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Petitioner

BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

In re the Matter of: YOU EMPOWER OUR COMMUNITY and NEIGHBORHOOD MARKET ASSOCIATION, Respondents.

CASE No.: 2008-71

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 Election Campaign Control Ordinance [ECCO], SDMC section 27.2901, et seq.

2. At all times mentioned herein, the Neighborhood Market Association [NMA] was responsible for the activities of You Empower Our Community [YEOC], a committee registered with the State of California (Identification No. 1309024). NMA is an organization comprised of independent retailers in the food and alcohol beverage industry. NMA and YEOC are collectively referred to herein as “Respondents.”

3. This 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 raised in this matter by the Ethics Commission without the necessity of holding an administrative hearing to determine Respondents’ liability.

5. 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 an impartial 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, 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.

6. 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.

7. 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 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

8. ECCO defines “committee” as any person or combination of persons who raise $1,000 or more for the purpose of supporting or opposing a candidate or ballot measure, or make independent expenditures of $1,000 or more, within a single calendar year. SDMC § 27.2903.

9. ECCO requires committees to file campaign statements in the time and manner required by California Government Code section 81000, et seq. and the regulations adopted by the Fair Political Practices Commission [FPPC]. It is unlawful under ECCO to fail to comply with the disclosure requirements of ECCO and state law. SDMC § 27.2930(j).

10. California Government Code section 84101 requires the filing of a Statement of Organization [Form 410] within 10 days after qualification as a committee, and Government Code section 84102 requires the filing of an amended Form 410 within 10 days of any change in information contained therein. The Form 410 must be filed with the Secretary of State and with the local filing officer where the committee will be required to file campaign statements.

11. According to California Government Code section 82047.5, a “primarily formed committee” is a committee that is formed or exists primarily to support or oppose a single candidate or single measure (or a group of candidates or measures being voted upon in the same jurisdiction). Government Code section 84102(d) requires primarily formed committees to include in their Form 410 the title and ballot number, if any, of any measure that the committee supports or opposes as its primary activity.

12. According to SDMC section 27.2903, a committee is “sponsored” by another entity if any of the following criteria apply: the committee receives 80% or more of its contributions either from the entity or from the entity’s members; the entity collects contributions for the committee by use of dues from its members; the entity (alone or with other entities) provides administrative services for the committee; or the entity (alone or with other entities) sets the committee’s policies for soliciting contributions or making expenditures. ECCO requires sponsored committees participating in City elections to adhere to the reporting obligations set forth in FPPC Regulation 18419. SDMC § 27.2930(i). Regulation 18419 requires a committee that is sponsored by another entity to include the name of the sponsor in the
name of the committee, and to identify the sponsor and the sponsor’s industry group or affiliation on the committee’s Form 410.

13. In addition to filing a Form 410, a committee formed primarily for the purpose of supporting or opposing a ballot measure to be voted upon in one city must file campaign disclosure statements [Forms 460] with the clerk of that city. Cal. Gov’t Code § 84215(e).

According to the deadlines established by state law, a committee primarily formed to oppose a City ballot measure being voted on in the November 4, 2008, general election was required to file its Forms 460 as follows:

<table>
<thead>
<tr>
<th>Period Covered</th>
<th>Filing Deadline</th>
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<tbody>
<tr>
<td>07/01/08 – 09/30/08</td>
<td>10/06/08</td>
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<tr>
<td>10/01/08 – 10/18/08</td>
<td>10/23/08</td>
</tr>
<tr>
<td>10/19/08 – 12/31/08</td>
<td>02/02/09¹</td>
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<tr>
<td>01/01/09 – 06/30/09</td>
<td>07/31/09</td>
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Cal. Gov’t Code § 84200, et seq.

14. SDMC section 27.2931 requires candidates and committees to file Forms 460 electronically if they have received contributions or made expenditures of $10,000 or more in connection with a City election.

15. In addition to the above filing requirements, ECCO mandates that all committees that pay for mass campaign literature (200 substantially similar pieces of campaign literature) for the purpose of supporting or opposing a City measure include the words “paid for by” followed by the name and address of the committee. SDMC § 27.2970. In addition, ECCO requires all committees that pay for billboard advertising for the purpose of supporting or opposing a City measure to include the words “paid for by” followed by the name of the committee. The disclosure must constitute at least 5% of the height of the advertisement and be printed in a contrasting color. SDMC § 27.2972.

¹ Because January 31, 2009, fell on a Saturday, the deadline was extended to February 2, 2009.
16. Within 30 days of the assignation of a ballot measure’s letter designation, any committee that is primarily formed to oppose the ballot measure must include the statement “a committee against Proposition __,” in its name and in any other reference to the committee required by law. SDMC § 27.2976(e); Cal. Gov’t Code § 84107.

17. On July 29, 2008, the San Diego City Council voted to place on the November 4, 2008, general election ballot a measure to make permanent the temporary ban on alcohol consumption at City beaches and coastal parks. On August 11, 2008, this measure was designated by the County Registrar of Voters as “Proposition D.”

18. On August 1, 2008, Respondents filed a Form 410 with the California Secretary of State, and indicated on the form that YEOC was a State general purpose committee established for the purpose of “working with communities to increase their political awareness.” Respondents filed Forms 460 with the Secretary of State in accordance with the schedule set forth above in Paragraph 13.

19. The Commission’s investigation reveals that Respondent YEOC was established and controlled by Respondent NMA and its agents. NMA and its agents were responsible for establishing YEOC, hiring consultants and vendors, fundraising, making decisions about and directing the committee’s activities, and approving the committee’s expenditures.

20. The Commission’s investigation reveals that Respondent YEOC was formed and has existed primarily for the purpose of opposing Proposition D on the November 4, 2008, ballot. Since its inception in August of 2008, Respondent YEOC has spent a total of $73,155 on political activities: $63,655 to oppose Proposition D and $9,500 to support Pamela Bensoussan, a candidate for City Council in the City of Chula Vista. Respondent YEOC has not engaged in any activities to support or oppose any other candidates or measures in the City of San Diego or in any other jurisdiction. Thus, 87% of the expenditures made by YEOC for political purposes were directly related to efforts to oppose Proposition D. Accordingly, Respondent YEOC was not a State general purpose committee, but was instead a committee primarily formed to oppose a City ballot measure. As a result, it was required to file its Form 410 and Forms 460 with the San Diego City Clerk, not the Secretary of State.
21. In addition to being required to file its campaign statements with the City Clerk, Respondent YEOC was required to amend its Form 410 on or before September 10, 2008, to indicate somewhere in its name that it was “a committee against Proposition D.”

22. Because it was a committee primarily formed to oppose a City ballot measure, and because it received more than $10,000 in contributions before September 30, 2009, Respondent YEOC was required to electronically file all four of its Forms 460 with the City Clerk.

23. The Commission’s investigation also reveals that Respondent YEOC is sponsored by NMA. In particular, Respondent YEOC received more than 80% of its funding from NMA and its members. Moreover NMA and its principals collected contributions for YEOC through dues from its members, provided administrative services to YEOC, and set YEOC’s policies for soliciting contributions and making expenditures. Consequently, Respondent YEOC was required to include NMA in its committee name, and to identify the name, address, and industry of NMA on its Form 410.

24. In September of 2008, Respondents commissioned 28 billboard advertisements for the purpose of opposing Proposition D. Respondents were required to include a disclosure on each billboard that read substantially as follows: “paid for by You Empower Our Community, a committee against Proposition D and sponsored by the Neighborhood Market Association.” The Commission’s investigation reveals that the “paid for by” disclosure included on YEOC’s billboard advertisements did not indicate that the committee was against Proposition D or that the committee was sponsored by NMA.

25. In late October 2008, Respondents distributed mass campaign literature in the form of a mailer sent to 65,000 City residents for the purpose of opposing Proposition D. Respondents were required to include a disclosure on each piece of campaign literature that read substantially as follows: “paid for by You Empower Our Community, a committee against Proposition D and sponsored by the Neighborhood Market Association.” The Commission’s investigation reveals that this mailer did not include any “paid for by” or “sponsored by” information or as required by local law.
Counts

Counts 1 and 2 - Violations of SDMC sections 27.2930 and 27.2976

26. Respondents violated SDMC section 27.2930 by failing to properly file a Form 410 on or about August 1, 2008, with the San Diego City Clerk disclosing that YEOC was primarily formed for the purpose of opposing the permanent beach alcohol ban and that it is sponsored by NMA.

27. Respondents violated SDMC sections 27.2930 and 27.2976(e) by failing to file an amended Form 410 on or before September 10, 2008, to include the disclosure “a committee against Proposition D” in the committee’s name.

Counts 3 thru 10 - Violations of SDMC sections 27.2930 and 27.2931

28. Respondents violated SDMC section 27.2930 by failing to file a Form 460 in both paper and electronic format with the San Diego City Clerk on or before October 6, 2008, covering the period from the committee’s inception on August 1, 2008, through September 30, 2008.

29. Respondents violated SDMC section 27.2930 by failing to file a Form 460 in both paper and electronic format with the San Diego City Clerk on or before October 23, 2008, covering the period from October 1, 2008, through October 18, 2008.

30. Respondents violated SDMC section 27.2930 by failing to file a Form 460 in both paper and electronic format with the San Diego City Clerk on or before January 31, 2009, covering the period from October 19, 2008, through December 31, 2008.

31. Respondents violated SDMC section 27.2930 by failing to file a Form 460 in both paper and electronic format with the San Diego City Clerk on or before July 31, 2009, covering the period from January 1, 2009, through June 30, 2009.

Counts 11 and 12 – Violations of SDMC sections 27.2970 and 27.2972

32. Respondents violated SDMC section 27.2972 by failing to include a complete “paid for by” disclosure on billboard advertisements commissioned for the purpose of opposing Proposition D. Specifically, in September of 2008, Respondents paid for 28 billboard advertisements that included a disclosure indicating they were “paid for by You Empower Our
Community,” but that failed to disclose that the committee was “against Proposition D” or that
the committee was “sponsored by the Neighborhood Market Association.”

33. Respondents violated SDMC section 27.2970 by failing to include any “paid for
by” or “sponsored by” information on a mass mailing distributed to 65,000 residents in late
October 2008 for the purpose of opposing Proposition D.

Factors in Aggravation

34. One of the primary purposes of the City’s campaign laws is to ensure that
information regarding a committee’s sponsorship, funding, and expenditures is timely disclosed
to the public. In particular, the pre-election filing requirements for committees primarily formed
to support or oppose City candidates or measures are extremely important because they ensure
that the public receives time-sensitive information in the jurisdiction regarding the sources of
funding for expenditures before they cast their votes. In this case, the voters in the City of San
Diego did not receive this essential information because campaign statements were not filed with
the City Clerk (in either paper or electronic format) as required by local and state law.

35. Because Respondents failed to file a Form 410 with the City Clerk for YEOC, the
committee was not included in the Ethics Commission’s random audit drawing conducted on
September 10, 2009. If it had been included and selected, the audit would have entailed an
examination of the committee’s records to ensure that the information disclosed on its campaign
statements was complete and accurate.

Factors in Mitigation

36. YEOC filed three Independent Expenditure Reports [Forms 465 and Forms 496]
with the City Clerk in October of 2008 and disclosed making independent expenditures in the
amount of $63,655 in opposition to Proposition D. Consequently, some information regarding
the expenditures made by the committee to oppose Proposition D was provided to the public
before the November 4, 2008, general election.

Conclusion

37. Respondents agree to take necessary and prudent precautions to ensure
compliance with all provisions of ECCO in the future.
38. Respondents agree to file the campaign statements described above in Paragraphs 25 through 32 with the City Clerk on or before January 15, 2010.

39. Respondents agree to pay a fine in the amount of $12,000 for violating SDMC sections 27.2930, 27.2931, 27.2970, 27.2972, and 27.2976. This amount must be paid no later than February 5, 2010, by check or money order 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:__________________
RAMZI MURAD, on behalf of Respondents, YOU EMPOWER OUR COMMUNITY and NEIGHBORHOOD MARKET ASSOCIATION

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on __________, 2010. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondents pay a fine in the amount of $12,000.

DATED:__________________
RICHARD VALDEZ, Chair
SAN DIEGO ETHICS COMMISSION