

# Item #6a - 17-18, 18-17 Staff Report



Michael MacDonald, -Chair  
Jerett Yan, Vice-Chair  
Avi Klein  
Ryan Micik  
Arvon Perteet  
Joseph Tuman

Whitney Barazoto, Executive Director

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TO: Public Ethics Commission  
FROM: Kellie F. Johnson, Enforcement Chief  
DATE: August 17, 2021  
RE: Case Analysis for PEC Complaint No(s). 17-18 & 18-17; In the matter of Darrel Carey, prepared for the September 2, 2021, Public Ethics Commission Meeting

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On August 28, 2017, the City of Oakland Public Ethics Commission (PEC) Campaign Filing Officer, Suzanne Doran emailed to Darrel Carey the principal officer of East Bay Small Business Council Committee, the first warning “Notice of Non-filer Non-compliance” for failure to file a Semi-Annual Campaign Statement, a Pre-election Report, and an incomplete Termination form between the years 2015-2017. On March 15, 2018, the Filing Officer referred the matter to PEC Enforcement Unit for Non-filer enforcement. After investigating the Respondent’s campaign filings, PEC staff determined that Darrel Carey and his committee, despite multiple warnings, did not electronically file the required campaign information pursuant to section 3.12.340 (A) of the Oakland Campaign Reform Act (OCRA).

After close consideration of all the facts and the law, and the reasons explained in this memorandum, Staff finds probable cause that a violation occurred and recommends that the Commission schedule the matter for a formal hearing.

## SUMMARY OF LAW:

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

**O.M.C. § 3.12.340 (A)** OCRA requires that any person required by State or local law to file a campaign statement or report with the local filing officer, shall file the statement or report in an electronic format with the Public Ethics Commission.

## TIMELINE OF EVENTS:

- 8/25/2017 PEC Filing Officer spoke with the Respondent in person and gave a warning notice of Non-filer Non-compliance to the Respondent.
- 8/28/2017 PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
- 9/11/2017 PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.

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9/13/2017	PEC Filing Officer spoke with the Respondent and gave notice of Non-filer Non-compliance to the Respondent.
9/15/2017	PEC Filing Officer spoke with the Respondent and notice of Non-filer Non-compliance to the Respondent.
1/05/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
2/06/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
2/13/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent.
2/15/2018	PEC Filing Officer spoke with the Respondent and gave notice of Non-filer Non-compliance to the Respondent.
2/16/2018	PEC Filing Officer emailed notice of Non-filer Non-compliance to the Respondent and emailed notice of Non-filer Non-compliance.
2/26/2018	PEC Filing Officer spoke with the Respondent and gave notice of Non-filer Non-compliance to the Respondent.
7/24/19	PEC Enforcement via formal letter notified the Respondent that the matter was referred for pursuant to Enforcement Procedure and offered to the Respondent an early resolution settlement offer.
10/30/2020	PEC Enforcement notified Respondent via formal letter in the absence of a response the matter will be referred to the Commission pursuant to formal Enforcement Procedures.

### **FACTUAL SUMMARY AND ANALYSIS:**

Between 2015-2018, the Respondent was the principal officer for the East Bay Small Business Council Committee. Around 2018, the Committee stopped its election activities. After the Committee ceased activities it failed to file a Semi-Annual campaign finance statement(s) for the following periods:

1. June 1, 2015 through December 31, 2015;
2. January 1, 2016 through June 30, 2016;
3. October 23, 2016 through December 31, 2016;
4. January 1, 2017 through June 30, 2017; and

In addition, the Committee failed to file a Pre-election campaign finance statements between the following dates:

1. July 1, 2016 through September 24, 2016;
2. September 25, 2016 through October 22, 2016.

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The Committee also failed to properly file a Termination 410 form on or between July 1, 2017 and September 13, 2017. Despite PEC best efforts to gain the Respondent's compliance, the Respondent did not submit the required campaign filing.

On March 15, 2018, the Filing Officer referred the matter to the PEC Enforcement unit. Enforcement notified the Respondent by formal letter that a Non-filer Non-compliance complaint was submitted for formal investigation. The Respondent did not respond to Enforcement.

### **Contact Efforts**

Pursuant to California State and Local candidacy filing requirements, it is the responsibility/obligation of a candidate for State or Local Office to provide correct contact information including a current mailing address and any available electronic mail address at which the candidate could be reached or receive correspondence relating to the candidate's campaign.

Despite the candidate's requirement to provide current contact information, the PEC Staff used its best efforts to locate any and all alternative addresses and email addresses for the Respondent. The PEC investigator conducted a locate search for the Respondent's address and found that the Respondent moved from the original address that was provided on his required Committee filings. The Staff mailed a certified notice of Non-filer letter to the address identified by the locate search. The PEC sent several email notices to the Respondent but received no response. Staff confirmed that the email address that the Filing Officer used to communicate with the Respondent on prior occasions, was the same email address that Staff used to forward copies of the Non-filer Non-compliance notice.

### **VIOLATION(S):**

The Respondent violated the following Oakland Municipal Code:

#### **Count 1: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter**

On or about February 1, 2019, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Semi-Annual Campaign Statement for the period of June 1, 2015- December 31, 2015.

#### **Count 2: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter**

On or about August 1, 2016, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Semi-Annual Campaign Statement for the period of January 1, 2016- June 30, 2016.

#### **Count 3: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter**

On or about September 29, 2016, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a First Pre-Election Report for the period of July 1, 2016- September 24, 2016.

#### **Count 4: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter**

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On or about October 27, 2016, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Second Pre-Election Report for the period of September 25, 2016- October 22, 2016.

### **Count 5: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter**

On or about January 31, 2017, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Semi-Annual Campaign Statement for the period of October 23, 2016- December 31, 2016.

### **Count 6: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter**

On or about July 31, 2017, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Semi-Annual Campaign Statement for the period of January 1, 2017-June 30, 2017.

### **Count 7: Failure to File Campaign Statement/Report Non-Filer and Non-Reporter**

On or about January 31, 2018, Respondent, Darrel Carey, Principal Officer of the East Bay Small Business Council Committee, violated O.M.C. 3.12.340 (A) of the Oakland Campaign Reform Act when he failed to file a Semi-Annual Campaign Statement or Termination.

### **PENALTIES:**

Oakland Campaign Reform Act authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three times the amount not properly reported (whichever is greater), per violation of the Oakland Campaign Reform Act. The Base Level penalty for this violation is \$1,000 plus 1% of all financial activity not timely reported.

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

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

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The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an enforcement action or impose a penalty

### **Aggravating Factors**

Here, the circumstances of the Respondent's conduct establish aggravating factors that should increase the severity of the penalty:

1. The Respondent had demonstrated knowledge of the rule and was aware of the filing obligations.

### Mitigating Factors

1. Respondent does not have prior Public Ethics Commission Violations.

### **RECOMMENDATION:**

The information in this memorandum establishes probable cause that a violation occurred; therefore, PEC Staff recommends the Commission schedule this matter for formal hearing before the full Commission.