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:
BRIAN POLLARD,
Respondent.

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, Brian “Barry” Pollard was a candidate for City Council District 4 in the June 8, 2010, primary election. The Brian “Barry” Pollard committee (Identification # 1330949) [Committee] was a campaign committee registered with the State of California established to support Mr. Pollard’s candidacy for Council District 4. At all relevant times herein, the Committee was controlled by Mr. Pollard within the meaning of the California Political Reform Act, California Government Code section 82016. Mr. Pollard is referred to herein as “Respondent.”

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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 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. Respondent agrees 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. Respondent further agrees 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. 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 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. Because the Committee was formed for the purpose of supporting a candidate in a City of San Diego election, Respondent is required to comply with the provisions of ECCO.

9. The Committee was selected for audit by a designee of the City Clerk in a random drawing conducted at a public meeting of the Ethics Commission held on September 26, 2011. An audit was performed for the period from September 30, 2009, through June 30, 2011. The Final Audit Report was presented to the Commission on January 20, 2013, at which time the Commission authorized an investigation into the material findings identified during the audit. The information set forth in this Stipulation was obtained during the course of audit and investigation.

9. SDMC section 27.2919 prohibits candidates from making expenditures of $100 or more with cash. Respondent negotiated a check payable to cash in the amount of $1,400 on May 21, 2010, and reportedly used this cash to purchase stamps from the U.S. Post Office. Although Respondent did not maintain a receipt for this purchase, his representation is supported by other committee records which indicate that he paid a vendor to prepare two different postcard campaign mailers in quantities of 5,000 each.

10. SDMC section 27.2925 requires candidates and committees to maintain detailed records necessary to prepare campaign disclosure statements, including copies of documents reflecting contributions received and invoices or receipts for expenditures made by the Committee. Respondent failed to maintain documents reflecting contributions made by 14 contributors totaling $770 and invoices or receipts for 8 expenditures totaling $1,984. (Although the Commission’s Final Audit Report referenced additional missing documents, Respondent was able to locate more records after the conclusion of the audit.)

11. SDMC section 27.2930 requires candidates and committees to file campaign statements in the time and manner required by state law. California Government Code section 84211 requires candidates and committees to itemize contributions from a single source that total $100 or more or campaign statements. Respondent failed to disclose the receipt of 14 such contributions totaling $2,180 on various campaign statements.
12. SDMC section 27.2950 prohibits contributions from any person other than an individual or political party to City candidates. Respondent accepted and deposited 2 contributions from business entities totaling $150 on April 8, 2010, and January 18, 2011.

Counts

Count 1 – Violation of SDMC section 27.2919

13. Respondent violated SDMC section 27.2919 by making an expenditure of more than $99 with cash.

Count 2 – Violation of SDMC section 27.2925

14. Respondent violated SDMC section 27.2925 by failing to maintain records reflecting contributions from 14 individuals totaling $770, and receipts or invoices for 9 expenditures totaling $1,984.

Count 3 – Violation of SDMC section 27.2930

15. Respondent violated SDMC section 27.2930 by failing to disclose the receipt of 14 contributions totaling $2,180.

Count 4 – Violation of SDMC section 27.2950

16. Respondent violated SDMC section 27.2950 by accepting two contributions totaling $150 drawn from business checking accounts.

Factors in Mitigation

17. Respondent has fully cooperated with the Ethics Commission’s investigation.

Conclusion

18. Respondent agrees to take necessary and prudent precautions to comply with all provisions of the Election Campaign Control Ordinance in the future.

19. Respondents acknowledge that the Ethics Commission may impose increased fines in connection with any future violations of the City’s campaign laws.

20. Respondent agrees to pay a fine in the amount of $3,500 for violating SDMC sections 27.2919, 27.2925, 27.2930 and 27.2950. This amount must be paid by check or money order made payable to the City Treasurer no later than June 30, 2013. Respondent acknowledges that if the fine is not timely paid in full, the Commission may refer the collection of the fine to
the City Treasurer’s Collection Division, which may pursue any or all available legal remedies to recover late penalties, interest, and costs, in addition to seeking the outstanding balance owed.

Dated:________________________

[REDACTED]

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

Dated:________________________

[REDACTED]

BRIAN POLLARD, Respondent

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on __________, 2013. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of $3,500.

Dated:________________________

[REDACTED]

CLYDE FULLER, Chair
SAN DIEGO ETHICS COMMISSION