

1 SHARON SPIVAK, Executive Director
City of San Diego Ethics Commission
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4

5 Petitioner
6

7 **BEFORE THE CITY OF SAN DIEGO**
8 **ETHICS COMMISSION**
9

10 In re the Matter of:) Case No.: 2021-12
11 TOMMY HOUGH,)
12 Respondent.) **STIPULATION, DECISION, AND**
13) **ORDER**
14)

15 **STIPULATION**

16 **THE PARTIES STIPULATE:**

17 1. Petitioner Sharon Spivak is the Executive Director of the City of San Diego Ethics
18 Commission (Ethics Commission). The Ethics Commission is charged with a duty to administer,
19 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
20 Code (Municipal Code and SDMC) relating to, among other things, the provisions of the
21 Election Campaign Control Ordinance (ECCO), Municipal Code section 27.2901, *et seq.* All
22 Municipal Code references in this Stipulation relate to provisions of ECCO that were in effect at
23 the time of the actions described.

24 2. At all times mentioned herein, Tommy Hough (Respondent) was a candidate for the
25 District 6 City Council seat in the 2018 election cycle. The Tommy Hough for City Council 2018
26 committee (Identification No. 1399902) (the Committee) was a campaign committee registered
27 with the State of California and established to support Respondent's candidacy. Respondent
28

1 controlled the Committee within the meaning of the California Political Reform Act, California
2 Government Code section 82016.

3 3. This Stipulation will be submitted to the Ethics Commission for consideration at its
4 next scheduled meeting. The agreements contained in this Stipulation are contingent upon the
5 Ethics Commission's approval of the Stipulation and the accompanying Decision and Order.

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

9 5. Respondent understands and knowingly and voluntarily waives any and all
10 procedural rights under the SDMC including, but not limited to: a determination of probable
11 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
12 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
13 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
14 have the Ethics Commission or an impartial hearing officer hear this matter. Respondent agrees
15 that the terms of this Stipulation constitute compliance with the provisions of Municipal Code
16 section 26.0450 in that the Stipulation includes a recitation of facts, a reference to each violation,
17 and an order.

18 6. Respondent agrees to hold the City of San Diego and the Ethics Commission
19 harmless from any and all claims or damages resulting from the Commission's investigation, this
20 stipulated agreement, or any matter reasonably related thereto.

21 7. Respondent acknowledges that this Stipulation is not binding upon any other law
22 enforcement or government agency and does not preclude the Ethics Commission from referring
23 this matter to, cooperating with, or assisting any other law enforcement or government agency
24 with regard to this or any other related matter.

25 8. The parties agree that in the event the Ethics Commission refuses to accept this
26 Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics
27 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission
28

1 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified
2 because of prior consideration of this Stipulation.

3 **Summary of Law and Facts**

4 9. The Committee was selected for audit by a designee of the City Clerk in a random
5 drawing conducted at a public meeting of the Ethics Commission held on September 12, 2019.
6 Ethics Commission staff conducted an audit of the Committee's activity covering the period
7 from October 31, 2017 through June 5, 2019. The audit provided some of the information set
8 forth in this Stipulation.

9 10. ECCO includes regulations regarding campaign telephone calls, including
10 disclosures that must be made to the person receiving the call. Among these local laws, ECCO
11 requires that candidates and committees using paid staff to make campaign telephone calls
12 include in their script the words "*paid for by*," immediately followed by the name of the
13 campaign committee. If a candidate or committee has a volunteer make a telephone call instead
14 of a paid staff member, ECCO requires that volunteers include in their script the words "*on*
15 *behalf of*," immediately followed by the name of the committee. Municipal Code section
16 27.2925¹ requires that candidates and committees maintain records identifying the date(s) calls
17 were made, the number of calls made, and an accurate transcript of each telephone
18 communication. The transcripts serve as evidence that a committee has complied with the
19 Municipal Code's disclosure requirements.

20 11. In this case, the Committee retained campaign consultants to provide a variety of
21 campaign services, including telephone banking. The consultants prepared three different scripts
22 that were used by both paid staff and volunteers when making campaign telephone calls. The
23 scripts all included an "on behalf of" disclosure, the correct disclosure for a volunteer making
24 calls; however, paid staff also made calls, and none of the scripts contained the "paid for by"
25 disclosure that paid staff was required to use. Callers were instructed to read directly from the
26 scripts.

27 _____
28 ¹ The Election Campaign Control Ordinance has been amended at various times. The Municipal Code sections
referenced in this document refer to the provisions of ECCO in effect at the times of the actions described herein.

1 12. The Committee reported that approximately 26,000 calls were made using both paid
2 staff and volunteers. While records provided by the Committee did not show the exact number of
3 calls made, they do support the estimate provided by the Committee.

4 13. The Committee was unable to provide documentation regarding the exact number
5 of calls made, the number of calls made using each script, or how many of the calls were made
6 by paid staff as opposed to volunteers.

7 Counts

8 **Count 1 - Violation of Municipal Code Section 27.2971 - Disclosures**

9 14. Respondent violated Municipal Code section 27.2971 by failing to include the
10 required "paid for by" disclosure in three scripts used by paid staff to make campaign telephone
11 calls to a portion of an estimated 26,000 calls, thus not providing legally required information to
12 those who received the calls.

13 **Count 2 - Violation of Municipal Code Section 27.2925 - Recordkeeping**

14 15. Respondent violated Municipal Code section 27.2925 by failing to maintain legally
15 required records relating to campaign telephone calls, including documentation regarding the
16 exact number of calls made, the number of calls made using each script, or how many of the calls
17 were made by paid staff as opposed to volunteers.

18 Factors in Aggravation

19 16. The records produced by the Committee's consultants include three transcripts used
20 for telephone banking. These transcripts include "on behalf of" disclosures but were used by paid
21 staffers as well as by volunteers. The Committee's failure to maintain records regarding the total
22 number of calls made by paid staff prevents Commission staff from determining how many calls
23 were made using the wrong disclosure.

24 Factors in Mitigation

25 17. The Commission's investigation revealed that Respondent reasonably relied on the
26 Committee's consultants to ensure that all campaign communications included the proper
27 disclosures.

28 18. Respondent fully cooperated with the Ethics Commission investigation.

Conclusion

19. Respondent agrees to take necessary and prudent precautions to ensure compliance with all provisions of ECCO in the future.

20. Respondent acknowledges that the Ethics Commission may impose increased fines in connection with any future violations of the City's campaign laws.

21. Respondent agrees to pay a fine in the amount of \$2,000, as the party controlling the Committee, for violations of Municipal Code sections 27.2971 and 27.2925. This amount must be paid no later than February 2, 2022, by check or money order payable to the City Treasurer and submitted to the Ethics Commission. The submitted payment will be held pending Ethics Commission approval of this Stipulation and the execution of the Decision and Order portion set forth below.

DATED: [Redacted] [Redacted] [Redacted]

Sharon Spivak, Petitioner
SAN DIEGO ETHICS COMMISSION

DATED: [Redacted] [Redacted] [Redacted] [Redacted]

Tommy Hough, Respondent

DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on February 10, 2022. The Ethics Commission hereby approves the Stipulation and orders that, in accordance with the Stipulation, Respondent pay a fine in the amount of \$2,000.

DATED: [Redacted] [Redacted]

Bill Baber, Chair
SAN DIEGO ETHICS COMMISSION