



MASS. JK
1991.5
114
D58
2004

DISPOSITION AGREEMENT

This disposition agreement (Agreement) entered into on November 10, 2004 by and between the Office of Campaign and Political Finance (OCPF), The Committee to Elect Kathi-Anne Reinstein (the "Committee"), and Kathi-Anne Reinstein (the "Candidate"), in which the parties mutually agree, for the purposes of this Agreement only, as follows:

I. INTRODUCTION

1. The Committee, at all times relevant to this Agreement, was a duly organized political committee subject to the provisions of M.G.L. c. 55, the Massachusetts campaign finance law.
2. The Committee was organized to promote the nomination and election of the Candidate to public office.
3. OCPF has the power and authority to review and investigate the legality, validity, completeness and accuracy of all reports required to be filed and all actions required to be taken by political committees, candidates, campaign treasurers and any other person pursuant to M.G.L. c. 55 or any other laws of the commonwealth relative to campaign contributions and expenditures.
4. The political contributions, expenditures and other activities noted in this Agreement are subject to the provisions of M.G.L. c. 55 and the regulations issued by this office in accordance with M.G.L. c. 55.

II. FACTS

1. The Committee received contributions and made expenditures between 2001 and 2003 to promote the election of the Candidate to the office of State Representative.
2. On May 10, 2004, the Candidate met with OCPF staff to resolve outstanding issues stemming from OCPF's 2001 and 2002 legislative audits. During the meeting, the Candidate informed the Director that she was aware that the Committee had also under-reported expenditures in 2003. The Candidate offered to provide OCPF with Committee bank records for the period between January 2001 through December 2003 in order to reconcile discrepancies between the Committee's actual activity and its campaign finance reports, and determine what amendments, if any, needed to be made to the Committee's reports.
3. OCPF reviewed the records provided, and compared the bank activity to the Committee's reports. The results of the review are summarized in the following paragraphs.
4. In 2001, no disclosure was provided for approximately \$4,000 in receipts and \$2,500 in expenditures. There were also minor discrepancies between the receipts and expenditures reported in 2002 as compared to the money deposited and withdrawn from the Committee's bank account during that calendar year.
5. In November 2001, the Candidate began using a debit card issued by the Committee's bank to make expenditures on a regular basis from the Committee's account. These expenditures

continued through 2003. At the time, there was no authority in the Massachusetts campaign finance law or regulations for a candidate or committee to use a debit card to make campaign expenditures. It was not until May 2004 that OCPF promulgated 970 CMR 2.06(7), which authorized non-depository candidates to use a debit card linked to a campaign account to pay for expenditures.

6. In January 2002, the Candidate also began using the Committee's debit card to make frequent cash withdrawals, which exceeded \$50, from ATMs. At the time, there was no authority in the Massachusetts campaign finance law or regulations for a candidate or committee to use a debit card to withdraw cash, and that continues to be the case. The recent debit card expenditure regulation at 970 CMR 2.06(7) specifically states that debit cards may not be used by a candidate or committee to obtain cash. In lieu of cash withdrawals, campaign finance regulations at 970 CMR 2.10 allow a committee to reimburse a candidate or other individual with a committee check for campaign expenses made out-of-pocket using personal funds.

7. The Candidate's ATM usage increased over time, with cash withdrawals totaling about \$4,784 in 2002 and about \$6,076 in 2003. These transactions, however, were not reflected as cash withdrawals on the Committee's 2001-2003 campaign finance reports. Instead, the Committee disclosed the underlying expenditures that were made with the cash withdrawn. The Candidate informed OCPF that she frequently withdrew cash from the Committee's account to reimburse for expenses incurred to hold regular "office" hours and other meetings with staff and constituents in local establishments, such as coffee shops, that do not generally accept other forms of payment. The nature of the expenditures reflected on the Committee's reports, which seem to represent the cash payments, appear consistent with this explanation, as many of the expenditures are under \$50 payments to local vendors. OCPF has no reason to believe that the Candidate or Committee withdrew cash from the Committee's account for personal use.

8. In 2003, there was significant lack of disclosure regarding Committee expenditures. Specifically, the Committee failed to report any expenditures for the period between May 1, 2003 and October 22, 2003, when it had actually spent approximately \$15,260. Besides frustrating timely disclosure of actual campaign expenditures, the failure to report such substantial activity resulted in an inflated ending balance on the Committee's 2003 year-end report. The report indicated that the Committee had approximately \$27,833 in its account, when its actual balance was closer to \$11,135.

9. Even taking into account the undisclosed expenditures, the Committee's 2003 year-end report still appeared to reflect approximately \$1,437 more than was actually on deposit in the Committee's account at that time.

III. CONCLUSIONS

1. DISCLOSURE OF RECEIPTS AND EXPENDITURES, M.G.L. c. 55, § 18

M.G.L. c. 55, § 18 requires candidates and committees to file periodic reports reflecting campaign finance activity, including a complete and accurate account of all contributions received and expenditures made during the relevant reporting period. OCPF has concluded that the Candidate and the Committee violated M.G.L. c. 55, § 18 by (1) failing to accurately disclose receipts and expenditures in 2001 and 2002; (2) failing to disclose over \$15,000 in expenditures in 2003; and (3) failing to disclose the cash withdrawals made using the Committee's debit card between 2001 and 2003 as reimbursements pursuant to 970 CMR 2.10.

2. FORM OF EXPENDITURES, M.G.L. c. 55, § 9

M.G.L. c. 55, § 9, states, in relevant part, that "No individual, candidate, political committee, or person acting on behalf of said individual, candidate, or political committee, shall make an expenditure for an amount exceeding \$50 except by check or by credit card." OCPF has concluded that the Candidate and the Committee violated M.G.L. c. 55, § 9 each time the Committee's debit card was used to withdraw cash in excess of \$50.

3. UNAUTHORIZED EXPENDITURES, M.G.L. c. 55, § 7

By making cash withdrawals from the Committee's account that exceeded \$50, OCPF has concluded that the Candidate and the Committee violated M.G.L. c. 55, § 7, which states, in relevant part, that "[n]o person ... shall in connection with any nomination or election ... expend or disburse [money or its equivalent] or promise to expend or disburse the same, except as authorized by this chapter."

IV. RESOLUTION

In order to resolve the matters now before OCPF the parties agree, pursuant to 970 CMR 3.07(1) and M.G.L. c. 55, § 3, as follows:

1. The parties agree that \$2,000 will be paid to the Commonwealth of Massachusetts in the nature of a civil forfeiture. The Candidate has opted to pay this amount using personal, rather than Committee, funds. As such, the Candidate will pay \$200 upon the execution of this Agreement, with \$200 due on or before the first day of each of the four months thereafter. The Director will suspend the remaining payment of \$1,000 upon the condition that the Candidate and Committee substantially comply with all of the requirements of this Agreement.

2. Within 30 days of the date of this Agreement, the Candidate and the Committee agree to electronically amend the Committee's 2003 year-end campaign finance report as follows: (1) to disclose all of the expenditures that appeared on the Committee's bank statements between May 2 and November 6, 2003, but were not included on the Committee's original report; (2) to utilize CPF Form R1 to report all expenditures made from the proceeds of cash withdrawals in

2003; and (3) to include on Schedule B a one-time negative adjustment of approximately \$1,437 in order to reconcile the Committee's reported balance with its actual balance as of the end of the reporting period.

3. The Candidate and the Committee agree to comply with M.G.L. c. 55, § 18 in the future. Specifically, in addition to complying with all other requirements of the statute, the Candidate and the Committee agree that the Committee will create and maintain sufficient accounting procedures to ensure the accurate data entry and reporting of all campaign finance information to OCPF.

4. The Candidate and the Committee agree to no longer use the Committee's debit card to obtain cash. For any expenditure not made by check or credit card pursuant to M.G.L. c. 55, § 9, the Candidate and Committee agree to utilize the Committee's debit card to pay vendors directly for goods or services as authorized by 970 CMR 2.06(7). In the case of reimbursements, the Candidate and the Committee agree that the Committee will issue reimbursements pursuant to 970 CMR 2.10 by committee check within two weeks of the underlying expenditure(s) or no less than once a month.

5. The Candidate and the Committee agree to provide OCPF with copies of relevant bank statements with campaign finance reports filed in 2004 and 2005. In 2005, the Committee agrees to file a mid-year campaign finance disclosure report on paper with OCPF. The report dates will be from January 1 to June 30, 2005, and the report will be due at OCPF no later than July 20, 2005. The Committee's 2005 year-end report will then be electronically filed as required by law no later than January 20, 2006, encompassing activity for the entire calendar year.

6. The Candidate and Committee agree that all funds received by the Committee will be deposited in the Committee's account within two weeks of receipt, and that all contributor checks received will be photocopied prior to deposit and retained with the Committee's records.

7. OCPF agrees not to refer any party to this Agreement to any other governmental agency, including without limitation, the Office of the Attorney General, for any of the specific instances of violations of the provisions of M.G.L. c. 55 set forth in Section II of this Agreement.

8. OCPF may, at any time, review compliance with this Agreement. If it reasonably believes that this Agreement or any related requirement thereof has been violated, OCPF may, notwithstanding the provisions of the foregoing paragraph and any payments by the Candidate or Committee in conjunction with this Agreement, proceed with any action consistent with M.G.L. c. 55 or otherwise authorized by law.

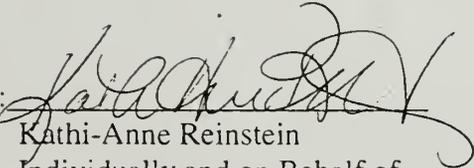
9. This Agreement shall be binding upon the parties thereto and their successors.

10. This Agreement constitutes a complete disposition of the matters specifically addressed herein.

11. The parties have entered into this Agreement, knowingly and voluntarily, in an effort to resolve all matters set forth in the Agreement.

12. This Agreement is a public record under M.G.L. c. 4, § 7 and shall be subject to public inspection as required by M.G.L. c. 66, § 10.

OFFICE OF CAMPAIGN AND
POLITICAL FINANCE

By: 
Kathi-Anne Reinstein
Individually and on Behalf of
The Committee

By: 
Michael J. Sullivan
Director