



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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December 19, 2014

mark@northcreeklaw.com

National Assn of Realtors Fund
c/o Mark C. Lamb
12900 NE 180th Street, Suite 235
Bothell, WA 98011

Subject: Final Order, National Association of Realtors Fund, PDC Case No. 14-009

Dear Mr. Lamb:

Enclosed is a copy of the Public Disclosure Commission's Final Order for PDC Case No. 14-009. Also enclosed is a copy of the Stipulation and information about appeals and enforcement of final orders. Thank you for your cooperation throughout this process.

If you have questions, please contact me at (360) 664-8853; toll free at (877) 601-2828 or by email at phil.stutzman@pdc.wa.gov.

Sincerely,

Philip E. Stutzman
Director of Compliance

Enclosure – Stipulation and Information about appeals and enforcement of final orders

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5 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
6 **OF THE STATE OF WASHINGTON**

7 IN RE COMPLIANCE WITH RCW 42.17A:

PDC CASE NO. 14-009

FINAL ORDER

8
9 National Association of Realtors Fund

10 Respondent.
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12 This matter came before the Washington State Public Disclosure Commission (PDC)
13 on December 4, 2014 at the PDC Office, 711 Capitol Way, Room 206, Olympia, Washington.
14 Those present included Grant Degginger, Chair; Katrina Asay, Vice Chair; Amit Ranade,
15 Member; and Kathy Turner, Member. In attendance were Phil Stutzman, Director of
16 Compliance; Andrea McNamara Doyle, PDC Executive Director; Tony Perkins, Acting
17 Assistant Director; Assistant Attorney General Linda Dalton serving as counsel for PDC staff;
18 Assistant Attorney General Callie Castillo serving as counsel for the Commission; and Jana
19 Greer as recorder/reporter of the proceeding. The Respondent appeared through Mark Lamb,
20 legal counsel, who was in attendance and addressed the Commission. The proceeding was
21 open to the public and recorded.

22 This case concerns allegations that the Respondent violated RCW 42.17A.260 and
23 RCW 42.17A.305 by failing to timely file reports of Electioneering Communications and
24 Independent Expenditure Political Advertising (C-6 reports).
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1 The staff investigation found that the Respondent violated: (1) RCW 42.17A.260 and
2 RCW 42.17A.305 by failing to timely file a C-6 report disclosing \$76,400 for direct mail,
3 advocacy phone calls and online advertising first presented to the public on October 11, 2013,
4 supporting Kevin Wallace, a Bellevue City Council candidate, and Tim Leavitt, a candidate for
5 Vancouver Mayor in the November 5, 2013 general election; and (2) RCW 42.17A.305 by
6 failing to timely file a C-6 report disclosing \$48,700 for Electioneering Communications first
7 presented to the public on October 17, 2013, for direct mail advertising and related polling and
8 consulting expenses supporting the following candidates for the offices listed: Nancy Backus,
9 for Mayor, City of Auburn; Dino Davis, for City Councilmember, City of Bremerton; Don
10 Barnes, for Port Commissioner, Port of Kennewick; Steve Hastings, for City Councilmember,
11 City of Puyallup; John Hopkins, for City Councilmember, City of Puyallup; and Chris McNutt,
12 for City Councilmember, City of Puyallup in the November 5, 2013 general election.

13 The Commission was provided with a Report of Investigation dated November 24,
14 2014 (and exhibits); a Notice of Administrative Charges dated November 24, 2014; and a staff
15 memo dated November 24, 2014.

16 **Stipulation**

17 The parties jointly submitted a signed Stipulation as to Facts, Violations, and Penalty
18 (Stipulation). Mr. Stutzman summarized the Stipulation and comparable cases, and asked the
19 Commission to accept the Stipulation. Mr. Lamb urged the Commission to accept the
20 Stipulation.

21 After deliberating, the Commission voted 4-0 to accept the Stipulation as to Facts,
22 Violations, and Penalty.

23 **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

24 Based upon the Stipulation, which is hereby attached and incorporated by reference, the
25 Commission finds and concludes:
26

- 1 1. The Jurisdiction, Facts, Legal Authority, and Violations are established as provided in
2 the Stipulation.
- 3 2. Respondent committed violations of RCW 42.17A.260 and RCW 42.17A.305 as
4 provided in the Stipulation.
- 5 3. A civil penalty of \$10,000 with \$7,500 suspended on the conditions enumerated below is
6 an appropriate resolution of this matter with respect to the Respondent.
7

8 II. ORDER

9 Based upon the findings and conclusions, the Commission orders that:

- 10 1. The Stipulation is accepted.
- 11 2. The Respondent National Association of Realtors Fund is assessed a civil penalty of
12 \$10,000. Of the total penalty amount, \$7,500 is suspended based on Respondent's
13 compliance with the following conditions:
 - 14 a. Respondent is not found to have committed further violations of RCW 42.17A
15 within four years from the date of the Commission's Final Order in this matter;
16 and
17
 - 18 b. Respondent pays the non-suspended portion of the penalty (\$2,500) within 30
19 days from the date of entry of the Commission's Final Order in this matter.
- 20 3. In the event Respondent fails to meet either of the terms in paragraph 2, the suspended
21 portion of the penalty (\$7,500) shall become due without any further intervention of the
22 Commission.
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24 The Executive Director is authorized to enter this order on behalf of the Commission.

25 So ORDERED this 19th day of December, 2014.
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WASHINGTON STATE PUBLIC
DISCLOSURE COMMISSION

FOR THE COMMISSION:

Andrea M. Doyle
Andrea McNamara Doyle
Executive Director

ATTACHMENTS

- (1) Stipulation as to Facts, Violation, and Penalty
- (2) Appeals and Enforcement of Final Orders

Copy of this Order sent to:
National Assn of Realtors Fund
C/O Mark C. Lamb
12900 NE 180th Street, Suite 235
Bothell, WA 98011

I, Jacob Berkey certify that I
mailed a copy of this order to the
Respondent/Applicant at his/her respective
address postage pre-paid on the date stated
herein. **EMAIL**

**BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON**

In the Matter of Enforcement Action
Against:

National Association of Realtors Fund

Respondents.

Case No. 14-009

**STIPULATION AS TO FACTS,
VIOLATIONS AND PENALTY**

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Andrea McNamara Doyle, and Respondent National Association of Realtors Fund (NAR Fund), through its counsel Mark Lamb, submit this Stipulation as to Facts, Violations and Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event that the Commission suggests modification to any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission.

JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the state campaign finance and disclosure laws; RCW 34.05, the Administrative Procedure Act; and WAC 390.

FACTS

1. The National Association of Realtors Fund (NAR Fund) is organized as a tax-exempt organization under Section 527 of the Internal Revenue Code. It receives all of its funding from the National Association of Realtors (NAR) and does not solicit or accept contributions from others.
2. NAR Fund was required to deliver a report of Independent Expenditures (PDC form C-6) within twenty-four hours of, or on the first working day after, the date it first published, mailed, or otherwise presented Independent Expenditure political advertising to the public

within 21 days of an election, valued at \$1,000 or more. NAR was required to electronically file a report of Electioneering Communications (PDC form C-6) within twenty-four hours of, or on the first working day after, the date it first broadcast, transmitted, mailed, erected, distributed, or otherwise published an Electioneering Communication within 60 days of an election.

NAR Fund Failed to Timely Report \$76,400 for Electioneering Communications and Independent Expenditure Political Advertisements

3. NAR Fund spent \$76,400 for communications first presented to the public on October 11, 2013, including direct mail Electioneering Communications, and Independent Expenditure advocacy phone calls and online advertising supporting Kevin Wallace, a Bellevue City Council candidate, and Tim Leavitt, a candidate for Vancouver Mayor. NAR Fund was required to electronically file a C-6 report by October 14, 2013 for the direct mail Electioneering Communications, and was required to deliver a C-6 report by the same day for the Independent Expenditure telephone calls and online advertising. NAR Fund faxed a C-6 report 16 days later on October 30, 2013, six days before the general election.
4. The October 11, 2013 C-6 report disclosed NAR Fund's Independent Expenditure telephone calls and online advertising 16 days late. The report also disclosed NAR Fund's direct mail Electioneering Communications, though not electronically as required.
5. NAR Fund electronically re-filed this C-6 report with the PDC on November 5, 2013, the date of the general election. This electronic report disclosed NAR Fund's direct mail Electioneering Communications 22 days late.

NAR Fund Failed to Timely Electronically Report \$48,700 for Electioneering Communications

6. NAR Fund spent \$48,700 for Electioneering Communications first presented to the public on October 17, 2013, for direct mail advertising and related polling and consulting expenses supporting the following candidates for the offices listed:

/

- Nancy Backus, for Mayor, City of Auburn;
- Dino Davis, for City Councilmember, City of Bremerton;
- Don Barnes, for Port Commissioner, Port of Kennewick;
- Steve Hastings, for City Councilmember, City of Puyallup;
- John Hopkins, for City Councilmember, City of Puyallup; and
- Chris McNutt, for City Councilmember, City of Puyallup.

7. NAR Fund was required to electronically file a C-6 report by October 18, 2013. NAR Fund faxed a C-6 report disclosing \$48,700 for Electioneering Communication expenditures 12 days later on October 30, 2013. However, NAR Fund did not electronically file its C-6 report, as required, until November 5, 2013, 18 days late and on the date of the general election.

STATUTORY AND RULE AUTHORITY

RCW 42.17A.005(19)(a) defines "Electioneering communication" to mean any broadcast, cable, or satellite television or radio transmission, United States postal service mailing, billboard, newspaper, or periodical that: (i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name; (ii) Is broadcast, transmitted, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and (iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

RCW 42.17.005(26) states, (26) "Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of *eight hundred dollars or more. A series of expenditures, each of which is under eight hundred dollars, constitutes one independent expenditure if their cumulative value is eight hundred dollars or more. * \$800 has been revised to \$950.

RCW 42.17.260 states in part, (1) The sponsor of political advertising who, within twenty-one days of an election, publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more shall deliver, either electronically or in written form, a special report to the commission within twenty-four hours of, or on the first working day after, the date the political advertising is first published, mailed, or otherwise presented to the public.

RCW 42.17A.305 requires that the sponsor of an electioneering communication shall report to the commission within twenty-four hours of, or on the first working day after, the date the electioneering communication is broadcast, transmitted, mailed, erected, distributed, or otherwise published, and include: (a) Name and address of the sponsor; (b) Source of funds for the communication, (c) Name and address of the person to whom an electioneering communication related expenditure was made; (d) A detailed description of each expenditure of more than one hundred dollars; (e) The date the expenditure was made and the date the electioneering communication was first broadcast, transmitted, mailed, erected, distributed, or otherwise published; (f) The amount of the expenditure; and (g) The name of each candidate clearly identified in the electioneering communication, the office being sought by each candidate, and the amount of the expenditure attributable to each candidate.

VIOLATIONS

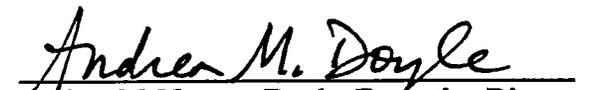
8. Based on the Stipulation of Facts set forth above, Respondent National Association of Realtors Fund violated RCW 42.17A as follows:
 - A. RCW 42.17A.260 and RCW 42.17A.305 by failing to timely file C-6 reports of Electioneering Communications and Independent Expenditure Political Advertising disclosing \$125,100 in direct mail, advocacy phone calls, online advertising, and related expenses supporting eight local candidates in the November 5, 2013 general election.

PENALTY

9. Based upon the Stipulation of Facts and Violations set forth above, Respondent National Association of Realtors Fund agrees to pay a total civil penalty of \$10,000 with \$7,500 suspended on the following conditions:

- a. National Association of Realtors Fund is not found to have committed any violations of RCW 42.17A within four years of the date of the final order in this matter.
- b. National Association of Realtors Fund pays the non-suspended portion of the penalty (\$2,500) within 30 days of the date of the final order.

10. Respondent National Association of Realtors Fund affirms its intention to comply in good faith with the provisions of RCW 42.17A in the future.


Andrea McNamara Doyle, Executive Director
Public Disclosure Commission

12/3/14
Date Signed


Mark Lamb, Counsel for
National Association of Realtors Fund

12-3-14
Date Signed

INFORMATION ABOUT APPEALS AND ENFORCEMENT OF FINAL ORDERS

APPEALS

RECONSIDERATION OF FINAL ORDER – BY THE COMMISSION

Any party may ask the Commission to **reconsider** a final order. Parties seeking reconsideration must:

- Make the request in writing;
- Include the specific grounds or reasons for the request; and
- Deliver the request to the PDC office so it is received within **TWENTY-ONE (21) BUSINESS DAYS** of the date that the Commission serves this order upon the party. *WAC 390-37-150*. (Note that the date of service by the Commission on a party is considered the date of mailing by U.S. mail if the order is mailed, or the date received if the order is personally served. RCW 34.05.010(19). The Commission orders are generally mailed via U.S. mail.)

Within twenty (20) business days after the petition for reconsideration is filed, the Commission may either act on the petition or notify the parties in writing of the date by which it will act. If neither of these events happens within twenty business days, the Commission is deemed to have denied the petition for reconsideration. *WAC 390-37-150*.

A Respondent is not required to ask the Commission to reconsider a final order before seeking judicial review by a superior court. *RCW 34.05.470(5)*.

FURTHER APPEAL RIGHTS – SUPERIOR COURT

A final order issued by the Public Disclosure Commission is subject to **judicial review** under the Administrative Procedure Act (APA), chapter 34.05 RCW. *RCW 42.17A.755*. The procedures are provided in the APA at RCW 34.05.510 - .574.

ENFORCEMENT OF FINAL ORDERS

If **enforcement** of a final order is required, the Commission may seek to enforce a final order in superior court under RCW 42.17A.755 - .760, and recover legal costs and attorney's fees if a penalty remains unpaid and no petition for judicial review has been filed. This action will be taken without further order by the Commission.