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

10
11 In the Matter of

FPPC No. 13/005

12 RUSSELL BOGH, RUSS BOGH FOR
13 SENATE 2010, and DANA HOPKINS,

STIPULATION, DECISION, AND ORDER

14 Respondents.

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16 **STIPULATION**

17 Complainant, the Fair Political Practices Commission (Commission), and respondents Russell
18 Bogh, Russ Bogh for Senate 2010, and Dana Hopkins (Respondents) hereby agree that this Stipulation
19 will be submitted for consideration by the Fair Political Practices Commission at its next regularly
20 scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
22 matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Respondents.

24 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
25 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
26 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
27 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
28 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondents violated the Political Reform Act by
4 receiving a campaign contribution in excess of contribution limits in violation of Government Code
5 section 85301, subdivision (a), as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated
6 by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in
7 this matter.

8 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
9 Respondents also agree to the Commission imposing an administrative penalty in the total amount of
10 Three Thousand Dollars (\$3,000). Respondents submitted with this Stipulation a cashier's check from
11 Respondents in said amount, made payable to the "General Fund of the State of California," as full
12 payment of the administrative penalty that shall be held by the State of California until the Commission
13 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
14 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
15 after the Commission meeting at which the Stipulation is rejected, all payments tendered by
16 Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
17 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
18 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
19 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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22 Dated: _____
23 Gary S. Winuk, on behalf of the Enforcement Division
24 Fair Political Practices Commission

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26 Dated: _____
27 Russell Bogh, individually, and on behalf of Russ Bogh
28 for Senate 2010

Dated: _____
Dana Hopkins, individually

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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “Russell Bogh, Russ Bogh for Senate 2010, and Dana
3 Hopkins” FPPC No. 13/005, including all attached exhibits, is hereby accepted as the final decision and
4 order of the Fair Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

_____ Sean Eskovitz, Vice Chair

9 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Russell Bogh (“Respondent Bogh”) ran for state Senate in the 2010 election. Russ Bogh for Senate 2010 (“Respondent Committee”) was his candidate-controlled recipient committee. Dana Hopkins (“Respondent Hopkins”) was, at all time relevant, the treasurer for Respondent Committee. Under the Political Reform Act (the “Act”)¹ a candidate for Senate cannot accept a campaign contribution in excess of applicable contribution limits. Respondents violated the Act by accepting a campaign contribution in excess of the contribution limit.

For purposes of this Stipulation, the proposed violation of the Act is as follows:

COUNT 1: Respondents accepted an \$11,000 contribution in the form of an in kind loan from Bogh Engineering, Inc. that exceeded the campaign contribution limit for candidates for state Senate in violation of Section 85301, subdivision (a), and Regulation 18545, subdivision (a)(1).

SUMMARY OF THE LAW

Contribution Limits

A candidate for state elective office may not accept from a person, any contribution exceeding the applicable contribution limit for that election. (Section 85301, subdivision (a).) In 2010, the limit for state Senate campaigns was \$3,900 per election. (Regulation 18545, subdivision (a)(1).) A corporation is considered a “person” under the Act. (Section 82047.)

Loans as Contributions

A loan received by a candidate or committee is a “contribution” under the Act unless the loan is received from a commercial lending institution in the ordinary course of business. (Section 84216, subdivision (a).) As such, loans are subject to the Act’s campaign contribution limits. Also, candidates and committees must report loans received as contributions on campaign statements. (Regulation 18537, subdivision (d).)

Treasurer Liability

Section 84100 provides that every committee shall have a treasurer. Under Section 84100 and Regulation §18427, subdivision (a), it is the duty of a committee’s treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and

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.

expenditure of funds and the reporting of such funds. A committee's treasurer may be held jointly and severally liable, along with the committee and candidate, for any reporting violations. (Sections 83116.5 and 91006; Regulation 18316.6.)

SUMMARY OF THE FACTS

This case resulted from an audit conducted by the Franchise Tax Board (FTB).

Respondent Bogh ran for state Senate in 2010. He lost in the primary election. In total, Respondent Committee reported receiving contributions of \$356,505 between December 11, 2009 and April 4, 2010. It reported total expenditures of \$382,373.

On November 8 through 9, 2009, Public Opinion Strategies, LLC conducted polling services for Respondents. Bogh Engineering, Inc., a company owned by Respondent Bogh's brother and sister-in-law, paid \$11,000 to Public Opinion Strategies, LLC for those services. Respondents reported the \$11,000 payment by Bogh Engineering, Inc. as an accrued expense on Schedule F of their campaign statement for the statement period ending on December 31, 2009. Respondents also reported the \$11,000 payment to Public Opinion Strategies, LLC on Schedule G of that campaign statement as a payment made by an agent or independent contractor. Respondent Committee did not report the payment by Bogh Engineering, Inc. as a loan or a contribution on any of its campaign statements. Respondent Committee wrote a check dated July 28, 2011 to Bogh Engineering for \$11,000 as repayment for the payment made to Public Opinion Strategies, LLC. In addition to the \$11,000 payment, Respondents received a \$3,900 contribution from Bogh Engineering, Inc. on December 11, 2009.

Respondents told FTB that they were not aware that the payment made by Bogh Engineering, Inc. on their behalf constituted a loan and not an accrued expense.

COUNT 1

Accepting a Campaign Contribution Over the Limit

Respondents accepted an \$11,000 contribution in the form of an in kind loan from Bogh Engineering, Inc. that exceeded the campaign contribution limit for candidates for state Senate in violation of Section 85301, subdivision (a), and Regulation 18545, subdivision (a)(1).

CONCLUSION

This matter consists of one 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 Commission 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 Commission considers the facts and circumstances of the violation in the 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 conceal, deceive or mislead; whether the violation was deliberate,

negligent, or inadvertent; whether the respondents demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Prior Commission cases involving receipt of campaign contributions over the limit typically have resulted in penalties in the range of \$3,000 to \$4,000. For example, in the case of *In the Matter of Joel Anderson and Taxfighters for Anderson Assembly 2010*, FPPC Case No. 09/064 respondents agreed to pay a penalty of \$4,000 per count for five counts of accepting contributions in excess of contribution limits. (Stipulation approved by Commission on December 10, 2009.) In that case, the committee accepted five contributions in excess of the \$3,900 contribution limit. Four of these contributions were for \$10,000 and the fifth was for \$8,000. The contributions were funneled through the Fresno County Republican Central Committee, presumably to conceal the contribution limit violation.

In the Matter of Lloyd Levine and Lloyd Levine for Assembly, FPPC Case No. 04/651, involved similar facts to Respondents' case. In that case, the candidate's parents loaned \$88,000 to the candidate, who deposited the loan in his personal account before loaning the same amount to his committee. The committee improperly reported the candidate as the source of the loan. The loan exceeded the contribution limit for Assembly campaigns, which at the time was \$3,000. The committee paid back the loan immediately after being informed by the Commission that the loan constituted a contribution. Respondents paid a total penalty of \$12,000 in that case, which included one count for accepting a contribution over the limit, and three additional counts for campaign reporting violations. The portion of the penalty attributable to the violation for accepting a contribution over the limit was between \$3,000 and \$5,000. (Stipulation approved by the Commission on April 13, 2006.)

In the Matter of Gregory C. Hill, Greg Hill for Assembly '05, and Betty Presley, FPPC Case No. 06/1163, also involved a contribution limit violation. The candidate accepted a loan of \$18,000 from a business owned by his fiancée, which the candidate deposited into his personal account before making a loan to his committee. The loan to his committee exceeded the contribution limit for candidates for Assembly, which at that time was \$3,300. The committee inaccurately reported the loan from the candidate's fiancée's company as a loan from the candidate. The committee paid the loan back about a week after receiving the funds. Respondents' paid a total penalty of \$8,500, approximately \$3,000 to \$4,000 of which was attributable to the contribution limit violation. (Stipulation approved by the Commission on June 12, 2008.)

Like the *Levine* and *Hill* cases, Respondents received funds from family members that actually constituted a loan subject to contribution limits under the Act. Unlike the *Levine* and *Hill* cases, Respondents disclosed the true source of the loan, Bogh Engineering, Inc., on timely filed campaign statements. However, Respondent Committee inaccurately reported the loan as an accrued expense when in fact it was a loan subject to the contribution limit. This conduct, while still a serious violation, is less problematic than in the *Anderson* matter where the respondents attempted to conceal the source of the contributions because at least the public was made aware that the contributor, Bogh Engineering, Inc., had expended funds in support of Respondent Bogh.

It does not appear Respondents intended to violate the Act, which is a mitigating factor. More specifically, Respondents believed that they had properly reported Bogh Engineering, Inc.'s payment for polling expenses as an accrued expense on their campaign statements, which also listed the polling firm as a subcontractor. Additionally, Respondents have no history of violating the Act and cooperated with the Commission in reaching an early settlement of this matter.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, including whether the violation in question was inadvertent, negligent or deliberate and whether Respondents' intended to deceive voters, as well as other relevant factors, the imposition of a penalty of \$3,000 is recommended.