

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

STAND FOR SALMON,)	
)	
Complainant,)	
)	
v.)	APOC Case No. 18-03-CD
)	
STAND FOR ALASKA–VOTE NO ON ONE,)	
)	
Respondent.)	
_____)	

ORDER DENYING MOTION FOR ATTORNEY’S FEES

Stand for Salmon supported the ballot initiative titled, “An Act providing for protection of wild salmon and fish and wildlife habitat,” and Stand for Alaska – Vote No on One (formerly known as simply “Stand for Alaska”) opposed it. After Stand for Salmon filed a complaint, the Commission found that Stand for Alaska – Vote No on One had violated AS 15.13.050(c), which requires certain naming conventions, and AS 15.13.090(a), which requires “paid for by” identifiers on campaign communications, and assessed a civil penalty of \$1,925. Stand for Salmon then filed a motion requesting \$26,645 in attorney’s fees. For the following reason, the Commission denies the motion.

I. Background

When a group makes more than half of its contributions or expenditures in opposition to a single ballot initiative, AS 15.13.050(c) requires that the group’s name “clearly state that the group opposes that initiative by using a word such as ‘opposes,’ ‘opposing,’ ‘in opposition to,’ or ‘against’ in the group’s name.”

On July 6, 2018, Stand for Salmon filed an expedited complaint alleging that Stand for Alaska – Vote No on One had been in violation of AS 15.13.050(c) while its name was just “Stand for Alaska” because that name contains no opposition-related words, and continued to be in violation after its name change because it was still using the old name sometimes—for instance, in YouTube videos.

Stand for Salmon requested expedited consideration of its complaint. The Commission denied this request on the record at a July 12, 2018 special meeting, and ordered its staff to investigate the complaint.

The Commission’s staff investigated the complaint and issued a report recommending that the Commission find violations and impose a civil penalty. Staff concluded that once the Stand for Salmon initiative was certified for the ballot, Stand for Alaska was in violation of AS 15.13.050(c) until it changed its name to “Stand for Alaska – Vote No on One.” Staff also concluded that the group violated AS 15.13.090(a)—which requires “paid for by” identifiers on campaign communications—by posting two YouTube videos after its name change that were identified as being paid for by “Stand for Alaska” and by not amending the identifiers on previously posted videos that remained posted after the name change. Staff calculated the maximum penalty for all of these violations as \$7,700, and recommended that it be reduced by 50 percent to \$3,850 because the group is an inexperienced filer.¹

¹ 2 AAC 50.865(a)(1)(B).

The Commission considered the matter during a special meeting on August 29, 2018 at which the Commission’s staff presented its report. Attorney Tom Amodio appeared and argued on behalf of Stand for Alaska – Vote No on One. Stand for Salmon was not officially designated as a party to the hearing under 2 AAC 50.891(b), but attorney Holly Wells appeared and argued on behalf of Stand for Salmon. No witnesses testified. After the meeting, the Commission found violations and assessed a penalty of \$1,925 against Stand for Alaska – Vote No on One.

After the hearing, Stand for Salmon filed a motion asking the Commission to award it full attorney’s fees of \$26,645 under AS 15.13.390(b).

II. Analysis

Stand for Salmon argues that it is entitled to full attorney’s fees under AS 15.13.390(b), which states that if, after holding a hearing on a complaint, the Commission finds a violation, “the commission shall assess (1) civil penalties ... (2) the commission’s costs of investigation and adjudication; and (3) reasonable attorney fees.” But the statute says the Commission shall “assess” attorney’s fees, it does not say the Commission shall “award” fees, and does not specifically entitle *the complainant* to receive fees, as opposed to the Commission. In practice, the Commission has not typically assessed attorney’s fees. In recent years, the Commission did so only once, in a complex case that went to hearing before an Administrative Law Judge.² Those fees were

² See *RBG Bush Planes, LLC v. Alaska Public Offices Commission*, 361 P.3d 886, 890 (Alaska 2015) (“[T]he Commission’s final award against Bush Planes was for \$55,268: \$25,500 in fines, \$10,668 in adjudication and investigation costs, and \$19,100 in attorney’s fees.”). The attorney’s fees were assessed at the request of the Attorney

assessed for the work of the Commission's attorney and went to the Commission; the Commission did not award fees to a complainant. Although the Commission might award attorney's fees to a complainant in more unusual circumstances, it declines to do so here.

This is a final Commission order. It may be appealed to the superior court within 30 days from the date of this order under AS 44.62. A request for the Commission to reconsider this order must be filed within 15 days from the date this order is delivered or mailed under 2 AAC 50.891(g).

Dated: February 4, 2019

BY ORDER OF THE ALASKA PUBLIC OFFICES COMMISSION³

General's Office, which represented the Commission's staff and moved for 30 percent of its fees. *See* Motion for Award of Attorney Fees, *APOC v. Robert Gillam et al*, No. 11-09-CD (Dec. 23, 2011), *available at* <http://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=5540>.

³ Commissioners Anne Helzer, Irene Catalone, Robert Clift, Jim McDermott, and Richard Stillie participated in this matter. The decision was made on a 3-2 vote.

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

STAND FOR SALMON,

Complainant,

v.

STAND FOR ALASKA – VOTE NO ON ONE,

Respondent.

Case No. 18-03-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:

Holly Wells Birch Horton Bitner & Cherot 510 L Street, Suite 700 Anchorage, Alaska 99501 hwells@bhb.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> U.S. Mail
Thomas P. Amodio Reeves Amodio LLC 500 L Street #300 Anchorage, Alaska 99501 tom@reevesamodio.com	<input checked="" type="checkbox"/> Email <input checked="" type="checkbox"/> Certified Mail



Signature

2/4/2019

Date

9171-9690-0935-0185-8854-20