

Item #7 - Staff Report



Michael MacDonald, -Chair
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Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: October 20, 2021
RE: Case Analysis for PEC Complaint No(s). 17-18 & 18-17; In the matter of East Bay Small Business Council committee, Darrel Carey, and Treasurer Kiarra Carey and Assistant Treasurer Aliyah Carey, prepared for the November 1, 2021, Public Ethics Commission Meeting

BACKGROUND

On August 28, 2017, the City of Oakland Public Ethics Commission (PEC) Campaign Filing Officer Suzanne Doran emailed to Darrel Carey, the principal officer of East Bay Small Business Council Committee, the first warning “Notice of Non-filer Non-compliance” for failure to file a Semi-Annual Campaign Statement, a Pre-election Report, and an incomplete Termination form between the years 2015-2017. On March 15, 2018, the Filing Officer referred the matter to PEC Enforcement Unit for Non-filer enforcement. After investigating the Respondent’s campaign filings, PEC staff determined that the East Bay Small Business Council committee, Darrel Carey, his Treasurer Kiarra Carey and Assistant Treasurer Aliyah Carey, despite multiple warnings, did not electronically file the required campaign information pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act (OCRA).

After close consideration of all the facts and the law, and the reasons explained in this memorandum, Staff finds probable cause that a violation occurred and recommends that the Commission schedule the matter for a formal hearing.

SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

O.M.C. § 3.12.340 (A) OCRA requires that any person required by State or local law to file a campaign statement or report with the local filing officer, shall file the statement or report in an electronic format with the Public Ethics Commission.

O.M.C. 3.12.270 (C) reads as follows:

Administrative Penalties. Any person who violates any provision of this Act, who causes any other person to violate any provision of this Act, or who aids and abets any other person in the violation of any provision of this Act, shall be liable in an administrative proceeding before the Public Ethics Commission held pursuant to the Public Ethics Commission's Complaint Procedures. The Public Ethics Commission may impose administrative penalties in an amount up to five thousand dollars (\$5,000.00) per violation, or up to three (3) times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater. In addition to administrative penalties, the Public Ethics Commission may issue warnings or require other remedial measures.

1. If two (2) or more persons are responsible for any violation, they shall be jointly and severally liable.

TIMELINE OF EVENTS:

08/25/2017	PEC Filing Officer spoke with the Respondent in person and gave a warning notice of Non-filer Non-compliance to the Respondent.
08/28/2017	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
09/11/2017	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
09/13/2017	PEC Filing Officer spoke with the Respondent and gave notice of Non-filer Non-compliance to the Respondent.
09/15/2017	PEC Filing Officer spoke with the Respondent and notice of Non-filer Non-compliance to the Respondent.
01/05/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
02/06/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
02/13/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
02/15/2018	PEC Filing Officer spoke with the Respondent and gave notice of Non-filer Non-compliance to the Respondent.
02/16/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent and emailed notice of Non-filer Non-compliance.

- 02/26/2018 PEC Filing Officer spoke with the Respondent and gave notice of Non-filer Non-compliance to the Respondent.
- 07/24/19 PEC Enforcement via formal letter notified the Respondent that the matter was referred for pursuant to Enforcement Procedure and offered to the Respondent an early resolution settlement offer.
- 10/30/2020 PEC Enforcement notified Respondent and his Treasurer via formal letter in the absence of a response the matter will be referred to the Commission pursuant to formal Enforcement Procedures.

FACTUAL SUMMARY AND ANALYSIS:

Between 2015-2018, the Respondent was the principal officer for the East Bay Small Business Council Committee. Around 2018, the Committee stopped its election activities. After the Committee ceased activities it failed to file a Semi-Annual campaign finance statement(s) for the following periods:

1. June 11, 2015 through December 31, 2015;
2. January 11, 2016 through June 30, 2016;
3. October 23, 2016 through December 31, 2016;
4. January 11, 2017 through June 30, 2017; and

In addition, the Committee failed to file a Pre-election campaign finance statements between the following dates:

1. July 1, 2016 through September 24, 2016;
2. September 25, 2016 through October 22, 2016.

The Committee also failed to properly file a Termination 410 form on or between July 1, 2017 and September 13, 2017. Despite PEC best efforts to gain the Respondent's compliance, neither the Respondent candidate nor his Treasurer Kiarra Carey or Assistant Treasurer Aliyah Carey submitted the required campaign filing.

On March 15, 2018, the Filing Officer referred the matter pursuant to PEC Enforcement Procedures. Enforcement notified the Respondent, his Treasurer and Assistant Treasurer by formal letter that a Non-filer Non-compliance complaint was submitted for formal investigation. Neither the Respondent nor his Treasurer or Assistant Treasurer responded to Enforcement letters.¹

Contact Efforts

Pursuant to California State and Local candidacy filing requirements, it is the responsibility/obligation of a candidate for State or Local Office to provide correct contact information including a current mailing address and any available electronic mail address at which the candidate could be reached or receive correspondence relating to the candidate's campaign.

¹ Copy of front page of the Early Resolution Letter sent to the Respondent. The Respondent, his Treasurer nor Assistant Treasurer provided an update of an address or telephone number where they could be contacted.

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Despite the candidate's requirement to provide current contact information, the PEC Staff used its best efforts to locate any and all alternative addresses and email addresses for the Respondent. The PEC investigator conducted a locate search for the Respondent's address and found that the Respondent moved from the original address that was provided on his required Committee filings. The Staff mailed a certified notice of Non-filer letter to the address identified by the locate search. The Staff mailed several email notices to the Respondent but received no response. Staff confirmed that the email address that the Filing Officer used to communicate with the Respondent on prior occasions, was the same email address that Staff used to forward copies of the Non-filer Non-compliance notice.

Staff was able to contact Treasurer Kiarra Carey by telephone. She reported that she had not had contact with the Respondent, her uncle, for some time and did not know how to contact him. She informed the PEC investigator that she believed she was going to be evicted so she refused to confirm her current address and terminated the telephone call. Staff has made several attempts to reach Kiarra Carey by telephone, but have not received an answer.

Staff attempted to contact Assistant Treasurer Aliyah Carey at her last known address and telephone number, without success. The PEC investigator conducted a locate search for the Respondent's address and the search did not yield a current location for Aliyah Carey.

VIOLATION(S):

The Respondents, including the East Bay Small Business Council Committee, Darrel Carey, Treasurer Kiarra Carey, and Assistant Treasurer Aliyah Carey violated the following Oakland Municipal Code:

Count 1: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about February 1, 2019, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a Semi-Annual Campaign Statement for the period of June 1, 2015-December 31, 2015.

Count 2: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about August 1, 2016, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a Semi-Annual Campaign Statement for the period of January 1, 2016-June 30, 2016.

Count 3: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about September 29, 2016, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a First Pre-Election Report for the period of July 1, 2016- September 24, 2016.

Count 4: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about October 27, 2016, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a Second Pre-Election Report for the period of September 25, 2016-October 22, 2016.

Count 5: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about January 31, 2017, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a Semi-Annual Campaign Statement for the period of October 23, 2016-December 31, 2016.

Count 6: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about July 31, 2017, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a Semi-Annual Campaign Statement for the period of January 1, 2017-June 30, 2017.

Count 7: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter

On or about January 31, 2018, Respondents violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act by failing to file a Semi-Annual Campaign Statement or Termination.

PENALTIES:

The Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount not properly reported (whichever is greater), per violation of the Oakland Campaign Reform Act. The Base Level penalty for this violation is \$1,000 plus 1% of all financial activity not timely reported.

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor –

or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an enforcement action or impose a penalty.

Aggravating Factors

1. After multiple warnings, neither the Respondent candidate, his Treasurer, or his Assistant Treasurer submitted the outstanding campaign reports.

Mitigating Factors

1. Neither Respondent candidate, his Treasurer, or Assistant Treasurer have prior Public Ethics Commission Violations.

RECOMMENDATION:

The information in this memorandum establishes probable cause that a violation occurred; therefore, PEC Staff recommends the Commission schedule the matter for a formal hearing before the full Commission.