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Petitioner

BEFORE THE SAN DIEGO ETHICS COMMISSION

CITY OF SAN DIEGO

In the Matter of: ADVANTAGE TOWING INC., AYMAN AREKAT; Respondents.	Case No. 2013-15 OAH No. 2015090579 **PETITIONER'S BRIEF REGARDING THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE** Hearing Date: April 14, 2016 Hearing Time: 5:00 p.m.

Petitioner submits the following hearing brief:

I. INTRODUCTION

On March 17, 2016, the Commission was served with the proposed decision of Administrative Law Judge Mary Agnes Matyszewski, which issued after a hearing in this matter on February 22-24, 2016, in San Diego. The Commission staff served Respondents with a copy of the proposed decision on March 24, 2016.

II. SUMMARY OF CASE

This matter came before Administrative Law Judge Matyszewski of the Office of Administrative Hearings, on February 22, 23, and 24, 2016 in San Diego, California. Gary Winuk, Special Counsel and Lauri Davis, Investigative Program Manager, represented the Commission. Steve Lopez represented Respondents Ayman Arekat and Advantage Towing.

In this matter, Administrative Law Judge Matyszewski found that Respondents violated ECCO in all 32 counts alleged and recommended the maximum penalty of $5,000 per count. The counts charged were as follows:

(Counts 1-15) Respondents carried out a campaign money laundering scheme to attempt to increase the influence of their contributions. Respondents made fifteen $500 maximum contributions through ten of its employees and their spouses to three different Mayoral candidates; Nathan Fletcher, Bonnie Dumanis, and Carl DeMaio. Respondents failed to identify themselves as the "true source" of the contributions.

(Counts 16-30) Respondents made the fifteen contributions from an organization, which is prohibited under ECCO. Respondents reimbursed all fifteen contributions using checks from Respondent Advantage Towing signed by Respondent Arkeat.

(Counts 31-32) As a result of the laundered contributions, the scheme involved over-the-limit contributions from Respondents to both Bonnie Dumanis' and Nathan Fletcher's mayoral campaigns. A total of $3,000 was contributed to Nathan Fletcher's campaign. A total of $4,000 was contributed to Bonnie Dumanis' campaign.

Administrative Law Judge Matyszewski completely rejected Respondents' contentions that the laundered contributions were, in fact, loans to its employees. Judge Matyszewski succinctly summarized the case as follows:

> The evidence overwhelmingly established that ten of respondents' employees or their spouses made campaign contributions to three mayoral

> candidates on the same days that respondents issued checks to the employees for the exact same amount as their campaign contributions. Although respondents and its employees testified about respondents' policy of giving loans to employees, and numerous checks to employees in support of that position were introduced, that argument was neither credible nor persuasive. **The documentation, witness interviews, recorded statements, depositions, and witness testimony, as well as the multiple credibility issues, including acknowledgement by respondents and many of the witnesses that they had lied to petitioner, the investigator and the commission, supported petitioner's contention** that the fifteen checks at issue here were reimbursements for campaign contributions and that respondents were the actual donors to the three campaigns.

Administrative Law Judge Matyszewski recommended imposing a penalty of $5,000 per count for Counts 1-32, for a total penalty of $160,000 after she considered and applied the following factors set forth in San Diego Municipal Code section 26.0438 subdivision (f):

In determining the penalty to be imposed, the Commission shall consider all of the relevant circumstances surrounding the matter, including, but not limited to:

(1) the severity of the violation; and

(2) the presence or absence of any intention to conceal, deceive, or mislead; and

(3) whether the violation was deliberate, negligent, or inadvertent; and

(4) whether the Respondent demonstrated good faith by consulting the Commission staff for written advice, and such written advice does not constitute a complete defense; and

(5) whether the violation was an isolated incident or part of a pattern, and whether the violator has a prior record of violations of Governmental Ethics Laws; and

(6) the existence of any Mitigating Information; and

(7) the degree to which the Respondent cooperated with Commission staff by providing full disclosure, remedying a violation, or assisting with the investigation.

In applying these factors, Judge Matyszewski determined that the Petitioner established that this matter involved serious violations, with absolutely no mitigation. Specifically, Judge Matyszewski found that:

> In assessing the appropriate penalty, given San Diego Municipal Code Section 26.0438, subdivision (f), it is clear that the maximum penalty for each violation is warranted. **Respondents engaged in serious violations of the campaign contribution limits, intended to deceive the commission; deliberately violated the municipal code; did not consult with commission staff and admitted to lying to the commission; and the contributions were part of a pattern and not an isolated incident. Further, no mitigating evidence was put forth and respondents did not cooperate with the commission, but instead provided contradictory testimony at the hearing.** Given the extensive admissions by respondents and the witnesses that they lied during the investigation, as well as the fact that the defenses to the counts plead were not credible, the maximum penalty of $5,000 per each municipal code violation is appropriate and shall be awarded, for a total penalty of $160,000.

In addition to these findings by Judge Matyszewski, the Commission should also consider the fact that Petitioner was required to seek and obtain an Order from the San Diego Superior Court requiring Respondents to comply with the subpoena duces tecum issued by the Commission on April 9, 2015. Not only did Respondents fail to comply with the subpoena, necessitating the time and expense involved in preparing and filing a petition for a court order compelling compliance, but Respondents failed to comply with the Court's Order issued on August 6, 2015. Specifically, Respondents failed to produce all of the documents required by the original Commission subpoena and the subsequent Court Order until just days before the Administrative Hearing commenced on February 22, 2016. This factor

in aggravation clearly constitutes additional evidence that Respondents failed to cooperate during the Commission investigation.

III. PETITIONER POSITION

A. Technical and Minor Changes

Petitioner submits that the Proposed Decision contains two minor inadvertent mistakes that are essentially clerical in nature. Petitioner therefore requests these minor corrections:

1. On page 48, paragraph 6, the Judge articulated the contribution limit for City Council members during the 2012 election as $500, but listed the contribution limit for Mayoral candidates as $1,000. The judge applied the correct amount, $500, in her findings on page 50 in paragraphs 13 and 14. The Commission requests this typo be corrected to reflect the contribution limit, which was $500.
2. On page 4, second paragraph, second line, it states that the Commissions' investigative program supervisor, Lauri Davis, previously worked as a San Diego Police Officer. In fact, as she testified at the Administrative Hearing, she used to work at the office of the San Diego Police Department, but in the capacity of a police code compliance officer. The Commission requests this typo be corrected to read "She began her career as a San Diego police code compliance officer."

B. Recommendation: Accept the Proposed Decision.

After conducting a full hearing on the merits and thoughtfully considering the required factors for imposing a monetary penalty, Judge Matyszewski found absolutely no mitigation presented by the Respondents. She further found that Respondents and their witnesses lied without remorse, even when confronted with the truth and in the face of Petitioner's overwhelming evidence. Last, she also found that Respondent's lied directly to the Commission during the Probable Cause hearing on several significant matters.

Judge Matyszewski's Proposed Decision accurately summarizes the facts and is consistent with the proffered evidence. The Commission does not need any additional information or evidence to make a determination in this matter. The Petitioner therefore recommends that the Commission essentially accept the Proposed Decision in its entirety and find that Respondents violated ECCO by laundering fifteen contributions, making fifteen contributions from an organization, and by exceeding the contribution limits to two Mayoral campaigns. The Petitioner further recommends that, based on the extensive factors in aggravation cited above, the Commission impose the maximum penalty of $5,000 per count, for a total penalty of $160,000.

Respectfully submitted,

Dated: April 7, 2016

/s/ Gary S. Winuk
Gary S. Winuk
Special Counsel