STACEY FULHORST, Executive Director
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.: No. 2004-04
) )
EQUITY RESIDENTIAL PROPERTIES ) STIPULATION, DECISION AND
MANAGEMENT CORP., ) ORDER
)
)

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 making of campaign contributions and the filing of campaign statements as required by the City’s Election Campaign Control Ordinance [ECCO].

2. Respondent Equity Residential Properties Management Corp. [Respondent] is an organization registered with the California Secretary of State as a major donor committee (Identification No. 1253939) that made contributions to state and local committees of $10,000 or more in a calendar year.

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 raised in this matter by the Ethics Commission 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 an impartial hearing officer hear this matter.

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.

SUMMARY OF LAW AND FACTS

8. SDMC section 27.2931 requires committees to file campaign statements in the time and manner required by state law.

9. SDMC section 27.2947 prohibits contributions to candidates and candidate-controlled committees by anyone other than an individual.

10. Respondent filed a Major Donor and Independent Expenditure Committee Statement [Form 461] with the City of San Diego, Office of the City Clerk, on January 30, 2004, covering the time period from January 1 through December 31, 2003.

12. On March 1, 2004, Respondent filed an amended Form 461, in which the contribution to the Friends of Dick Murphy committee was deleted. According to a letter accompanying the amended Form 461, the deletion occurred because the contribution had not been made by Respondent, but was instead made by one of Respondent’s employees.

13. The Ethics Commission, in accordance with SDMC section 26.0425, authorized a formal investigation of a complaint alleging that Respondent made an organizational contribution to a candidate-controlled committee, in violation of SDMC section 27.2947.

14. During the investigation, Petitioner determined that Respondent was the true source of a contribution to the Friends of Dick Murphy committee. Petitioner determined that Bruce Salter, an individual employed by Respondent, (a) made the subject $150 contribution with a personal check on November 12, 2003; (b) made the contribution at the behest of Respondent; and (c) was subsequently reimbursed by Respondent for the contribution.

COUNT 1

[Violation of SDMC Section 27.2947]

15. Respondent is the true source of the $150 contribution to the Friends of Dick Murphy committee. Because Respondent is not an individual, Respondent violated ECCO’s prohibition against organizations making contributions to support City candidates.

COUNT 2

[Violation of SDMC Sections 27.2931]

16. On its amended Form 461, Respondent failed to disclose that it had made a $150 contribution to the Friends of Dick Murphy.

STIPULATIONS AND ORDER

AGREEMENT

17. Respondent agrees to take necessary and prudent precautions to ensure compliance with all provisions of ECCO in the future.
FACTORS IN AGGRAVATION

18. Respondent’s contribution was made in an envelope provided by the Friends of Dick Murphy committee, and that envelope explicitly states that corporate and business contributions are not allowed.

19. Before filing its amended Form 461 on March 1, 2004, Respondent failed to exercise due diligence to determine whether or not it had reimbursed its employee for the contribution to the Friends of Dick Murphy committee.

FACTORS IN MITIGATION

20. Petitioner has determined that the Respondent’s contribution to a City candidate was an isolated instance and was not part of a broader scheme to undermine the contribution source prohibitions set forth in ECCO.

21. By reporting the $150 contribution on its January 30, 2004, Form 461, Respondent demonstrated an intent to fully disclose the fact that it had made a contribution to a City candidate.

22. Respondent has cooperated fully with the Commission’s investigation.

CONCLUSION

23. Respondent shall pay a fine in the amount of $1,500 for violations of SDMC sections 27.2947 and 27.2931 (Counts 1 and 2). This amount must be paid no later than April 2, 2004.

24. This Stipulation shall not become effective until Respondent has provided to the Ethics Commission the amount set forth in paragraph 23, by check or money order made payable to the City Treasurer.

DATED:______________________

Stacey Fulhorst, Executive Director
ETHICS COMMISSION, Petitioner

DATED:______________________

Denise Boklach Beihoffer, Vice President
EQUITY RESIDENTIAL PROPERTIES MANAGEMENT CORP., Respondent
DECISION AND ORDER

The Ethics Commission has considered the above Stipulation at its meeting on April 8, 2004. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $1,500.

DATED:__________________ _______________________________

DOROTHY L.W. SMITH, Chair
SAN DIEGO ETHICS COMMISSION