

BEFORE THE ALASKA PUBLIC OFFICES COMMISSION

DUNBAR FOR MAYOR,)
)
 Complainant,)
)
 v.)
)
 BRONSON FOR MAYOR,)
)
 Respondent.) APOC Case No. 21-01-CD
)

RESPONSE TO AMENDED STAFF REPORT

Respondent, Bronson for Mayor, by and through its counsel of record, Holmes Weddle & Barcott, P.C. hereby files its response to the amended staff report in the above-referenced matter.¹

As stated in the staff report, the complaint set forth six allegations of violation of campaign finance law, these include: 1) reporting errors; 2) acceptance of over limit contributions; 3) contributions connected with a business; 4) acceptance of a prohibited contribution; 5) administration expenses; and 6) polling expenses. Of the six allegations set forth, staff recommends dismissal of four of the six, and respondent agrees with staff’s position. Therefore, respondent agrees that the allegations of contributions connected with a business, acceptance of a prohibited contribution, administration expenses, and polling expenses should be dismissed by the Commission.

¹ As indicated in n. 1 of the amended staff report, the report was amended due to staff issuing an initial report with significant errors, a penalty recommendation that was approximately \$30,000 higher than even contemplated by law. Respondent pointed out the significant error to staff, to which they amended the report without delay. However, it is ironic that staff’s error demonstrates that mistakes happen when filing significant reports.

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In its report, staff ultimately concluded that respondent failed to file full and complete reports. While respondent's volunteers put forth their best efforts, respondent recognizes that certain errors were made when the campaign filed its reports with the Commission. Respondent first became aware of the same when the complaint was filed.² The staff report demonstrates that several amendments were filed—the campaign was working as fast as possible through its books and records, and with its various vendors, in order to obtain information to correct any errors in real time. This resulted in the several amendments as information was obtained, in order to provide as much information to the public as possible. However, at no time was there any intent to obscure or conceal information.

As a result of the reporting errors, staff recommends the maximum penalty under AS 15.13.390(a) be assessed in the amount of \$39,600. In doing so, staff asserts that the respondent has a poor reporting history, and therefore is not entitled to any reduction. However, that position does not meet with the spirit of the regulations, ignores pertinent facts, and fails to acknowledge precedent. First, the Commission has great discretion with regard to reductions in civil penalties. The pertinent regulation, 2 AAC 50.865, does not say that the Commission “shall” act, but says “may” act in a certain fashion. Specifically, 2 AAC 50.865 provides that the Commission “may” increase the penalty to the maximum if a person has a poor filing history, but in doing so, the Commission must consider several factors. However, in its report, the staff has only considered one of those four factors. In asserting that the respondent has a poor filing history, the staff cites to two penalties. However, one is currently being appealed due to a computer discrepancy that resulted in a one-minute delay, i.e. the report was filed at

² Indeed, while respondent acknowledges that it is the campaign's responsibility to file full and accurate reports, many vendors are still working to fully comply with recent APOC determinations regarding the timing of any expenditure. Therefore, in its best efforts, respondent is working with its vendors to ensure that it can comply with law.

12:01 AM. Therefore, respondent contends it is incorrect to base a poor filing history on this one minute delay. Finally, when considering APOC precedent, a reduction of over 90 percent is appropriate, and therefore, the penalty must be reduced to an amount between \$396 and \$3,960.³

Even if the Commission were to ignore its own precedent and impose a maximum fine, the staff's calculations are wrong.

1. Year Start Report. The year-start report was due on February 16, 2021. Therefore, the report was late as of February 17, 2021. February 17 through May 17, 2021 is a period of 90 days, and therefore the maximum violations totals \$4,500.
2. 30-Day Report. The 30-day report was due on March 8, 2021. Therefore, the report was late as of March 9, 2021. March 9, 2021 through May 17, 2021 is a period of 70 days, and therefore the maximum violation totals \$3,500.
3. 7-Day Report. The 7-day report was due on March 30, 2021. Therefore, the report was late as of March 31, 2021. March 31, 2021 through May 17, 2021 is a period of 48 days, and therefore, the maximum violation totals \$24,000.
4. 7-Day Runoff Report. The 7-day runoff report was due on May 4, 2021. Therefore, the report was late of May 5, 2021. May 5, 2021 through May 17, 2021 is a period of 13 days, and therefore, the maximum violation totals \$6,500.⁴

³ See e.g. *Steven R. McCoy v. Liz Vazquez*, 16-06 CD (in this case, the Commission still found a 99 percent reduction in penalty appropriate in spite of the fact that the candidate had a history of inaccurate reporting, as well as a failure to act after staff identified the same issues set forth in the Complaint); *APOC v. Charlotte Brower*, 15-02 CD (in this matter, the penalty was reduced by 80 percent, even though the Commission found her actions were egregious and she failed to cooperate with staff); *District 36 Republicans v. Daniel Ortiz*, 14-11 CD; *APOC v. Traini*, 08-07 CD; *APOC v. Bob Griffin*, 11-14 CD; *APOC v. Alan Dick*, 13-08 CD; *APOC Staff v. Chris Tuck*, 13-11 CD; and *Carol Carmen v. Cezzar Martinson*, 20-01 CD.

⁴ The amendment staff report relies on a total of 14 days to arrive at a penalty of \$7,000. However, staff failed to correct its error as to the number of days, and the amendment report continues to contain the incorrect number of 49 days.

Therefore, the total maximum penalty is \$38,500 versus the proposed \$39,600.

Respondent urges the Commission to meet with its precedent and order a reduced penalty in an amount not to exceed \$3,850.

With regard to the over limit contributions, the Commission must dismiss the allegations summarily as such limitation has been found unconstitutional by the federal courts.⁵ Therefore, the Commission cannot assess penalties for a violation of an unconstitutional statute. In its recent decision, the United States Court of Appeals for the 9th Circuit “[t]he panel held that ... the district court ... erred under Supreme Court precedent in upholding the individual-to-candidate limit...”⁶ “Alaska failed to meet its burden of showing that the individual contribution limit was closely drawn to meet its objectives.”⁷ Therefore, the court reversed the district court’s decision upholding the individual-to-candidate limits.⁸

However, even if the Commission were to improperly assess a penalty for violating this unconstitutional provision, it must disregard staff’s recommendation. During the course of its investigation, staff set forth that there three over limit contributions that were not timely returned. However, one was indeed not over limit, as demonstrated in the information provided to staff during its investigation, James Strong initial contribution was made at 08:16 UTC time, or 11:16 PM on December 31, 2021. Therefore, James Strong did not make any over limit contributions to respondent. The value of the three alleged over limit contributions totals \$1,050, but based on the information provided herein only amounts to \$550. Staff has

⁵ See *DAVID THOMPSON; AARON DOWNING; JIM CRAWFORD, v. HEATHER HEBDON*, in *Her Official Capacity as the Executive Dir. of the Alaska Pub. Offices Commission*; *RICHARD STILLIE; IRENE CATALONE; ANNE HELZER; ROBERT CLIFT; & JIM MCDERMOTT*, in *their official capacities as members of the Alaska Pub. Offices Comm'n.,*, 17-35019, 2021 WL 3235775 (9th Cir. July 30, 2021).

⁶ *Id.* p. 3.

⁷ *Id.*

⁸ *Id.* p. 8.

recommended a civil penalty related to the same in the amount of \$13,050.⁹ Imposing the maximum penalty in this case is wholly disproportionate to any alleged harm. As set forth in the foregoing section relating to the Commission's precedent, if the Commission were to impose a fine, it must be significantly reduced to an amount between \$129 and \$1,290.

In sum, the respondent remains committed to ensuring that its reports are as accurate as possible. In conjunction with the above suggested reduction, respondent is prepared to attend recommended or require APOC training if the candidate files his intent to again run for elected office. Respondent maintains that under the facts, circumstances and law, significant reduction in the proposed civil penalty is necessary, and that a fine of no more than \$3,850 is appropriate in the instant matter.

DATED this 2nd day of August, 2021.

HOLMES WEDDLE & BARCOTT, P.C.
Attorneys for Respondent

By: s/ Stacey C. Stone
Stacey C. Stone
Alaska Bar No. 1005030

CERTIFICATE OF SERVICE

The undersigned certifies that on this 2nd day of August, 2021, a true and correct copy of the foregoing document was served via Email to:

Dunbar for Mayor
paula.delaiarro@gmail.com

By: s/ Shaunalee Nichols
Holmes Weddle & Barcott, P.C.

⁹ Again, the staff has included the date due, therefore, the maximum penalty is actually \$12,900.