

CITY OF OAKLAND
Public Ethics Commission

Whitney Barazoto, Executive Director

TO: Public Ethics Commission
FROM: Kellie F. Johnson, Enforcement Chief
Simon Russell, Investigator
DATE: September 26, 2019
RE: Case No. 15-03; *In the Matter of Melanie Shelby*

INTRODUCTION

On or around January 2, 2015, the Public Ethics Commission (“PEC”) received a formal complaint alleging that on August 23, 2013, both Melanie Shelby and her company, Gray, Greer, Shelby, and Vaughn (“GGSV”), made \$700 contributions (the legal maximum at the time) to City Councilmember Desley Brooks. According to the complainant, these contributions should have been aggregated under the Oakland Campaign Reform Act (“OCRA”), resulting in a single contribution that was \$700 over the legal limit.

Also on or around January 2, 2015, the Commission received a formal complaint alleging that on October 3, 2014, Shelby and GGSV made \$700 contributions (the legal maximum at the time) to City Council candidate Dana King. According to the complaint, these contributions should have been aggregated under OCRA, resulting in a single contribution that was \$700 over the legal limit.

SUMMARY OF LAW

OCRA limits the total dollar amount that a person may contribute to a candidate for city office. For the November 4, 2014, election, a person was prohibited from making contributions in excess of \$700 to any single candidate for city office who accepted the voluntary expenditure ceiling.¹

A “person” is defined under OCRA as any individual, proprietorship, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, committee, or any other organization or group of persons acting in concert.²

Per OCRA, there are various scenarios under which contributions made by multiple persons shall be aggregated. One such scenario (an “ownership or management” theory) states that contributions from different entities shall be aggregated if they share common ownership or management.³

¹ Oakland Municipal Code (“OMC”) section 3.12.050. All statutory references and discussions of law pertain to the OCRA’s provisions as they existed at the time of the violations.

² OMC section 3.12.040.

³ OMC §3.12.080(A)(1)-(4). More precisely, contributions from different entities shall be aggregated under an “ownership or management” theory if any of the following apply: the entities share the majority of members of their

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Another scenario (a “direction and control” theory) states that the contributions of an entity whose contributions are directed and controlled by any person shall be aggregated with contributions made by any other entity whose contributions are directed and controlled by that same person.⁴

FINDINGS

At all times relevant to this case, Shelby was the sole registered manager of GGSV. In an interview with the PEC, Shelby stated that she has always been the sole “managing director” of GGSV throughout its existence. When asked to explain how she fit into the overall leadership structure of the company, Shelby described herself as providing “leadership” for the rest of the company.

Desley Brooks was a successful incumbent candidate for Oakland City Council in the November 4, 2014, election, and accepted the voluntary expenditure ceiling for the November 4, 2014, election. At all relevant times, *Friends of Desley Brooks for City Council 2014* was Brooks’ controlled committee. Shelby made two contributions, one for \$700 from her personal account and another for \$700 from her business account, to the Brooks campaign on August 23, 2013.

Dana King was an unsuccessful candidate for Oakland City Council in the November 4, 2014, election and accepted the voluntary expenditure ceiling for the November 4, 2014, election. At all relevant times, *Dana King for City Council 2014* was King’s controlled committee. Shelby made two contributions, one for \$700 from her personal account and another for \$700 from her business account, to the Brooks campaign on October 3, 2014.

The contributions at issue in this case are the following:

Date Made	Amount	To:	From:
08/23/2013	\$700	Friends of Desley Brooks	Melanie Shelby
08/23/2013	\$700	Friends of Desley Brooks	GGSV
10/03/2014	\$700	Dana King For City Council 2014	Melanie Shelby
10/03/2014	\$700	Dana King For City Council 2014	GGSV

In an interview with the PEC, Shelby confirmed that she or GGSV made all of the contributions at issue in this case. She also stated that all contributions from GGSV required the approval of two people: herself, and the Chief Operating Officer (a position held by Kimberly Register Childs in 013-2014). No contributions from GGSV could be, or were, made unless both Shelby and Childs agreed to it. Kimberly Childs did not respond to the PEC investigator confirming or denying the respondent’s representation.

boards of directors; the entities share three or more, or a majority of, officers; the entities are owned or controlled by the same majority shareholder or shareholders; or the entities are in a parent-subsidiary relationship. *Id.*

⁴ OMC § 3.12.080(C).

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Shelby ran for Oakland City Council in 2010. In an interview with the PEC in 2018, she was unable to recall if she ever received any training or information packets from the City of Oakland regarding local campaign finance law. She also could not recall whether she personally completed her committee's Form 460s or did any research of her own into local campaign finance law during her campaign. She was aware that the local contribution limit was \$700 at the time she and GGSV made the contributions at issue in this case.

When asked why she believed it was legal for both her and GGSV to make contributions that, when aggregated, would exceed the local contribution limit, Shelby said that it was because her understanding was that these contributions were the result of "two separate accounts, two separate decision-making processes." This understanding was based on her experience of the similar practice of other people in Oakland making both personal and business contributions; it was not derived from research into local law. She does not recall if she consulted with an attorney before making the contributions in this case. GGSV does not have a compliance officer or general counsel.

Shelby did not discuss these contributions with Brooks, King, or their campaign staff.

The King committee terminated on June 30, 2015. The Brooks campaign was terminated in 2019.

PENALTY ANALYSIS

Count 1: Making aggregated contributions over the legal limit, OCRA 3.12.050, 3.12.080

Per the PEC's penalty guidelines, the baseline penalty for a violation of the contribution limit is \$1,000 plus the amount unlawfully given. The maximum penalty is \$5,000 or three times the amount of the unlawful contribution, whichever is greater. Here, the amount of the unlawful contributions is \$1,400, which brings the baseline penalty to \$2,400.

The penalty guidelines also state that a warning letter may be used for any minor violations without any aggravating circumstances. A warning letter is a public acknowledgement by the PEC via letter to the respondent that explains the allegation and allows the PEC to create a record of "a potential or proven low-level violation." A warning letter may be used to address a violation "where the evidence demonstrates that a monetary penalty is not justified, or in the interest of justice." A warning letter will not be available where the respondent has had a prior violation of the same or similar type.

In determining an appropriate penalty amount, the PEC may consider the following aggravating and mitigating factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;

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2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

The respondent has argued, as mitigation, that the contributions to the Brooks campaign should be dismissed because they occurred outside of the statute of limitations. To the contrary, no statute of limitations applies to either contribution that the respondent made because under the 2014 Campaign Reform Act, section 3.12.280 (f) provides that, "no complaint alleging a violation of any provision of this Act shall be filed more than two years after the date the violation occurred." In this case, the contribution that was made in violation of the Campaign Reform Act occurred August 23, 2013. The PEC sent a notice of the complaint and investigation on January 12, 2015, to the respondent, she received notice of the violation well under the two-year limitation.

The respondent has also argued that she should not be found in violation because she did not knowingly or negligently violate the Campaign Reform Act. Staff disagrees. Shelby herself was once a candidate for office in Oakland (2010, just three years before she made this contribution), and therefore had a duty to review her 460s for compliance with state and local campaign law. As a candidate, Shelby was expected to perform due diligence in verifying that her campaign was complying with OCRA, including the aggregation rules. She therefore cannot reasonably argue that she did not know, or could not reasonably be expected to know, about OCRA's aggregation rule. In addition, mere ignorance of the law is not a defense to OCRA provisions.

CONCLUSION

OCRA states that contributions from an entity shall be aggregated with those of an individual, if that same individual "control[s]" the "contributions or expenditure activity" of that entity. Here, according to Shelby, she is the sole managing director of GGSV. The other relevant basis in OCRA upon which these contributions might be aggregated, is if Shelby "ha[d] more than a fifty percent share" in GGSV at the time these contributions were made. The GGSV's business filings with the Secretary of State, indicate that Shelby was the sole "manager" of GGSV at the time these contributions were made. Shelby also admits that she provided "leadership" for GGSV at the time.

Here, staff recommends issuing a warning letter to Shelby rather than pursuing a monetary fine, in the interest of justice. Shelby has no prior violations or demonstrated knowledge of the rules. While Shelby was once a candidate for local office and arguably should know the rules, she attests that

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she did not know that contributions from both a personal account and a business operation could be aggregated for purposes of contribution limits. Prior to 2014, there had been a lack of training for candidates regarding campaign finance rules, and this is consistent with Shelby's assertions that she does not recall receiving information about this rule. All of the contributions were reported publicly by the committees; there was no intent to conceal. Shelby cooperated with Commission staff by responding to staff questions. The amount of time that has passed since the alleged violations occurred, coupled with the fact that neither of the involved candidates is still in office, also significantly diminishes the public interest in moving forward with this case. Lastly, nothing in the history of this case indicates that any of the delays in this case were due to bad-faith actions of either party.

As for aggregation violations by candidates, the PEC's past enforcement practice for addressing first-time aggregation violations by candidate-controlled committees has alternated between issuing a warning letter, so long as the contributions were timely and accurately reported (*see* Case No. 15-02a) or seeking forfeiture of the overage amount (Case No. 14-25b).

As for why we are not obtaining forfeiture of the contributions made over the limit, the passage of time means that the King and Brooks committee is no longer in existence, so there is nothing for them to disgorge.

RECOMMENDATION

Staff recommends that we issue warning letters to Shelby for making the aggregate contributions.