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City of San Diego Ethics Commission
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Petitioner

BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

In re the Matter of:  )  Case No.:  2004-69
ROBERT CHUBINSKY and BOB GLASER, )  STIPULATION, DECISION AND
   )  ORDER
Respondents.

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 Robert Chubinsky [Chubinsky] was the treasurer of record for San Diegans for the Protection of Responsible Beach Rights [Committee], a committee registered with the State of California (Identification No. 1235129) primarily formed for the purpose of opposing Proposition G (Mission Beach alcohol ban) in the March 2002 primary election.

3. At all times mentioned herein, Respondent Bob Glaser [Glaser] was the principal of The La Jolla Group and the political consultant paid by the Committee for printing initiative petitions, gathering signatures, and placing media advertisements. In addition, Glaser was
primarily responsible for the preparation of campaign statements and the disclosure of campaign
activity, the filing of campaign statements, and the maintenance of all records associated with the
committee’s activities.

4. Chubinsky and Glaser are referred to herein collectively as “Respondents.”

5. 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.

6. This Stipulation resolves all factual and legal issues raised in this matter by the
Ethics Commission without the necessity of holding an administrative hearing to determine the
Respondent’s liability.

7. Respondents understand and knowingly and voluntarily waive 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. Respondents agree
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. Respondents further agree 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.

8. The Respondents acknowledge 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.

9. The parties agree that in the event the Ethics Commission refuses to accept this
Stipulation, it shall become null and void. Respondents further agree 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.

Summary of Law and Facts

10.   On May 15, 2001, the Committee filed a Statement of Organization with the San Diego City Clerk indicating that it was a general purpose committee formed for the “referendum on alcohol ban”. Subsequent campaign statements indicate the Committee was a ballot measure committee primarily formed to oppose Proposition G (Mission Beach alcohol ban) in the March 2002 primary election. These Statements identify Chubinsky as the Committee’s treasurer.

11.   The Committee was selected for audit by the Ethics Commission at a random drawing conducted on October 9, 2003. An audit was performed for the period from July 1, 2001, through June 30, 2004 (the Commission’s Audit Manual prohibits the audit of any activity prior to July 1, 2001). The Final Audit Report was issued on December 28, 2004, at which time the Commission authorized an investigation into the material findings noted during the course of the audit. The majority of the Committee’s activity took place prior to the audit period and therefore was not the subject of the audit or the subsequent investigation.

12.   During the course of the audit, Respondents acknowledged that Chubinsky served as the Committee treasurer in name only, and that Glaser was responsible for all duties traditionally performed by the treasurer, including the preparation of campaign statements and the disclosure of campaign activity, the filing of campaign statements, and the maintenance of all records associated with the Committee’s activities.

13.   SDMC section 27.2925 requires committees to maintain a record of any contribution received and any disbursement made from the committee’s checking account. In particular, SDMC section 27.2925 indicates that records maintained by a committee shall include, but are not limited to, all of the following:

(1) the name and address of the contributor; and

(2) the amount of the contribution, and the date on which it was received or offered; and
(3) if the contribution is made by check, a legible photocopy of the check; and

(4) if the contribution offered or received consists of cash, an indication that cash was offered or received, and a legible photocopy of the bank deposit slip indicating that the cash contribution was deposited into the campaign contribution checking account; and

(5) legible photocopies or originals of all bank records pertaining to the campaign contribution checking account; and

(6) if a contribution is made by the candidate to his or her own campaign, a statement disclosing the source of the funds; and

(7) if a contribution is of something other than money, a description of what was contributed, a reasonable good faith estimate of the monetary value of the contribution, and the basis for the estimate; and

(8) for each disbursement made from or check drawn on the campaign contribution checking account, the canceled check (if requested), the bank statement showing the disbursement, the name of the payee of each check, an itemized record of the goods or services for which each check is issued or disbursement made, and legible photocopies or originals of any invoices, bills, or other supporting documents for which funds were disbursed.

14. The Commission’s audit and subsequent investigation revealed that the Respondents did not comply with the requirements of SDMC section 27.2925. In particular, Respondents did not retain copies of eleven contributor checks or any deposit slips. In addition, the check register was incomplete and Respondents did not maintain all original vendor and subvendor invoices or a complete set of original bank statements.

15. SDMC section 27.2930 (formerly section 27.2931) requires 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:

(a) The total amount of contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received.

(b) The total amount of expenditures made during the period covered by the campaign statement and the total cumulative amount of expenditures made.

... 

(g) If the cumulative amount of loans received from or made to a person is one hundred dollars ($100) or more, and a loan has been received from or made to a person during the period covered by the campaign statement, or is outstanding 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 original date and amount of each loan.
(6) The due date and interest rate of the loan.
(7) The cumulative payment made or received to date at the end of the reporting period.
(8) The balance outstanding at the end of the reporting period.

16. The Commission’s audit and subsequent investigation revealed that the Respondents did not comply with the disclosure requirements in local and state law. In particular:
- Respondents did not disclose two payments made by check: one on September 6, 2001, in the amount of $250 to Suha Hurmiz, and another on February 26, 2002, in the amount of $1,131.38 to The Sign Mobile.
- Respondents did not disclose the correct amount of bank fees on any of the nine campaign statements filed during the audit period.
- Respondents incorrectly reported an expenditure of $897.58 to The La Jolla Group on the campaign statement covering the period from February 17, 2002, through June 30, 2002 (there is no evidence of this payment in any bank records).
- Respondents failed to properly carry over and report nine outstanding loans to the Committee totaling $23,500 on three campaign statements filed during the audit period (these loans were originally disclosed on a prior campaign statement).
- Respondents made mathematical errors on all nine campaign statements filed during the audit period which resulted in the incorrect reporting of cash balances.

17. As discussed above, ECCO requires candidates and committees to file campaign statements in the time and manner required by state law. California Government Code section 84303 requires Committees to report any payments of $500 or more made by an agent to a subvendor.

18. The Commission’s audit and subsequent investigation revealed that the Respondents did not comply with the reporting requirements in local and state law. In
particular, Respondents failed to report the following payments made by The La Jolla
Group to subvendors (although Respondents did report a payment to The La Jolla Group
in the amount of $20,000 with a code for “radio airtime and production costs,” and two
additional payments to The La Jolla Group in the amounts of $1,500 and $897.58 with a
code for “print ads”):

<table>
<thead>
<tr>
<th>Invoice Date</th>
<th>Amount</th>
<th>Subvendor</th>
</tr>
</thead>
<tbody>
<tr>
<td>02/21/02</td>
<td>$3,622.50</td>
<td>Sets 102.1 FM</td>
</tr>
<tr>
<td>02/21/02</td>
<td>$3,560.00</td>
<td>KFMB</td>
</tr>
<tr>
<td>02/27/02</td>
<td>$800.00</td>
<td>SLAMM Music Magazine</td>
</tr>
<tr>
<td>03/10/02</td>
<td>$3,280.00</td>
<td>KIFM</td>
</tr>
<tr>
<td>03/10/02</td>
<td>$3,075.00</td>
<td>Clear Channel 91X</td>
</tr>
<tr>
<td>03/10/02</td>
<td>$2,900.00</td>
<td>Clear Channel KGB</td>
</tr>
<tr>
<td>03/03/02</td>
<td>$2,650.00</td>
<td>KYXY</td>
</tr>
<tr>
<td>03/11/02</td>
<td>$4,350.00</td>
<td>KPOP</td>
</tr>
</tbody>
</table>

19. As discussed above, ECCO requires candidates and committees to file
campaign statements in the time and manner required by state law. California
Government Code section 84200 requires candidates and committees to file semiannual
campaign statements for each year no later than July 31 for the period ending June 30,
and no later than January 31 for the period ending December 31.

20. Respondents filed a campaign statement covering the period from July 1,
2003, to December 31, 2003, on February 9, 2004, seven days late (the original due date
of January 31, 2004, fell on a Saturday so the actual due date was February 2, 2004). In
addition, Respondents filed a campaign statement covering the period from January 1,
2004, to June 30, 2004, on August 3, 2004, one day late (the original due date of July 31,
2004 fell on a Saturday so the actual due date was August 2, 2004).

21. SDMC section 27.2991 indicates that any person who counsels, aids,
abets, advises, or participates with another to commit any violation of ECCO, has also
committed a violation of local law.
22. As described above, Glaser was primarily responsible for the preparation of campaign statements and the disclosure of campaign activity, the filing of campaign statements, and the maintenance of all records associated with the committee’s activities. Although Chubinsky was the Committee’s treasurer of record, Glaser assumed the treasurer’s responsibilities and therefore aided and abetted Chubinsky with respect to the violations of ECCO described above. Therefore, Glaser violated SDMC section 27.2991.

Counts

Count 1 - Violations of SDMC sections 27.2925 and 27.2991

23. Chubinsky was the treasurer of record for the Committee; however, Glaser assumed the responsibility for all the treasurer’s duties, including the maintenance of the Committee’s records. Respondents did not maintain adequate accounting records as required by SDMC section 27.2925. In particular, Respondents did not maintain copies of eleven contributor checks or any deposit slips. In addition, the check register was incomplete and the Respondents did not maintain all original vendor and subvendor invoices or a complete set of original bank statements. In violation of SDMC section 27.2991, Respondent Glaser aided and abetted Chubinsky with respect to the violations of SDMC section 27.2925.

Count 2 - Violations of SDMC sections 27.2930 and 27.2991

24. Chubinsky was the treasurer of record for the Committee; however, Glaser assumed the responsibility for all the treasurer’s duties, including the preparation of campaign statements and the disclosure of campaign activities. Respondents did not properly disclose campaign activities, in violation of SDMC section 27.2930 (formerly section 27.2931). In particular, Respondents did not properly disclose two payments and the correct amount of bank fees. In addition, Respondents failed to carry over and report nine outstanding loans that were originally disclosed on a prior campaign statement, and incorrectly reported an expenditure to The La Jolla Group which was never actually made. Finally, mathematical errors resulted in the incorrect reporting of cash balances. In violation of SDMC section 27.2991, Respondent Glaser aided and abetted Chubinsky with respect to the violations of SDMC section 27.2930.

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Count 3 - Violations of SDMC sections 27.2930 and 27.2991

25. Chubinsky was the treasurer of record for the Committee; however, Glaser assumed the responsibility for all the treasurer’s duties, including the preparation of campaign statements and the disclosure of payments by Committee agents to subvendors. Respondents did not properly report payments by agents to subvendors, in violation of SDMC section 27.2930 (formerly section 27.2931). In particular, Respondents did not report payments made by The La Jolla Group to eight vendors, totaling $24,237.50. In violation of SDMC section 27.2991, Respondent Glaser aided and abetted Chubinsky with respect to the violations of SDMC section 27.2930.

Count 4 - Violations of SDMC sections 27.2930 and 27.2991

26. Chubinsky was the treasurer of record for the Committee; however, Glaser assumed the responsibility for all the treasurer’s duties, including the filing of campaign statements. Respondents did not file all campaign statements in a timely manner. Respondents filed a campaign statement covering the period from July 1, 2003, to December 31, 2003, on February 9, 2004, seven days late. In addition, Respondents filed a campaign statement covering the period from January 1, 2004, to June 30, 2004, on August 3, 2004, one day late. In violation of SDMC section 27.2991, Respondent Glaser aided and abetted Chubinsky with respect to the violations of SDMC section 27.2930.

Factors in Aggravation

27. The Committee was the subject of a prior Ethics Commission investigation regarding the late filing of a campaign statement covering the period from February 17, 2002, through June 30, 2002. As a result of the investigation, the Commission concluded that the Committee filed the campaign statement 127 days late. At that time, the Ethics Commission chose not to pursue administrative enforcement remedies against Respondents, but advised them that all future campaign statements must be filed in a timely manner. Despite this warning, Respondents filed two subsequent campaign statements late.

28. Respondent Glaser has extensive experience as a consultant to candidate and ballot measure committees in the City of San Diego.
Factors in Mitigation

29. Respondents cooperated fully with the Ethics Commission investigation.

30. The Commission’s investigation indicates that the violations discussed herein are the result of disorganization and poor recordkeeping, and not an intent to conceal information or deceive the public. For example, Respondents did originally report loans to the Committee, but failed to re-list these loans on subsequent campaign statements. In addition, Respondents did report payments made to the La Jolla Group with codes that explained the payments were for radio and print advertisements; however, Respondents failed to report the specific payments by The La Jolla Group to individual subvendors.

Conclusion

31. Respondents agree to take necessary and prudent precautions to comply with all provisions of the Election Campaign Control Ordinance in the future.

32. Respondents agree to file all necessary amendments to correct the deficiencies described above in paragraphs 16 and 18. The amendments must be filed on or before July 8, 2005.

33. Respondent Glaser agrees to pay a fine in the amount of $3,500 for violations of SDMC sections 27.2925, 27.2930 (formerly section 27.2931), and 27.2991. This amount must be paid no later than July 8, 2005, by check or money order made payable to the City Treasurer. The submitted payment will be held pending Commission approval of this Stipulation and execution of the Decision and Order portion set forth below.

DATED:__________________ STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

DATED:__________________ ROBERT CHUBINSKY, Respondent

DATED:__________________ BOB GLASER, Respondent
DECISION AND ORDER

The Ethics Commission has considered the above Stipulation at its meeting on August 1, 2005. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent Glaser pay a fine in the amount of $3,500.

DATED: _________________________

DOROTHY LEONARD, Chair
SAN DIEGO ETHICS COMMISSION