pages 273-274, § 6.10 E - Ex Parte Communications Prohibited With presiding officer, it states Unless there is a notice and opportunity for all parties to participate, agencies or other interested persons should not communicate directly or indirectly with the presiding officer while proceedings are pending on any issue in the proceeding. Govt C §11430.10. See *Mathew Zaheri Corp. v New Motor Vehicle Bd.* (1997) 55 CA4th 1305, 64 CR2d 705. This limitation includes communications from (Govt C §11430.10(a)):

- An employee or representative of an agency that is a party, or
- An interested person outside the agency.

In California Administrative Hearing Practice (CEB), Page 286, § 6.32 1. Formal APA Proceedings, It states: Note> The agency typically sends the initial pleading to the OAH with a request to set the case for hearing or contacts the OAH by telephone to obtain a hearing date. Under 1 Cal Code Regs §1018(a), the agency's request to the OAH must be in writing. The

document used to request the date is completed by the OAH with the file number, date(s), time, and place for hearing, which is transmitted simultaneously to the agency and parties or representatives identified in the hearing request. 1 Cal Code Regs §1018(b).

On 3/11/11, Bucknell sent a request to Brenda Manalo requesting the OAH to set (Exhibit 10).

On 3/17/11, respondent sent a letter to Brenda Manalo stating the dates respondent would be unavailable and requesting a 5-days time for the Formal Hearing (Exhibit 10).

On 3/22/11, Bucknell sent a letter to Presiding Administrative Law Judge in opposition to respondent's counter request to set Hearing and Bucknell's request for a prehearing conference (Exhibit 11).

On 4/4/11, respondent filed a "Request for Continuance of Telephonic Conference" (Exhibit 13) after the OAH's "Notice of Telephonic Trial Setting Conference" was received by respondent on 3/19/11 (Exhibit 12).

Later, Brenda Manalo called respondent informing respondent that the OAH had denied respondent's request for Continuance and told respondent that a "Telephonic Trial Setting Conference" would be held on 4/7/11.

In the Instant Case, the FPPC did not send the initial pleading to the OAH. Instead, FPPC sent to Brenda Manalo. The OAH had also failed to transmit the FPPC's documents to respondent after filing (Exhibits 10, 11, 12).

Because the Ex Parte Communications between Bucknell and Manalo and between Bucknell and the Presiding Administrative Law Judge as afore-cited, respondent had been deprived of respondent's Constitutional Rights of Due Process in setting the dates regarding the Telephonic Trial Setting Conference, the Prehearing Conference, and Formal Hearing.

II. Respondent Had Not Violated Any Laws As Accused By The FPPC

1. Govt C, § 18110. Duties of Filing Officers - Campaign Statements,

Subsection (3) provides that “In those cases where the filing officer discovers in his or her review of campaign statements that a candidate or committee has filed an incorrect, incomplete or illegible campaign statement or a campaign statement which cannot be reproduced, he or she shall promptly notify the candidate or committee of the error or omission. However, no notification is required in those cases in which the errors or omissions are minor ones which do not recur throughout the campaign statement. An error or omission is minor if it does not result in omission of the amount of an individual contribution or expenditure. An error or omission in connection with the identification of the recipient of an expenditure or person providing consideration for an expenditure is minor if such person is identified by name.”

In the instant case, Rasey and Bucknell, had alleged that respondent’s Forms 461, 465, and 496 sent to Rasey were incorrect, had never notified respondent.

2. Govt C § 18115. Duties of Filing Officers and Filing Officials – Statements of Economic Interests provides that “An official who is both a filing officer and an official who receives statements and forwards the originals to the filing officer will have duties under subsections (a) and (b) of this regulation.

(a) Filing officers who are responsible for statements of economic interests shall:

(1) Supply the necessary forms and manuals prescribed by the Fair Political Practices Commission;

(2) Determine whether the proper statements have been filed and whether:

(A) The cover sheet includes the name and address of the filer, the period covered and

type of statement;

- (3) Promptly notify the filer if a statement does not satisfy the requirements of subsection (a)(2).

Govt C, §81010. Filing officer; duties, It states With respect to reports and statements filed with him pursuant to this title, the filing officer shall:

- (a) Supply the necessary forms and manuals prescribed by the Commission;
- (b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this title;
- (c) Notify promptly all persons and known committees who have failed to file a report or statement in the form and at the time required by this title;
- (d) Report apparent violations of this title to the appropriate agencies; and
- (e) Compile and maintain a current list of all reports and statements filed with this office.

In the instant case, the Arcadia City clerk, as the Filing Officer, should notify respondent that the law requires respondent to file the required Forms and respondent could obtain the Forms from the Arcadia City Clerk after the Clerk reviewed respondent's Business License Application and License and gave the "Refusal Register" to respondent (Exhibits 6, 103).

In the instant case, the Arcadia City Clerk failed 1) to inform respondent that the law requires respondent to file the Forms with the City Clerk and 2) to provide Forms to respondent while respondent was giving the "Refusal Register" by the City Clerk (Ex. B to Exhibit 6).

As shown by the Forms provided by Paul A. Rasey, respondent did his best effort to follow the law after Rasey asked respondent to fill out and return the Forms to Rasey (Exhibit 2).

Further, Rasey had never informed respondent that there were defects after Rasey had received the Forms provided by Rasey.

III. OAH Refused To Allow Respondent to Have His Witnesses Testify and to Present Evidence By Limiting a 2-days' Formal Hearing.

On 8/16/11, respondent served the "Respondent's Government Code §11450.50 Requests that the Executive Director Roman G. Porter as a witness attend the Formal Hearing of the within matter" on Roman G. Porter (Exhibit 19).

On or about 8/23/11, Bucknell filed a "Complainant's Notice of motion and motion to Quash and for a Protective Order, etc." (Exhibit 21). The Motion did not have any legal authority supporting Bucknell's motion (1 Cal Code Regs 1022 (e)).

On 9/6/11, respondent filed his "Opposition to Complainant's, Fair Political Practice Commission, Motion to quash and for a protective order to Respondent's Requests that the Executive Director, Ramon G. Porter, as a witness attend the Formal Hearing of the Within Matter; Memorandum of Points and Authorities and Declaration of Shong-Ching Tong in opposition to Neal P. Bucknell's, Sr. Commission Counsel of FPPC's, Enforcement Div., Motion (Ex. A – Stipulation, Decision and Order; Ex. B – Shong-Ching Tong's 8/14/11 letter to Neal P. Bucknell)

Request for Judicial Notice

Request for "Statements of Findings of Facts and Conclusions of Laws" in OAH's Rulings".

Respondent's Objection to Exhibit 3 contained in the Sr. Commission Counsel's, of the Enforcement Division of Complainant, FPPC, Supporting Declaration of Neal P. Bucknell, 9/2/11. (Exhibit 24).

On 9/9/11 Bucknell served the OAH's ruling regarding OAH's granting of Bucknell's motion without any authority the OAH made its ruling (Exhibit 25).

There has never been any order signed by OAH and the OAH has never had any legal

authority opposing respondent's reason to request Roman G. Porter attend the Formal Hearing and explaining what facts and evidence the FPPC had when he/she asked respondent to sign the 7/21/10 "Stipulation, Decision, and Order" and what's the reason he/she would ask respondent to file the Forms again as contained in his/her 10/27/10 letter.

Since FPPC failed to cite any authority supporting Bucknell's motion and OAH had failed to cite any authority in granting Bucknell's motion, thus, OAH had abused its discretion in denying of respondent's Constitutional right to confront the witness, to present evidence, to call and examine witnesses.

In California Administrative Hearing Practice (CEB), Pages 357-358, §7.16 2. Right to Confront Witnesses, it states that the respondent has a right to cross-examine witnesses and produce evidence in refutation. Govt C §11513(b). *Goldberg v Kelly* (1970) 397 US 254, 25 L Ed 2d 287, 90 S Ct 1011; *Olive Proration Program Comm. v Agricultural Prorate Comm'n* (1941) 17 C2d 204, 210, 109 P2d 918; *Jennings v Jones* (1985) 165 CA3d 1083, 212 CR 134.

In California Administrative Hearing Practice (CEB), Page 383, §7.64 1. Right to Present Evidence, it states, the APA confers on each party the rights to call and examine witnesses, cross-examine opposing witnesses, impeach any witnesses, introduce exhibits, and rebut evidence. Govt C §§11425.10(a), 11513(b). See also *Blinder, Robinson & Co. v Tom* (1986) 181 CA3d 283, 290, 226 CR 339. The rules relating to these rights are similar to those applied in court proceedings.

In California Administrative Hearing Practice (CEB), Page 384, §7.65 2. Relevant Evidence It states, any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Govt C §11513(c).

In California Administrative Hearing Practice (CEB), Page 407, §7.99 A. Right to Call and Examine Witnesses, It states Under Govt C §11513(b), a party has the right to call and examine

witnesses. See §7.15. Subject to statutory limitations, the right to call witnesses includes the right to examine them on all matters relevant to the proceeding. *Blinder, Robinson & Co. v Tom* (1986) 181 CA3d 283, 290, 226 CR 339. Testimony is relevant if it directly touches on an issue raised by the pleadings. *Moran v. Abbey* (1881) 58 C 163, 168.

In California Administrative Hearing Practice (CEB), Page, 417, §7.115 H. Agency Members or Personnel as Witnesses, It states Agency members, by analogy to Evid C §§700-701, it appears that unless a statute or regulation provides otherwise, agency members and personnel may be subpoenaed and called as witnesses by the agency or other party.

As shown by Exhibits 1, 6, 7, 10, 13, 17, 19, 23, 24, 25, 101, 102, 103, 103.1, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, P and R., respondent had the Constitutional right 1) to confront and cross-examine the witnesses who testified against respondent, 2) to subpoena witnesses, and 3) to present facts and evidence showing the FPPC's allegations against respondent were meritless when respondent was informing Arcadia's voters and citizens not to elect Paul P. Cheng to the Arcadia City Council and was defending respondent's reputation through freedom of speech after Paul P. Cheng and his associates, the Chinese newspapers, Chinese Radio stations, Chinese TV stations and the "Arcadia Weekly" had reported and published untrue facts and evidence attacking respondent's reputation.

As shown by the afore-mentioned Exhibits and Witnesses to be called, the two-day Formal Hearing time had violated respondent's U. S. and State constitutions to defend the FPPC's false and meritless accusations. Especially, when there are many translations required in translating the testimonies and documents from Chinese to English and from English to Chinese.

IV. The ALJ Erred in Allowing FPPC's Expert to Testify At the Formal Hearing

In California Administrative Hearing Practice (CEB), Pages 291-292, §6.40 2. Documents

Required to be Considered or Exchanged at Hearing, the Note states In matters brought before the Medical Board of California, a party may use expert testimony only if, under an order issued by the OAH, the following information is exchanged in writing with opposing counsel: (1) a curriculum vitae setting forth the expert's qualifications; (2) a brief narrative statement of the general substance of the expert's expected testimony, including any opinion testimony and its basis; (3) a representation that the expert has agreed to testify at the hearing; and (4) a statement of the expert's hourly and daily fee for providing testimony and for consulting with the party who retained his or her services. Bus & P C §2334.

In the instant case, Bucknell's "Complainant's Prehearing Conference Statement" had violated afore-mentioned case law (Exhibit 16) and the ALJ had erroneously overruled respondent's objection at the hearing to allow FPPC's Expert to testify.

In California Administrative Hearing Practice (CEB), Page 300, §6.54 1. Form of Motion, It states Although no special form of motion is required, motions should comply with the requirements of 1 Cal Code Regs §1006. 1 Cal Code Regs §1022(e). The moving party should attach a proof of service of the motion on all parties. 1 Cal Code Regs §1022(b). The motion should state in plain language the relief sought and the facts and circumstances in support of the motion. The motion should be supported by legal authority. 1 Cal Code Regs 1022(e).

In California Administrative Hearing Practice (CEB), Page 309, §6.57 4. Hearing, Deciding Motion, It states the ALJ should issue a written order deciding any motion and may request the party prevailing on the motion to prepare the order, unless the motion is made during the course of a hearing while on the record. 1 Cal Code Regs §1022(i)

In the instant case, the ALJ failed to cite an authority supporting his/her ruling granting the FPPC's Motion to Quash.

V. The ALJ Had Violated GOVT.C. §11517(C)(1).

In California Administrative Hearing Practice (CEB), Page 444, §8.24 I. In Cases Governed by APA, It states ALJ must issue decision within 30 days. The ALJ must issue the proposed decision within 30 days after the case is submitted; however, failure to do so does not prejudice the agency's right to act in the case. Govt C §11517(c)(1). This provision in the amended APA is consistent with case law. See *Chrysler Corp. v New Motor Vehicle Bd.* (1993) 12 CA4th 621, 15 CR2d 771; *Outdoor Resorts Palm Springs Owners Ass'n v Alcoholic Beverage Control Appeals Bd.* (1990) 224 CA3d 696, 273 CR 748. Any delay does not violate due process. *Anserv Ins. Servs. v Kelso* (2000) 83 CA4th 197, 207, 99 CR2d 357.

In the instant case, the Formal Hearing ended on 9/14/11. Thus, the ALJ should issue his proposed decision no later than 10/13/11. The fact that the ALJ did not issue his proposed decision until after 10/26/11 was in violation of Govt C section 11517 (C) (1).

VI. The FPPC Failed To Enforce The Law As Follows:

In United States Code Annotated, page 592, § 315. Candidates for public office, subsection (a) Equal opportunities requirement; censorship prohibition; allowance of station use; news appearances exception; public interest; public issues discussion opportunities, It states If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is imposed under this subsection upon any licensee to allow the use of its station by any such candidate.

In United States Code Annotated page 602, §315. Wire or Radio Communication, providing

that if any licensee permits legally qualified candidate for public office to use broadcasting station, he shall afford equal opportunities to all other such candidates for that office in use of such broadcasting station and licensee shall have no power of censorship over material broadcast under this statute. *Becker v. F.C.C., C.A.D.C.* 1996, 95 F.3d 75, 320 U.S.App.D.C. 387, rehearing denied.

In *National Broadcasting Co., Inc. v. F. C. C., C.A.D.C.* 1974, 516 F.2d 1101, 170 U.S.App.D.C. 173, certiorari denied 96 S.Ct. 1105, 424 U.S. 910, 47 L.Ed.2d 313, the court held that The “fairness doctrine” imposes a double obligation on the broadcast licensee to devote a substantial portion of available time to the discussion of controversial issues of public importance and, when he presents such an issue, the licensee has further duty to present responsible conflicting views, including making free time available if those holding responsible conflicting views are unable to purchase air time.

In the instant case, as shown by Exhibits 1, 6, 17, 102, 103, 103.2, 104, 106, 106.1, 107 thru 115, FPPC had failed to enforce the law against Paul P. Cheng, the “Arcadia Weekly”, and the Chinese news media. Especially, the “Radio 1300” only gave its free air time to Cheng and ignored respondent’s request to participate in its “Rush Hour” program on 4/2/10 (Exhibit 107).

VII. The FPPC Had Abused Its Power In Accusing Respondent Had Violated The Law While Respondent Was Exercising His Constitutional Right of Freedom of Speech

Govt C §81002. Purposes of title provides the people enact this title to accomplish the following purposes:

(a) 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.

In the instant case, the Arcadia voters and citizens should have no problems knowing

whether or not respondent had done any improper practices as defined by the law, because the two Fliers mailed out only asking the voters/citizens not to elect Paul P. Cheng to the Arcadia City Council and, as Crystal Tran asserted that respondent was unaffiliated with any candidate/issue, was not needed to be prohibited (Exhibit 1, Tran's Complaint, page 3, para 3).

Govt C. §83115. Investigations; notice to complainant provides Upon the sworn complaint of any person or on its own initiative, the commission shall investigate possible violations of this title relating to any agency, official, election, lobbyist or legislative or administrative action. Within 14 days after receipt of a complaint under this section, the commission shall notify in writing the person who made the complaint of the action, if any, the commission has taken or plans to take on the complaint, together with the reasons for such action or nonaction. If no decision has been made within 14 days, the person who made the complaint shall be notified of the reasons for the delay and shall subsequently receive notification as provided above.

The Crystal Tran's complaint was made on 4/8/10. The FPPC should contact respondent by 4/22/10 as required in order for FPPC to notify Crystal Tran regarding the FPPC's action or no action. FPPC did not do so, because FPPC did not send Crystal Tran's complaint to respondent until after 5/4/10 (Exhibit 1). Since FPPC has the duty to enforce the law fairly and on equal basis, the facts that the failures of FPPC to prosecute Paul P. Cheng's, the "Arcadia Weekly's", and the Chinese News Media's violations of the law can clearly show FPPC had no courage to go after the big fishes and had abused its power in repeatedly accusing respondent for the alleged violation never existed. Most importantly, the FPPC has failed to prosecute the Cheng's violations in failing to report who was the person/committee raising the big money (Ex 7 to Exhibit 1; Ex 105 #1 to Exhibit 105).

Govt C. §83115.5. Probable cause; violation of title; notice of violation; summary of

evidence; notice of rights; private proceedings provides 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, provided with a summary of the evidence, and informed of his right to be present in person and represented by counsel at any proceeding of the commission held for the purpose of considering whether probable cause exists for believing the person violated this title.

In the instant case, respondent had never violated any law as FPPC accused and FPPC's "7/21/10 Stipulation, Decision, and Order" proved respondent's assertion. Otherwise, the FPPC should follow Govt C §83115.5 to notify respondent before FPPC would ask respondent to sign the "7/21/10 Stipulation, Decision, and Order".

Govt C §83116 provides that "When the commission determines on the basis of the hearing that a violation has occurred, it shall issue an order that may require the violator to do all or any of the following:

- (a) Cease and desist violation of this title.
- (b) File any reports, statements, or other documents or information required by this title.
- (c) Pay a monetary penalty of up to five thousand dollars (\$5,000) per violation to the General Fund of the state. When the Commission determines that no violation has occurred, it shall publish a declaration so stating."

In the instant case, FPPC had never required respondent to cease and desist. In fact, respondent had filed the Forms with Rasey as he requested. Therefore, the FPPC had no facts or evidence supporting FPPC's accusation that respondent had violated the Law so severely to be punished with the maximum penalty, \$30,000.00.

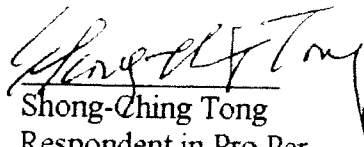
Govt C §84305. Mass mailings; requirements, subsection (a) provides Except as provided in subdivision (b), no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail or the mailing in no less than 6-point type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the organization's address is a matter or public record with the Secretary of State.

In the instant case, the first Flier (Exhibit A to Exhibit A) mailed to Arcadia voters had the name, address, and the city on the outside of each piece of mail. The second Flier mailed to Arcadia voters and citizens had name, address, and city on the inserts (Exhibit B to Exhibit 10; Both Exhibits A & B are contained in Exhibits 1, 103). Therefore, the Fliers mailed were not in violation of any Law as alleged by FPPC (Exhibit 1's Attachments 1, 2).

CONCLUSION

In light of the foregoing points and authorities, the facts and documents presented, the Commission should discard the OAH's "Proposed Decision" in its entirety, because respondent had never violated any law as alleged and respondent's acts and conduct as displayed in the City of Arcadia's Municipal Election was respondent's exercise of a citizen's right of freedom of speech conferred by the U. S. and State Constitutions and the Arcadia City voters were fully informed and there had never been ANY improper practices committed.

DATED: November 23, 2011


Shong-Ching Tong
Respondent in Pro Per

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18 years old and not a party to the within action; My address is 1741 Phillips Dr., Pomona, CA.

On November 25, 2011, I served the foregoing document described as Respondent's Opening Brief on interested parties in this action by placing a true copy thereof enclosed in a sealed envelop with postage thereon fully prepaid in the United States Mail at Pomona, CA., addressed as:

Commission Chair &
Commissioners
FPPC
428 J St., #620
Sacramento, CA 95814

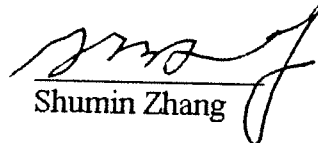
FPPC
ATTN: Gary Winuk
428 J St., #620
Sacramento, CA 95814

By mail. I caused such envelop with postage thereon fully prepaid to be placed in the United States mail at Pomona, California.

Personal Service. I served the documents by placing them in an envelop addressed to the persons at the addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: November 25, 2011


Shumin Zhang