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5 Petitioner

6
7 **BEFORE THE CITY OF SAN DIEGO**
8 **ETHICS COMMISSION**

9
10 In re the Matter of:) Case No.: 2006-12
11)
CYNTHIA MORGAN,) **STIPULATION, DECISION AND**
12) **ORDER**
Respondent.)
13)

14 **STIPULATION**

15 **THE PARTIES STIPULATE AS FOLLOWS:**

16 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego
17 Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to
18 administer, implement, and enforce local governmental ethics laws contained in the San Diego
19 Municipal Code [SDMC] relating to, among other things, the provisions of the City's Municipal
20 Lobbying Ordinance.

21 2. At all times mentioned herein, Respondent Cynthia Morgan [Respondent] was an
22 attorney employed by the law firm of Seltzer Caplan McMahon Vitek.

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

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1 short-term basis. It also serves as a four hour “sobering center,” commonly referred to as a
2 “drunk tank,” for inebriated individuals delivered to the facility by law enforcement officers to
3 sleep off the effects of alcohol consumption. In October of 2005, the lease for the VOA
4 downtown facility was due to expire, and the proposed relocation involved the conversion of two
5 existing buildings in Pacific Beach. The relocation required approval of a coastal development
6 permit, a planned development permit, and a conditional use permit.

7 9. Ms. Angelucci is the owner of Mission Bay Center, a mixed-use commercial project
8 located in close proximity to the proposed VOA site in Pacific Beach. Although Respondent was
9 retained to represent PBCCC, ninety-seven percent of the funding for Respondent’s services
10 came from two sources: Mission Bay Center paid thirty-nine percent, and Shawn Evans, a
11 physician who resides in the Pacific Beach area, paid fifty-eight percent of Respondent’s bills.
12 The remaining three percent of Respondent’s bills were paid by seven different individuals who
13 reside in the Pacific Beach area.

14 10. PBCCC is an organization created for the purpose of opposing the relocation of the
15 VOA facility. Both Respondent and her clients, Mission Bay Center and Dr. Evans, deny any
16 role in the formation of PBCCC. Instead, Ms. Angelucci maintains that PBCCC “formed itself,”
17 and she describes it as “not a real body.” Respondent acknowledges that all of her client contacts
18 were with Ms. Angelucci and Dr. Evans, and that she is not familiar with all the other members
19 of PBCCC. There is no record of any formal organization of PBCCC (e.g. articles of
20 incorporation), nor is there any membership roster or any record of membership meetings.

21 11. During the fourth quarter of 2005, Respondent, on behalf of her clients, spent 86.6
22 hours on lobbying and related activities in an effort to discourage elected officials from
23 approving the proposed relocation of the VOA facility to Pacific Beach. During this time period,
24 Respondent lobbied a variety of City Officials, including City Councilmembers and the City
25 Attorney. Respondent’s lobbying contacts occurred in the form of meetings, telephone calls,
26 emails, and letters, and each was made in an effort to influence the municipal decision
27 concerning the VOA facility.

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1 12. Although the VOA matter was originally scheduled to be considered by the City
2 Council in November of 2005, it was delayed until February of 2006 because the Pacific Beach
3 area was not represented by a Councilmember until the District 2 special runoff election took
4 place on January 10, 2006. The matter was ultimately heard by the City Council on February 7,
5 2006, at which time the City Council voted to deny the permits requested by VOA to convert the
6 existing structures and relocate the VOA Rehabilitation Center to Pacific Beach.

7 13. As compensation for Respondent's lobbying efforts during the fourth quarter of
8 2005, Mission Bay Center, Dr. Evans, and several additional individuals paid Respondent's
9 employer, Seltzer Caplan McMahon Vitek, for Respondent's services. Respondent, as an
10 employee of Seltzer Caplan McMahon Vitek, personally earned more than \$2,542 during the
11 fourth quarter of 2005 in connection with her work on the VOA matter (as discussed in greater
12 detail below, \$2,542 was the registration threshold in 2005).

13 14. The City's Municipal Lobbying Ordinance requires lobbyists to register with the
14 City Clerk within ten days of qualifying as a lobbyist. Qualification is based on the receipt of a
15 threshold level of compensation for lobbying and related activities. The registration threshold in
16 2005 was \$2,542 per calendar quarter. The Lobbying Ordinance requires registered lobbyists to
17 file quarterly disclosure reports no later than the last day of the months of April, July, October,
18 and January. SDMC §§ 27.4007, 27.4015, and 27.4016. The registration form must include the
19 following for each of the lobbyist's clients: name, address, and telephone number; a description
20 of the client's business; and the specific municipal decision or the types of municipal decisions
21 for which the lobbyist was retained to represent the client. SDMC § 27.4009. Similarly, the
22 quarterly disclosure reports must include the name, address, and telephone number of each client
23 represented during the reporting period. SDMC § 27.4017. The definition of "client" set forth in
24 the ordinance includes a person who compensates a lobbyist for the purpose of influencing a
25 municipal decision. SDMC § 27.4002.

26 15. Based on her hourly rate of compensation from Seltzer Caplan McMahon Vitek and
27 the amount of time she spent on lobbying and related activities during the fourth quarter of 2005,
28 Respondent became entitled to receive the threshold level of compensation on November 15,

1 2005. Accordingly, she was required to register as a lobbyist on or before November 25, 2005.
2 In addition, Respondent was required to file a quarterly disclosure report covering her lobbying
3 activities during the fourth quarter of 2005 on or before January 31, 2006. Respondent did not
4 register as a lobbyist and file a quarterly disclosure report for the fourth quarter of 2005 until
5 August 2, 2006, after she was contacted by the Ethics Commission staff.

6 16. The registration form and quarterly disclosure report ultimately filed by
7 Respondent identify her client as the "Pacific Beach Concerned Citizens Coalition." As
8 discussed above, the Commission's investigation reveals that the primary sources of funding for
9 Respondent's lobbying activities were Mission Bay Center and Dr. Shawn Evans. The address
10 and telephone number provided by Respondent for PBCCC belong to Suba Corporation, a
11 property management company located in Solana Beach that is owned and operated by Suzanne
12 Angelucci.

13 Counts

14 **Count 1 - Violation of SDMC section 27.4007**

15 17. Respondent failed to timely register as a lobbyist as required by SDMC section
16 27.4007. Respondent qualified as a lobbyist on November 15, 2005, but did not register until
17 August 2, 2006, more than eight months late and approximately six months after the subject
18 municipal decision was considered by the City Council.

19 **Count 2 - Violation of SDMC section 27.4016**

20 18 Respondent failed to timely file a quarterly disclosure report as required by
21 SDMC section 27.4016. The disclosure report for the fourth quarter of 2005 was due on January
22 31, 2006, but Respondent did not file it until August 2, 2006, approximately six months late and
23 approximately six months after the subject municipal decision was considered by the City
24 Council.

25 Factors in Aggravation

26 19. Respondent's failure to timely register as a lobbyist and disclose her lobbying and
27 related activities resulted in the public and City Officials being deprived of information about

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1 compensated efforts to influence a contentious municipal decision until well after the decision
2 was made by the City Council.

3 20. Respondent did not provide complete information on her registration form and
4 quarterly disclosure report. By indicating that her client was a “coalition” of “concerned
5 citizens,” and by failing to disclose that nearly all of the funding for her lobbying activities came
6 from Mission Bay Center and Dr. Evans, she failed to provide the public and City Officials with
7 important information regarding the identity of the persons responsible for her efforts to
8 influence a municipal decision.

9 21. The stated purpose of the Lobbying Ordinance is to “require lobbyists to provide
10 sufficient information so that complete disclosure of principals and clients they represent may
11 become public information for the benefit of the City Council and the general public.”
12 Respondent’s failure to timely register as a lobbyist and her failure to provide complete
13 information on her registration and disclosure forms contradict the intent and purpose of the
14 City’s lobbying laws.

15 **Factors in Mitigation**

16 22. At the time Respondent was retained by Angelucci on behalf of PBCCC in the
17 VOA matter, she had been employed by the Seltzer Caplan law firm for approximately one
18 week. Although there are approximately six other attorneys at this law firm who are registered
19 as lobbyists with the City of San Diego, and although Respondent reports directly to one of these
20 attorneys, Respondent did not receive any training or instruction regarding the City’s lobbying
21 laws. In addition, Respondent’s prior experience as an attorney in San Diego primarily involved
22 litigation matters and she was unaware that her transactional work and related contact with City
23 Officials would necessitate registration as a lobbyist.

24 23. Respondent mistakenly believed that because her law firm retained a registered
25 lobbyist (Alan Ziegus with Southwest Strategies) to assist with the lobbying effort concerning
26 the VOA facility, she did not have to consider whether she too would be required to register as a
27 lobbyist and disclose her lobbying activities.

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