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Jill Butler
Gail Kong
Nayeli Maxson
Joseph Tuman
Jerett Yan

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
DATE: December 23, 2019
RE: *In the Matter of Michael Colbruno (Case No. 16-01)*; PEC Memorandum on Proposed Decision

INTRODUCTION

The Enforcement Unit of the City of Oakland Public Ethics Commission (“Complainant”) brought this action to redress violations of the Lobbyist Registration Act (“LRA”) by Oakland Lobbyist Michael Colbruno (“Respondent”). Complainant charged Respondent with twelve separate violations of the Lobbyist Registration Act: 1) Failing to timely register as a lobbyist 2013 and 2014, 2) Failure to file quarterly lobbyist reports in 2012, 2014 and 2015, and 3) Failing to timely file lobbyist registration forms 2013 and 2014. Complainant is only required to show that the violations occurred by a preponderance of the evidence and has established the violations in this case.

Respondent failed to present a viable defense to any of these charges. Based on his Opening Statement, testimony and supplemental letter, Complainant anticipates Respondent will continue to claim multiple conflicting stories like; 1) He filed the required documents but someone must have removed them from the City Clerk’s Office, 2) He filed the required documents electronically but did not confirm if they had been received therefore a mistake occurred in transmitting the documents, and 3) He did not, in fact, conduct any lobbying except for one year but the Public Ethics Enforcement Chief told him to file lobbyist reports. Despite his conflicting accounts, Respondent provided no evidence to support any of his defensive assertions.

The Hearing Officer made the following findings and proposed decision recommendation:

1. Respondent failed to timely file four quarterly reports in 2012.
2. Respondent failed to timely file four quarterly reports in 2014.
3. Respondent failed to timely file one Lobbyist Registration Forms in 2013.
4. Respondent failed to timely file one Lobbyist Registration Forms in 2014.
5. Respondent failed to timely file two quarterly reports for 2015
6. The Hearing Officer recommends that the Commission impose a total administrative penalty of **\$5,250.00** for the 12 violations of the City of Oakland Lobbyist Registration Act.

I. BRIEF HISTORY

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Respondent registered as a lobbyist in 2002 and has been an active lobbyist since. The Respondent also served on the City's Planning Commission from 2006 until 2013 and has been a member of the Port of Oakland Board of Commissioners since 2013.

On January 12, 2016, the Commission received a complaint alleging that the Respondent had failed to register as lobbyist in 2012 and 2014. Enforcement Staff completed its investigation and found that the Respondent had failed to timely register as a lobbyist and or failed to file timely lobbyist quarterly reports in 2012, 2013, 2014 and 2015. On March 28, 2016, the Commission's Enforcement Staff informed the Respondent of the allegations against him.

On April 7, 2016, Enforcement Staff contacted the City Clerk and requested all lobbyist registration forms and quarterly reports it had received for the Respondent. According to the City Clerk's records, it had not received a lobbyist registration form for 2013 and 2014 or lobbyist quarterly reports for any of 2012, 2014 and the first half of 2015.

In his initial response, the Respondent asserted the following: 1) that he timely filed all required lobbyist forms with the City Clerk; 2) that the City Clerk kept filed lobbyist forms in a binder in a section of the City Clerk's Office that was available to the public without supervision, and; 3) that someone removed the 12 missing lobbyist forms from the binders in the City Clerks' office.

However, the Respondent did not provide any evidence that he timely filed the twelve missing lobbyist forms with the City Clerk. In fact, the Respondent acknowledged that he failed to maintain copies of his registration and quarterly reports, contrary to the LRA Records requirement provision 3.20.100.¹

Moreover, the City Clerk, at all relevant times, sent a copy of all lobbyist forms it received to Commission Staff to post on the Commission's website. A review of the Commission Staff's records found that it never received a copy of any of the 12 missing lobbyist forms from the City Clerk.

Subsequently, on April 11, 2016, the Respondent filed each of the missing lobbyist forms with the City Clerk.

Between March 28, 2016 and December 2018, Enforcement Staff, attempted, unsuccessfully, to reach a proposed settlement agreement with the Respondent. Commission Staff placed a proposed stipulation on the agenda for the Commission to consider on April 2, 2018. At that meeting, the Commission rejected the proposed stipulated agreement and instructed Staff to negotiate a larger penalty, and if not successful, to start the process for setting the matter for an administrative hearing.

Between April 2, 2018 and November 18, 2019, the parties did not reach a proposed stipulated agreement and therefore, pursuant to the Commission's instructions and its Complaint Procedures, Staff started the process for setting this matter for an administrative hearing.

On November 18, 2019, In the Matter of Colbruno came before Public Ethics Commissioner James Jackson acting in the capacity of Hearing Officer.

II. PROPOSED DECISION

a. Violations

¹ O.M.C. 3.20.100 "A local governmental lobbyist shall retain, for a period of five (5) years, all books, papers and documents necessary to substantiate the registration and disclosure required to be made under this act."

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The Hearing Officer's proposed decision finds that the Respondent, Michael Colbruno, committed the following violations of the Lobbyist Registration Act:

Count I: Failing to Timely File Four Quarterly Lobbyist Reports for the year(s) 2012 and 2014 (8 total)

As a lobbyist in 2012, the Respondent was required to file with the City a quarterly lobbyist report within 30 days of the end of each calendar quarter of 2012.

Respondent failed to timely file with the City: 1) a quarterly lobbyist report for the January 1 through March 31, 2012, reporting period by April 30, 2012; 2) a quarterly lobbyist report for the April 1 through June 30, 2012, reporting period by July 30, 2012; 3) a quarterly lobbyist report for the July 1 through September 30, reporting period by October 30, 2012, 4) a quarterly lobbyist report for the October 1 through December 31, 2012, reporting period by January 30, 2013, 5) a quarterly lobbyist report for the January 1 through March 31, 2014 reporting period by April 30, 2014; 6) a quarterly lobbyist report for the April 1 through June 30, 2014, reporting period by July 30, 2014, 7) a lobbyist quarterly report for the July 1 through September 30, 2014, reporting period by October 30, 2014, and; 8) a lobbyist quarterly report for October 1 through December 31, 2014, reporting period by January 30, 2015, in violation of Section 3.20.110 of the Oakland Lobbyist Registration Act.

Count II: Failing to Timely File a Lobbyist Registration Form(s) one in 2013 and in 2014 (2 total)

As a lobbyist in 2013 and 2014, the Respondent was required to file with the City a lobbyist registration form by January 30, 2013 and 2014.

Respondent failed to timely file with the City: 1) a lobbyist registration form by January 30, 2013 and 2014, in violation of Sections 3.20.050 and 3.20.110 of the LRA.

Count III: Failing to Timely File Two Quarterly Reports for 2015 (2 total)

As a lobbyist in 2015, the Respondent was required to file with the City a quarterly lobbyist form within 30 days of the end of each the calendar quarter in 2015.

The Respondent failed to timely file with the City: 1) a quarterly lobbyist report for the January 1 through March 31, 2015, reporting period by April 30, 2015, and 2) a quarterly lobbyist report for the April 1 through June 30, 2015, reporting period by July 31, 2015, in violation of Section 3.20.110 of the LRA.

b. Penalty

The Hearing Officer's proposed decision recommends that the Commission impose a total administrative penalty of **\$5,250.00** for the 12 violations of the City of Oakland Lobbyist Registration Act.

III. POSSIBLE ACTIONS BY THE COMMISSION

Pursuant to the Commission's Complaint Procedures, the Commission may either adopt the proposed decision in its entirety, or in the alternative, adopt the proposed decisions' actual finding, but reach additional or different conclusions consistent with the proposed decision's factual findings. (Commission's Complaint Procedures § v(1)(2).)

If the Commission decides that the proposed decision in its entirety, the proposed decision will be adopted as the Commission's decision and the Respondent will be ordered to pay an administrative penalty of \$5,250.00.

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If the Commission decides that the proposed decision's factual findings warrant a different legal conclusion and/or a different penalty, the Commission may adopt the proposed decision's factual finding and additional or different legal conclusions and/or impose a different penalty.

Whether the Commission decides to adopt the proposed decision in its entirety or adopt different legal conclusions and/or penalties, the Commission's decision and order regarding a proposed decision will constitute the closure of the administrative process for this matter. (Commission's Complaint Procedures § V (I)(6).)

IV. COMMISSION STAFF RECOMMENDATION

Commission Staff recommends that the Commission adopt the proposed decision's factual and legal findings, but that the Commission impose an administrative penalty of \$12,000 as a recommended penalty in the proposed decision based on the aggravating factors stated below.

Aggravating Factors

In this case, all of the counts are aggravated by the following facts:

1. Respondent was an experienced lobbyist with over a decade of experience at the time of each of the violations. He had substantial experience with the City of Oakland Lobbyist filing requirements and direct knowledge of the Lobbyist filing and quarterly reporting rules requiring timely filing of Lobbyist forms.
2. Respondent has received the benefit of uncharged violations of the LRA.² An uncharged violation is an aggravating factor when the circumstance concerns something which the respondent has done or failed to do that could establish a separate but related violation of the rules that the respondent is aware of or could be expected to foresee. In this case, the respondent acknowledged that he failed to maintain records/copies of his lobbyist annual and quarterly filings, the basis of which establish a separate but related violation of the LRA that the respondent was aware of and could be expected to foresee.
3. The Respondent also engaged in a pattern of conduct that was not isolated or incidental, but was continuous during critical election years in the City of Oakland, specifically:
 - i. The Respondent failed to timely file four quarterly lobbyist reports for 2012. Lobbyist quarterly reports detail who the lobbyist worked for, what type of work they conducted on their client's behalf and which City department, elected or appointed official was lobbied. According to the late reports the Respondent filed in 2016, he did a significant amount of lobbying in 2012 on behalf of three clients; the California Nurses Association, Harborside Health Center and Sagwa Ibrahim.
 - ii. In 2013, the respondent failed to timely file his initial lobbyist registration form. A person is prohibited from engaging in lobbyist activity on behalf of a client unless he or she has registered by submitting the lobbyist registration form with his or her listed clients on the form. In this case, the Respondent admits that he lobbied in 2013, in spite of not being a registered lobbyist in the City of Oakland.
 - iii. The Respondent failed to timely file a lobbyist registration form and four quarterly lobbyist reports for 2014, resulting in a complete lack of information available to the public and

² O.M.C. § 3.20.100 Records.

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other parties regarding his lobbying activity for an entire year. According to the late forms he filed in 2016, he did a significant amount of lobbying in 2014 on behalf of four clients; AMG Development, Harborside Health Center, Recology and Blum.

- iv. The Respondent failed to timely file two quarterly lobbyist reports for 2015, resulting in a complete lack of information available to the public and other parties regarding his lobbying activity for the first six-month period. According to the late forms he filed in 2016, he did a significant amount of lobbying during that six-month period on behalf of seven clients; Harborside Health Center, Blum, AirBnB, AMG Development, Signature Development, VOLTA, and Recurrent Energy.
4. Presence of intent to mislead. Throughout the investigation and hearing the Respondent has made misrepresentations about the facts alleged that resulted in his failure to file timely Lobbyist Registration Forms and Lobbyist Quarterly Reports. The respondent has made the following misrepresentations:
 - i. Respondent represented that he, in fact, filed the missing Lobbyist Registration Forms and Quarterly Reports and that they were received by the City Clerk but that someone removed them from the City Clerk's office from an unsecured binder. Respondent could not produce any documentation or receipt of confirmation that he had, in fact, filed the missing forms with the City Clerk's office. Respondent failed to produce any copies of the aforementioned forms. Respondent admitted that he did not keep copies of the submitted forms.
 - ii. Respondent represented that a member of his staff electronically filed the missing Lobbyist Registration Forms and Quarterly Reports but that it is possible that the City did not receive them. Respondent could not produce any documentation, receipt of confirmation or testimony from his staff that they had, in fact, electronically filed the missing forms.
 - iii. Respondent represented that he did not engage in any lobby activity specifically between March/April 2014 to November 2014, because he was working on a City of Oakland mayoral candidate campaign. Respondent, however, late filed both Lobbyist Registration Forms and Quarterly Reports that represented to the City that he, in fact, engaged in lobbyist activity during the stated time.
 - iv. Respondent represented that although he did not engage in lobbying in any year besides 2012, the late filed Lobbyist Registration Forms and Quarterly Reports reflect that he had engaged in lobbyist activity because he was instructed by PEC Staff. Respondent, however, could produce no email, letter, memo or any other verifiable document or witness that corroborated that the Ethics Staff directed him to file a Lobbyist Registration Form or Quarterly Report with false information in it.
 5. The Respondent's failure to file his Lobbyist Registration Forms and Quarterly Reports are serious violations. The only current way for the public to trace the influence on legislation, contracts, initiatives and City projects is by looking at the disclosure reports lobbyists are required to file. Those reports show who's getting paid to lobby and by whom, where lobbyists are influencing City policies and the reasons why. They are a critical measure of external influences on both legislation and legislators. In this case, the lack of transparency and information reported by the Respondent during critical election years in the City made his conduct particularly egregious.
 6. There was considerable public harm to the citizens of Oakland. Citizens have a right to know how much lobbyist clients are spending to influence governmental decisions, who the lobbyists are and

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what interests they represent. The Respondent's failure to disclose his lobbying activities or register to lobby for four years (2012-2015) hindered Oakland citizens from knowing very important information on what and who their City government was doing business with. Oakland is a particularly politically active community where individual citizens take particular note of City Council and its outside influences. This complaint was initiated by a concerned citizen.

7. Respondent's failure to file Lobbyist Registration and Quarterly Reports between 2012 and 2015 was not inadvertent, at a minimum it was negligent. The Respondent admitted he had sloppy recordkeeping and was not following up to confirm whether his forms were actually received by the City. The Lobbyist Registration Ordinance imposes a duty upon the lobbyist to not only timely file their forms but to keep copies for their own records³ to avoid any disputes over a filed form or the content of the form. The Respondent, a seasoned, well known lobbyist in Oakland, failed to do the minimum requirement of keeping copies of his forms and admitted to filling out and submitting the forms to the City only upon the request of PEC Staff after the complaint had been filed.
8. Although the Respondent may regret what has occurred or regret that it was discovered and reported by an Oakland citizen, he has not shown any remorse for his failure to file lobbyist forms over a four-year period. The Respondent has demonstrated a nonchalant attitude regarding the seriousness of his conduct. Throughout conversations with the PEC he has characterized his conduct as just "sloppy record keeping." He has not acknowledged the greater harm to the community as a result of his failure to provide transparent reporting.
9. The extended period of time (four years) that the Respondent failed to either file his required Lobbyist Registration Form or Quarterly Report is egregious.

The purpose of administrative penalties like those provided in the LRA is to promote transparency, gain compliance with lobbyist filing requirements and protect the public from lobbyists who have not discharged, will not discharge or are unlikely to properly discharge their professional duties. The public rightfully expects the Commission to enforce the lobbyist filing requirements and hold those responsible who fail to comply.

Based on the consideration of all the relevant aggravating factors stated above, and the expressed concerns of the Commission, Enforcement Staff submits that an appropriate administrative penalty is \$1,000 for each individual form the Respondent failed to file, for a total administrative penalty of \$12,000.

In this case, Respondent failed to file the following twelve forms:

1. Four Quarterly Lobbyist Reports for 2012
2. One Lobbyist Registration Form for 2013
3. One Lobbyist Registration Form for 2014
4. Four Quarterly Lobbyist Reports for 2014
5. Two Quarterly Lobbyist Reports for 2015.

To be clear, Staff is not recommending a total penalty of \$12,000 to penalize the Respondent for taking his own case to hearing; to the contrary, the aggravating factors associated with the Respondent's conduct warrant imposing a substantial penalty.

³ Oakland Municipal Ordinance § 3.20.100.