

1 GARY S. WINUK
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FAIR POLITICAL PRACTICES COMMISSION

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6
7 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

8 **STATE OF CALIFORNIA**

9
10 In the Matter of) FPPC No. 09/0209
11)
12 BEVERLY SEEDBORG AND VOTER) DEFAULT DECISION AND ORDER
GUIDE SLATE MAIL,)
13)
14 Respondents.) (Gov. Code §§ 11506 and 11520)
15)

16 Complainant, the Fair Political Practices Commission, hereby submits this Default Decision and
17 Order for consideration at its next regularly scheduled meeting.

18 Pursuant to the California Administrative Procedure Act,¹ Respondents Beverly Seedborg and
19 Voter Guide Slate Mail have been served with all of the documents necessary to conduct an
20 administrative hearing regarding the above-captioned matter, including the following:

- 21 1. An Order Finding Probable Cause;
22 2. An Accusation;
23 3. A Notice of Defense (Two Copies);

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

1 A Statement to Respondent; and

2 4. Copies of Sections 11506, 11507.5, 11507.6 and 11507.7 of the Government Code.

3 Government Code Section 11506 provides that failure of a respondent to file a Notice of Defense
4 within 15 days after being served with an Accusation shall constitute a waiver of respondent's right to a
5 hearing on the merits of the Accusation. The Statement to Respondent, served on Respondents Beverly
6 Seedborg and Voter Guide Slate Mail, explicitly stated that a Notice of Defense must be filed in order to
7 request a hearing. Respondents failed to file a Notice of Defense within fifteen days of being served
8 with the Accusation.

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

13 Respondents Beverly Seedborg and Voter Guide Slate Mail violated the Political Reform Act as
14 described in Exhibit 1, and accompanying declarations, which are attached hereto and incorporated by
15 reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the law and
16 evidence in this matter. This Default Decision and Order is submitted to the Commission to obtain a
17 final disposition of this matter.

18
19 Dated: _____

20 Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

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22 **ORDER**

23 The Commission issues this Default Decision and Order and imposes an administrative penalty
24 of Two Thousand Dollars (\$2,000) upon Respondents Beverly Seedborg and Voter Guide Slate Mail,
25 payable to the "General Fund of the State of California."

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

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5 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Voter Guide Slate Mail (“Respondent VGSM”) is a California slate mailer organization which has filed campaign statements since 1998. Respondent Beverly Seedborg (“Respondent Seedborg”) has been the treasurer of Respondent VGSM since 1998. Respondents were required by the Political Reform Act (the “Act”)¹ to comply with specified campaign reporting requirements for slate mailer organizations.

This case arose from referrals from the office of the Los Angeles County Registrar-Recorder/County Clerk (“County Clerk”) alleging that the Respondents did not file semi-annual campaign statements for the reporting periods ending December 31, 2006, and December 31, 2008. The subsequent investigation by the Enforcement Division revealed that the Respondents failed to file campaign statements as required by the Act.

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

COUNT 1: Respondents Beverly Seedborg and Voter Guide Slate Mail failed to timely file a semi-annual campaign statement for the reporting period October 19, 2008, through December 31, 2008, by its February 2 due date, in violation of Government Code Section 84218, subdivision (a).

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

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

¹The 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 (“Commission”) are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

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

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

PROCEDURAL REQUIREMENTS AND HISTORY

A. Initiation of the Administrative Action

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

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) 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 the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred.

Documents supporting the procedural history are included in the attached Certification of Records ("Certification") filed herewith at Exhibit A, A-1 through A-9, and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondents in this matter by serving them with a Report in Support of a Finding of Probable Cause (the "Report") by certified mail, return receipt

requested,³ on May 28, 2010. (Certification, Exhibit A-1.) Therefore, the administrative action commenced on May 28, 2010, the date Respondents were served the Report, and the five year statute of limitations was effectively tolled on this date.

As required by Section 83115.5, the packet served on Respondents contained a cover letter and a memorandum describing Probable Cause Proceedings, advising that Respondents had 21 days in which to request a probable cause conference and/or to file a written response to the Report. (Certification, Exhibit A-2.)

B. Ex Parte Request for a Finding of Probable Cause

Since Respondents failed to request a probable cause conference or submit a written response to the Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to Executive Director Roman G. Porter, on August 23, 2010. Respondents were sent copies of these documents.

On August 27, 2010, Executive Director Roman G. Porter issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-3.)

C. The Issuance and Service of the Accusation

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

Section 11503 states:

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

Section 11505, subdivision (a) requires that, upon the filing of the accusation, the agency shall 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c);

³ Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law. (Section 8311.)

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

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

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

On August 27, 2010, the Commission's Executive Director, Roman G. Porter, issued an Accusation against Respondent in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506, 11507.5, 11507.6, 11507.7, and 11509 were personally served on Beverly Seedborg on behalf of Respondents, on September 10, 2010. (Certification, Exhibit A-4.)

Along with the Accusation, the Enforcement Division served Respondents with a "Statement to Respondent" which notified them that they could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, they would be deemed to have waived the right to a hearing. Respondents did not file a Notice of Defense within the statutory time period, which ended on September 25, 2010. However, on September 29, 2010, a letter from Respondent Seedborg, post marked September 27, 2010, along with a signed Grounds for Notice of Defense by Respondent Seedborg was received by the Commission. (Certification, Exhibit A-5.) The Grounds for Notice of Defense was not completed and contained a handwritten note "Not sure what to do."

On March 1, 2011, a letter with two copies of Grounds for Notice of Defense was sent by certified mail, return receipt requested, to Respondent Seedborg requesting she specify if she wanted a hearing. (Certification, Exhibit A-6.) On March 2, 2011, the letter was delivered to Ms. Seedborg's address. (Certification, Exhibit A-7.) Respondents did not file a completed Grounds for Notice of Defense in response to the March 1, 2011, letter.

As a result, on November 17, 2011, Chief of Enforcement Gary Winuk sent a letter to Respondents advising that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for December 8, 2011. A copy of the Default Decision and Order, and this accompanying Exhibit 1 with attachments, was included with the letter. (Certification, Exhibit A-8.)

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose of disclosure.

Duty to File Campaign Statements

Slate mailer organizations are included among the entities subject to the Act's campaign reporting requirements. Section 82048.4, subdivision (a) defines a slate mailer organization as any person who directly or indirectly, does all of the following: 1) is involved in the production of one or more slate mailers and exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailers; and 2) receives or is promised payments totaling five hundred dollars (\$500) or more in a calendar year for the production of one or more slate mailers.

Section 84218, subdivision (a) requires slate mailer organizations to file semi-annual campaign statements for each period in which it has received payments totaling \$500 or more from any person for the support of or opposition to candidates or ballot measures in a slate mailer, or in which it has expended \$500 or more to produce one or more slate mailers. The first semi-annual statement covers the reporting period ending June 30, and must be filed by July 31. The second semi-annual campaign statement covers the reporting ending December 31, and must be filed by January 31 of the following year. Sections 84214 and Regulation 18404 require slate mailer organizations to file campaign statements until it terminates its obligations by filing a Statement of Termination (Slate Mailer Organization) (Form 402).

Treasurer Liability

Section 84100 provides that every committee shall have a treasurer. Section 84108, subdivision (a) provides that every slate mailer organization must comply with Section 84100. Regulation 18427, subdivision (a) sets forth the duties of a treasurer. One of these duties is to ensure that the slate mailer organization complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds.

Sections 83116.5 and 91006 provide that a slate mailer organization's treasurer may be held jointly and severally liable, along with the slate mailer organization, for any reporting violations of the Act.

SUMMARY OF THE FACTS

Respondent VGSM has been a California slate mailer organization since September of 1998. Respondent Seedborg has been the treasurer of Respondent VGSM since its formation.

In February, and March of 2009, the County Clerk sent notices to the Respondents that a semi-annual campaign statement for Respondent VGSM had not been filed with its office for the reporting period ending December 31, 2008. (Certification, Exhibit A-9.) When Respondents did not file the semi-annual campaign statement as requested, the County Clerk referred the matter to the Commission. . (Certification, Exhibit A-10.)

After reviewing the referral, Commission staff determined that Respondents received payments in excess of \$500 from persons for the support of or opposition to candidates or ballot measures in a slate mailer during the semi-annual statement reporting period October 19, 2008, through December 31, 2008, and failed to timely file the required semi-annual campaign statement.

By failing to timely file the required semi-annual campaign statement for the period October 19, 2008, through December 31, 2008, Respondents violated Government Code Sections 84218, subdivision (a).

CONCLUSION

This matter consists of 1 count of violating the Act, which carries a maximum administrative penalty of Five Thousand Dollars (\$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 demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

In this matter, Respondents failed to file a campaign statement as required by the Act. Failures to file campaign statements are serious violations of the Act. The public harm inherent in these violations is that the public is deprived of important and timely information from Respondents regarding the payments Respondents received and amounts expended in connection with producing slate mailers.

Respondents were well aware of their filing obligations having filed slate mailer organization campaign statements since 1998. Respondents were requested multiple times by their filing officer to file the semi-annual statement for the period ending December 31, 2008, and had substantial reportable activity during the period of approximately \$111,286 in payments received and \$342,785 in payments made. Further, respondents failed to file two preelection statements and one semi-annual statement in 2006 demonstrating a pattern of failing to file.

In mitigation, as requested during this investigation, Respondents filed the required campaign statement for the period October 19, 2008 through December 31, 2008, with the Secretary of State on October 23, 2011. In addition, Respondents disclosed \$104,670 of the payments received during the semi-annual period prior to the 2008 general election in timely filed slate mailer late payment reports. Further, Respondent Seedborg experienced a significant illness which contributed to the failure to timely file the 2008 semi-annual statement. However, the party responsible for managing the slate mailer organization failed to ensure the statements were filed, but is not subject to liability under the Act.

Other similar cases regarding failure to file post-election semi-annual campaign statements recently approved by the Commission include:

In the Matter of Yolo County Democratic Central Committee Local Account et al., FPPC No. 08/357. This case involved seven counts of various campaign statements not timely filed. Included in this were five counts of failure to timely file semi-annual campaign statements. Most of the reporting periods contained amounts that were relatively low when compared to the committee's contributions received and expenditures made per election. There was no evidence found that this activity was deliberate. A \$2,000 per count penalty for the campaign statements not filed timely was approved by the Commission on January 28, 2011.

In the Matter of Saundra Davis and Committee to Elect Saundra Davis, FPPC No. 06/372. This case involved one count of failure to file a post-election semi-annual campaign statement. The campaign statement not filed would have included 50% of all contributions received (\$5,610) as well as 64% of all expenditures made (\$7,015) for the entire campaign. A \$2,000 penalty was approved by the Commission on September 17, 2010.

In this case, Respondents' actions were similar to the cases above in that none of these cases appear to include anything more than negligent behavior. However, Respondents were well aware of their filing obligations and disregarded the requests to file made by their filing officer. Further, the amount of reportable activity was significant in dollar amount.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the presence or absence of good faith, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Dollars (\$2,000) is recommended.