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Petitioner

BEFORE THE CITY OF SAN DIEGO

ETHICS COMMISSION

In re the Matter of:) Case No.: 2004-64
)
NICHOLAS INZUNZA,   ) **STIPULATION, DECISION AND**
) **ORDER**
                    Respondent.   )
)
_____)

STIPULATION

THE PARTIES STIPULATE AS FOLLOWS:

1.   Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego

Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to

administer, implement, and enforce local governmental ethics laws contained in the San Diego

Municipal Code [SDMC] relating to, among other things, the provisions of the City's Election

Campaign Control Ordinance [ECCO].

2.   At all times mentioned herein, Respondent Nicholas Inzunza [Respondent] was the

Mayor of National City. Citizens for South Bay is a committee [Committee] registered with the

State of California (Identification No. 1271132) as a general purpose County committee formed

to support Proposition S, a National City ballot measure in the November 2, 2004, general

election, and the candidacy of George Stevens in the City Council District 4 special election on

November 16, 2004. At all times mentioned herein, the Committee was controlled by

Respondent within the meaning of California Government Code section 82016.

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3.   This Stipulation, Decision and Order [Stipulation] will be submitted for consideration by the Ethics Commission at its next scheduled meeting, and the agreements contained herein are contingent upon the approval of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

4.   This Stipulation resolves all factual and legal issues addressed below in paragraphs 11 through 18 without the necessity of holding an administrative hearing to determine the Respondent's liability.

5.   Respondent understands and knowingly and voluntarily waives any and all procedural rights under the SDMC, including, but not limited to, a determination of probable cause, the issuance and receipt of an administrative complaint, the right to appear personally in any administrative hearing held in this matter, the right to confront and cross-examine witnesses testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to have the Ethics Commission or a volunteer hearing officer hear this matter. Respondent agrees to hold the City of San Diego harmless from any and all claims or damages resulting from the Commission's investigation or this stipulated agreement, or any matter reasonably related thereto. Respondent further agrees that the terms of this Stipulation constitute compliance with the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a reference to each violation, and an order.

6.   The Respondent acknowledges that this Stipulation is not binding upon any other law enforcement or government agency and does not preclude the Ethics Commission from referring this matter to, cooperating with, or assisting any other law enforcement or government agency with regard to this or any other related matter.

7.   The parties agree that in the event the Ethics Commission refuses to accept this Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics Commission rejects the Stipulation and a full evidentiary hearing before the City Ethics Commission becomes necessary, no member of the Ethics Commission or its staff shall be disqualified because of prior consideration of this Stipulation.

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Summary of Law and Facts

8. Although ECCO was amended and renumbered in early 2005, this Stipulation refers to the applicable provisions of the SDMC by the section number and language in force and effect at the time of the actions that are the subject of this Stipulation.

9. On September 30, 2004, the Committee filed a Statement of Organization with the San Diego County Registrar indicating that it is a general purpose County committee. This Statement identifies Respondent as the committee's "principal officer" and "chairman."

10. Because the Committee made expenditures for the purpose of supporting a candidate in a City of San Diego election, Respondent is required to comply with the provisions of ECCO.

11. SDMC section 27.2931 required committees to file campaign statements in the time and manner required by state law. California Government Code section 84211 requires that campaign statements include the following information:

> (f) If the cumulative amount of contributions (including loans) received from a person is one hundred dollars ($100) or more and a contribution or loan has been received from that person during the period covered by the campaign statement, all of the following:
>
> (1) His or her full name.
>
> (2) His or her street address.
>
> (3) His or her occupation.
>
> (4) The name of his or her employer, or if self-employed, the name of the business.
>
> (5) The date and amount received for each contribution received during the period covered by the campaign statement and if the contribution is a loan, the interest rate for the loan.
>
> (6) The cumulative amount of contributions.

12. SDMC section 27.2921 prohibited committees from depositing contributions into a campaign checking account without the receipt of the information required by California Government Code section 84211. SDMC section 27.2921 also required committees to request, in writing, any information that was not provided by a contributor within ten business days of the receipt of the contribution.

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STIPULATION, DECISION, AND ORDER

1   13.   The Commission's investigation reveals that the Committee failed to diligently

2 collect and report occupation and employer information as required by California Government

3 Code section 84211 and SDMC sections 27.2921 and 27.2931. In particular, the Committee

4 failed to provide the occupation and employer information for eight contributors who contributed

5 a total of $2,000 on or about November 12, 2004. The Committee subsequently filed amended

6 campaign statements on January 28, 2005, February 28, 2005, October 14, 2005, and January 27,

7 2006, and provided correct occupation and employer information for these eight contributors.

8   14.   SDMC section 27.2903 defined "mass mailing" as 200 or more substantially similar

9 pieces of campaign literature sent within a single calendar month. SDMC section 27.2955 stated

10 in part:

11   (a)   It is unlawful for any *candidate* or *committee* to send a *mass mailing* for the

12   purpose of supporting or opposing a *City candidate* or *City measure* unless:

13   (1)   the name, street address, and city of the *candidate* or *committee* sending

14   the mailing are shown on the outside of each piece of mail in the *mass*

15   *mailing* in a typeface that is easily legible, contrasts with the background,

16   and is no less than 12 points in size; and

17   (2)   each mailing includes the words "paid for by" immediately followed by

18   the name, street address, and city of that *candidate* or *committee* in a

19   typeface that is easily legible, contrasts with the background, and is no less

20   than 12 points in size.

21   15.   After the requirements set forth in SDMC section 27.2955 took effect on October 7,

22 2004, and prior to the November 16, 2004, special election, the Committee sent out a mass

23 mailer supporting the candidacy of George Stevens. Although the mailer included the requisite

24 sender identification and "paid for by" disclosures, they were not in the mandatory 12-point type

25 size. Instead, the sender identification and "paid for by" disclosures (which were appropriately

26 combined on the mass mailing) appeared in 6-point type. In addition, the disclosures did not

27 include the Committee's street address.

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Counts

Counts 1 through 8 - Violations of SDMC sections 27.2921 and 27.2931

16.   The Committee did not obtain accurate information regarding the contributors' occupation and employer as required by California Government Code section 84211 prior to depositing checks from eight contributors as described above in paragraph 13, in violation of SDMC section 27.2921.

17.   The Committee did not report accurate information regarding the occupation and employer of eight contributors as described above in paragraph 13, in violation of SDMC section 27.2931.

Count 9 - Violations of SDMC section 27.2955

18.   The Committee failed to properly identify itself as the "sender" of one mass mailing in at least a 12-point type size as required by SDMC section 27.2955. Instead, the Committee identified itself as the "sender" in 6-point type. In addition, Respondent failed to provide the "paid for by" disclosure in at least a 12-point type size as required by SDMC section 27.2955. Instead, the Committee provided the "paid for by" disclosure in 6-point type.

Factors in Mitigation

19.   The Commission's investigation did not reveal any evidence that the Committee intended to conceal the true occupations of any particular industry group or special interest.

20.   Respondent has fully cooperated with the Ethics Commission investigation.

Conclusion

21.   Respondent agrees to take necessary and prudent precautions to comply with all provisions of the Election Campaign Control Ordinance in the future.

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STIPULATION, DECISION, AND ORDER

1   22.   Respondent agrees to pay a fine in the amount of $2,000 for violating SDMC

2   sections 27.2921, 27.2931, and 27.2955. This amount must be paid no later than February 3,

3   2006, by check or money order made payable to the City Treasurer. The submitted payment will

4   be held pending Commission approval of this Stipulation and execution of the Decision and

5   Order portion set forth below.

6

7   DATED:_____   _____

8   STACEY FULHORST, Executive Director
                                                         ETHICS COMMISSION, Petitioner

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10 DATED:_____   _____

                                                         NICHOLAS INZUNZA, Respondent

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12   **DECISION AND ORDER**

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         The Ethics Commission has considered the above Stipulation at its meeting on

14
    _____, 2006. The Ethics Commission hereby approves the Stipulation and orders that,

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    in accordance with the Stipulation, Respondent pays a fine in the amount of $2,000.

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    DATED:_____   _____

18   Dorothy Leonard, Chair
                                                         SAN DIEGO ETHICS COMMISSION

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STIPULATION, DECISION, AND ORDER