

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

LES GARA,)	
)	
Complainant,)	
)	
v.)	APOC Case No. 18-12-CD
)	
FAMILIES FOR)	
ALASKA’S FUTURE - DUNLEAVY,)	
)	
Respondent.)	
_____)	

FINAL ORDER

The complainant is Les Gara and the respondent is Families for Alaska’s Future – Dunleavy (FFAF), which is an independent expenditure group that supported the Republican gubernatorial nominee in the 2018 general election. Gara alleges that that FFAF violated AS 15.13.090—which requires audio advertisements to contain paid-for-by information that is “read in a manner that is easily heard”—when it ran ads in which the information was sped up to the point that it was indiscernible. For the following reasons, the Commission finds that FFAF violated AS 15.13.090 and assesses the statutory maximum civil penalty of \$900 as well as costs of \$212.50.

I. Facts and Proceedings

Shortly before the 2018 general election, on October 31, 2018, Les Gara filed a complaint against FFAF and requested expedited consideration. The complaint was about an FFAF radio advertisement that began airing on October 25, 2018 in which the paid-for-by information was extremely sped up.

At a November 2 hearing on Gara’s request for expedited consideration, Gara also brought to the Commission’s attention a TV ad with similarly sped up paid-for-by

information. FFAF represented to the Commission that the two complained-of ads were no longer airing, and the Commission denied expedited consideration and referred the complaint to staff for investigation and consideration on a regular basis.

For its investigation, the Commission's staff asked FFAF to provide information concerning all of its radio and television ads run before November 1, 2018. But despite staff's repeated requests, FFAF never provided the requested information. FFAF's attorney, Stacey Stone, did not return staff's phone calls.

Staff prepared a report about the two ads that Gara referenced. Staff concluded that the paid-for-by identifiers in both ads "are unintelligible, and the information required under AS 15.13.090 is not clearly identified." Staff reasoned that if "staff could not easily hear the information after several attempts, the average person cannot be expected to hear the required information when the ads are played on radio or television." Staff therefore concluded that FFAF violated AS 15.13.090(d) by using an "obviously manipulated and unintelligible disclaimer" in these two ads.

The radio ad began airing on October 25, 2018, and remained on the radio through November 1, 2018 (8 days). The television ad began airing on October 24, 2018, and ran through November 2, 2018 (10 days), after which the paid-for-by identifier was replaced with a slower version. The maximum civil penalty for an improper paid-for by-identifier is \$50 per day for each day the violation continues,¹ so staff assessed the maximum civil penalty of \$900 for these violations. Staff spent approximately five hours investigating

¹ AS 15.13.390(a).

this complaint, making the costs of investigation \$212.50. Based on FFAF's lack of cooperation, staff recommended imposing the full costs of investigation.

The Commission considered the matter at its January 24, 2019 regular meeting. Gara appeared telephonically and asked the Commission to enhance the penalty if possible, arguing that \$900 is an insufficient deterrent against such a blatant violation by a sophisticated and well-funded actor close to the election. Attorney Molly Magestro appeared telephonically on behalf of FFAF and deferred to the staff report.

II. Analysis

Alaska Statute 15.13.090 requires that communications be clearly identified and provide information about their source. A communication that includes an audio component must include statements about who paid for the communication and their top contributors, and these statements must be “read in a manner that is easily heard.”²

The Commission agrees with its staff that FFAF's ads violate this requirement because the paid-for-by information is read too quickly to be intelligible. The Commission rejects FFAF's position that the standard in the statute is overly “subjective.” An audio disclaimer is “read in a manner that is easily heard” only if the average person listening to it can clearly identify who paid for the communication and who the top contributors are. It is not enough that the audio disclaimer can be “heard”; it must also be understandable. Accepting FFAF's position would defeat the purpose of the statute, which is to inform voters about who paid for the communication.

² AS 15.13.090(d).

The Commission assesses the maximum civil penalty of \$900 for the violations. The Commission declines to reduce the penalty from the maximum because it agrees with staff that FFAF's violation is particularly self-evident, egregious, and could easily have been avoided. Indeed, the Commission would increase the penalty if doing so were permissible under the statute, because it agrees with Gara that a \$900 penalty is an insufficient deterrent under the circumstances. However, AS 15.13.390(a) sets the statutory maximum penalty for these violations at \$50/day.

The Commission also assesses the costs of investigation—\$212.50—as recommended by staff and permissible under AS 15.13.390(b)(2). This is particularly appropriate given FFAF's failure to cooperate in the Commission's investigation.

III. Conclusion

The Commission finds that FFAF violated AS 15.13.090 and assesses the statutory maximum civil penalty of \$900 as well as costs of \$212.50.

This is a final Commission order. It may be appealed to superior court within 30 days from the date of this order.³ A request for the Commission to reconsider this order must be filed within 15 days from the date this order is delivered or mailed.⁴

Dated: February 4, 2019

BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION⁵

³ AS 44.62.

⁴ 2 AAC 50.891(g).

⁵ Commissioners Anne Helzer, Irene Catalone, Robert Clift, Jim McDermott, and Richard Stillie participated in this matter. The decision was made on a 5-0 vote.

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

LES GARA,

Complainant,

v.

FAMILIES FOR
ALASKA'S FUTURE – DUNLEAVY,

Respondent.

Case No. 18-12-CD

CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing Commission Order and this Certificate of Service to be delivered as indicated to the following:

Holmes Weddle & Barcott, PC Attn: Stacey Stone 701 West Eighth Ave., Suite 700 Anchorage, AK 99501-3408 sstone@hwb-law.com snichols@hwb-law.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Certified Mail
Les Gara 1242 W. 10 th Ave. Anchorage, AK 99501 Lesgara@yahoo.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> U.S. Mail



Signature

2/4/2019

Date

9171-9690-0935-0185-8854-37