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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.: 2004-70
11)
12 BYRON WEAR and F. LAURENCE SCOTT,) **STIPULATION, DECISION AND**
13 JR.,) **ORDER**
Respondents.)
_____)

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 Election
20 Campaign Control Ordinance [ECCO].

21 2. At all times mentioned herein, Respondent Byron Wear [Wear] was a City
22 Councilmember representing City Council District 2. The Wear for Mayor committee was a
23 campaign committee registered with the State of California (Identification No. 990570)
24 established to support Respondent Wear's bid for Mayor in the March 2002 primary election. At
25 all relevant times herein, this committee was controlled by Respondent Wear within the meaning
26 of California Government Code section 82016.

27 3. Save Mission Bay Save Our Parks was a committee registered with the State of
28 California (Identification No. 1242956) primarily formed for the purpose of qualifying a measure

1 for the ballot in the November 2002 general election. The proposed measure was intended to
2 support a City Charter amendment known as the “Mission Bay and Regional Parks Improvement
3 Act.” At all times mentioned herein, this committee was controlled by Respondent Wear within
4 the meaning of California Government Code section 82016.

5 4. At all times mentioned herein, Respondent F. Laurence Scott, Jr., [Scott], principal
6 of the accounting firm Scott & Cronin, was the treasurer of record for both the Wear for Mayor
7 committee and the Save Mission Bay Save Our Parks committee.

8 5. Wear and Scott are referred to herein collectively as “Respondents.”

9 6. This Stipulation, Decision and Order [Stipulation] will be submitted for
10 consideration by the Ethics Commission at its next scheduled meeting, and the agreements
11 contained herein are contingent upon the approval of the Stipulation and the accompanying
12 Decision and Order by the Ethics Commission.

13 7. This Stipulation resolves all factual and legal issues raised in this matter by the
14 Ethics Commission without the necessity of holding an administrative hearing to determine the
15 Respondents’ liability.

16 8. Respondents understand and knowingly and voluntarily waive any and all
17 procedural rights under the SDMC, including, but not limited to, a determination of probable
18 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
19 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
20 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
21 have the Ethics Commission or a volunteer hearing officer hear this matter. Respondents agree
22 to hold the City of San Diego harmless from any and all claims or damages resulting from the
23 Commission’s investigation or this stipulated agreement, or any matter reasonably related
24 thereto. Respondents further agree that the terms of this Stipulation constitute compliance with
25 the provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
26 reference to each violation, and an order.

27 9. The Respondents acknowledge that this Stipulation is not binding upon any other
28 law enforcement or government agency and does not preclude the Ethics Commission from

1 referring this matter to, cooperating with, or assisting any other law enforcement or government
2 agency with regard to this or any other related matter.

3 10. The parties agree that in the event the Ethics Commission refuses to accept this
4 Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics
5 Commission rejects the Stipulation and a full evidentiary hearing before the City Ethics
6 Commission becomes necessary, no member of the Ethics Commission or its staff shall be
7 disqualified because of prior consideration of this Stipulation.

8 **Summary of Law and Facts**

9 11. On February 19, 2002, the Save Mission Bay Save Our Parks committee filed a
10 Statement of Organization with the San Diego City Clerk indicating that it was a committee
11 primarily formed for the purpose of supporting a City Charter amendment known as the
12 “Mission Bay and Regional Parks Improvement Act” in the November 2002 general election.
13 This Statement identifies Respondent Scott as the Committee’s treasurer, but does not identify
14 Respondent Wear as the individual who controlled the Committee.

15 12. The Committee was selected for audit by the Ethics Commission at a random
16 drawing conducted on October 9, 2003. An audit was performed for the period from July 1,
17 2001, through November 25, 2002 (the Commission’s Audit Manual prohibits the audit of any
18 activity prior to July 1, 2001). The Final Audit Report was issued on December 28, 2004, at
19 which time the Commission authorized an investigation into the material findings noted during
20 the course of the audit.

21 13. Information obtained during the course of the audit and subsequent investigation
22 indicates that Respondent Wear had significant influence and control over the activities of the
23 Committee. Respondent Wear was responsible for making all substantive decisions regarding
24 the Committee’s activities, including fundraising. In particular, Respondent Wear negotiated
25 with vendors, signed contracts, approved payments, and signed fundraising solicitations.

26 14. SDMC section 27.2931 (currently section 27.2930) required committees to file
27 campaign statements in the time and manner required by state law. Pursuant to California
28 Government Code section 84102, a Statement of Organization filed by a committee must include

1 the name of any candidate or officeholder who controls the committee. In addition, California
2 Government Code section 84103 requires the filing of an amendment to a Statement of
3 Organization (within ten days) whenever there is a change in the information provided in a prior
4 Statement of Organization.

5 15. The Commission's audit and subsequent investigation revealed that the
6 Respondents did not comply with the requirements of SDMC section 27.2931. In particular,
7 Respondents did not disclose on the Statement of Organization filed by the Committee that the
8 Committee was controlled by Respondent Wear.

9 16. SDMC section 27.2947 (currently section 27.2950) prohibited contributions from
10 organizations to City candidates.

11 17. The Commission's audit and subsequent investigation revealed that, on August
12 22, 2002, Respondents violated SDMC section 27.2947 when Respondents paid a Scott &
13 Cronin invoice previously billed to the Wear for Mayor committee from the bank account for the
14 Save Mission Bay Save Our Parks committee. The invoice, in the amount of \$335.66, was for
15 professional accounting services provided to the Wear for Mayor committee from October 2001
16 to January 2002. A notation on the invoice made by an employee of Scott & Cronin indicates as
17 follows: "Put on Mission Bay Acct. Report as Acc. Exp. 6/30/02." By using funds contributed
18 to the Save Mission Bay Save Our Parks committee to pay the bill for services provided to the
19 Wear for Mayor committee, Respondents made an organizational contribution from Save
20 Mission Bay Save Our Parks to a City candidate, in violation of the prohibition on organizational
21 contributions.

22 18. SDMC section 27.2941 (currently section 27.2935) limited contributions to City
23 candidates to \$250 per election. (Amendments to ECCO effective January 5, 2005, established
24 contribution limits of \$300 per candidate per election for Citywide races. At all times mentioned
25 herein, the contribution limit for both district and Citywide races was \$250 per election.)

26 19. As discussed above, on August 22, 2002, Respondents used funds from the Save
27 Mission Bay Save Our Parks committee to pay for an invoice in the amount of \$335.66 from
28 Scott & Cronin representing services provided to the Wear for Mayor committee from October

1 2001 to January 2002. This payment constitutes a contribution to a City candidate in excess of
2 the \$250 per election contribution limit set forth in ECCO.

3 20. SDMC section 27.2945 (currently SDMC section 27.2960) required candidates
4 and committees to pay for goods and services in full within 90 days after receipt of a bill or
5 invoice. (Amendments to ECCO effective January 5, 2005, extended the time period from 90 to
6 180 days.)

7 21. The Commission's audit and subsequent investigation revealed that the
8 Respondents did not pay two vendors within the 90 day time period required by SDMC section
9 27.2945. In particular, Respondents failed to pay Freelove Consulting and The La Jolla Group
10 for services provided to the Save Mission Bay Save Our Parks committee within 90 days. In
11 particular, Respondents had not paid the debt owed by Save Mission Bay Save Our Parks to
12 Freelove Consulting when it terminated on November 25, 2002, 154 days after the original
13 invoice date of June 24, 2002. In addition, Respondents had not paid the debt owed by Save
14 Mission Bay Save Our Parks to The La Jolla Group when it terminated on November 25, 2002,
15 148 days after the original invoice date of June 30, 2002.

16 22. The Commission's audit and subsequent investigation revealed that an invoice in
17 the amount of \$601.25 from Scott & Cronin for accounting services provided to the Committee
18 was not disclosed on the Committee's campaign statements. Although a partial payment of
19 \$16.51 was made, the remaining balance of \$584.74 was never reported as an accrued expense.

20 **Counts**

21 **Count 1 - Violation of SDMC section 27.2931 (currently section 27.2930)**

22 23. In violation of SDMC section 27.2931, Respondents did not properly disclose that
23 the Save Mission Bay Save Our Parks committee was controlled by Respondent Wear on the
24 Statement of Organization filed on February 19, 2002, nor did Respondents file any amended
25 Statements of Organization to disclose that the committee was controlled by Respondent Wear.

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1 **Count 2 - Violation of SDMC section 27.2947 (currently section 27.2950)**

2 24. Respondents caused a contribution to be made by the Save Mission Bay Save
3 Our Parks committee to the Wear for Mayor committee on August 22, 2002, in violation of the
4 ban on contributions from organizations to City candidates outlined in SDMC section 27.2947.
5 In particular, Respondents used funds contributed to the Save Mission Bay Save Our Parks
6 committee to pay an invoice previously submitted by Scott & Cronin to the Wear for Mayor
7 committee.

8 **Count 3 - Violation of SDMC section 27.2941 (currently section 27.2935)**

9 25. Respondents caused a contribution to be made by the Save Mission Bay Save
10 Our Parks committee to the Wear for Mayor committee on August 22, 2002, in excess of the
11 \$250 contribution limit set forth in SDMC section 27.2941. In particular, Respondents used
12 funds contributed to the Save Mission Bay Save Our Parks committee to pay an invoice in the
13 amount of \$335.66 previously submitted by Scott & Cronin to the Wear for Mayor committee.

14 **Count 4 - Violations of SDMC section 27.2945 (currently section 27.2960)**

15 26. Respondents failed to pay two vendors within the 90 day time period
16 required by SDMC section 27.2945. In particular, Respondents had not paid the debt owed by
17 Save Mission Bay Save Our Parks to Freelove Consulting when it terminated on November 25,
18 2002, 154 days after the original invoice date of June 24, 2002. In addition, Respondents had not
19 paid the debt owed by Save Mission Bay Save Our Parks to The La Jolla Group when it
20 terminated on November 25, 2002, 148 days after the original invoice date of June 30, 2002.

21 **Factors in Mitigation**

22 27. The Commission's investigation revealed that Respondent Wear was not
23 personally aware that Respondent Scott used funds contributed to the Save Mission Bay Save
24 Our Parks committee to pay a Scott & Cronin invoice in the amount of \$335.66 previously
25 submitted to the Wear for Mayor committee.

26 28. The Commission's investigation revealed that Respondent Scott mistakenly
27 believed that it was acceptable to use funds held in one committee controlled by an elected

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1 official to pay invoices of other committees controlled by the same official. Moreover, the
2 Commission's investigation did not reveal any attempt to conceal the payment of a Wear for
3 Mayor invoice with funds from the Save Mission Bay Save Our Parks account.

4 **Conclusion**

5 29. Respondents agree to take necessary and prudent precautions to comply with all
6 provisions of the Election Campaign Control Ordinance in the future.

7 30. Respondents agree to pay a fine in the amount of \$3,500 for violations of SDMC
8 sections 27.2931 (currently 27.2930), 27.2947 (currently 27.2950), 27.2941 (currently 27.2935),
9 and 27.2945 (currently 27.2960). This amount must be paid no later than August 5, 2005. The
10 submitted payment will be held pending Commission approval of this Stipulation and execution
11 of the Decision and Order portion set forth below.

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13 DATED: _____
14 STACEY FULHORST, Executive Director
15 ETHICS COMMISSION, Petitioner

16 DATED: _____
17 BYRON WEAR, Respondent

18 DATED: _____
19 F. LAURENCE SCOTT, JR., Respondent

20 **DECISION AND ORDER**

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22 The Ethics Commission has considered the above Stipulation at its meeting on August 1,
23 2005. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
24 with the Stipulation, Respondents pay a fine in the amount of \$3,500.

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26 DATED: _____
27 Dorothy Leonard, Chair
28 SAN DIEGO ETHICS COMMISSION