

Item #7 - Stipulation and Case Summary

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2 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
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4

5 Petitioner

6 BEFORE THE CITY OF OAKLAND

7 PUBLIC ETHICS COMMISSION
8

9 In the Matter of

) Case No.: 18-03

10 DORIAN GRAY

)
) **STIPULATION, DECISION AND**
) **ORDER**

11 Respondent.
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15 **STIPULATION**

16 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
17 respondent Dorian Gray, agree as follows:

- 18 1. This Stipulation will be submitted for consideration by the City of Oakland Public
19 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 20 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
21 the final resolution to this matter without the necessity of holding an administrative
22 hearing to determine the liability of Respondents;
- 23 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
24 City Charter, Oakland Municipal Code, and Public Ethics Commission Complaint
25 Procedures, including, but not limited to, the right to personally appear at an
26 administrative hearing held in this matter, to be represented by an attorney at their own
27 expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to
28 testify at the hearing, and to have the matter judicially reviewed;

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- 1 4. This Stipulation is not binding on any other law enforcement agency, and does not
2 preclude the Commission or its staff from referring the matter to, cooperating with, or
3 assisting any other government agency with regard to this matter, or any other matter
4 related to it;
- 5 5. Respondent violated the Government Ethics Act by offering to pay an Oakland City
6 Councilmember \$10,000 and provide an all-expense paid trip to Spain for a City
7 employee to obtain a City Marijuana Dispensary Permit for a business associate, in
8 violation of the Oakland Municipal Code section 2.25.070 (A) and 2.25.060 (C)(1).
- 9 6. The attached exhibit (Exhibit- Case Summary) is a true and accurate summary of the
10 facts in this matter and is incorporated by reference into this Stipulation;
- 11 7. The Commission will impose upon Respondents a total administrative penalty in the
12 amount of \$8,000;
- 13 8. A cashier's check from Respondents, in said amount, made payable to the "City of
14 Oakland," is submitted with this Stipulation as full payment of the administrative
15 penalty, to be held by the Commission until the Commission issues its decision and
16 order regarding this matter;
- 17 9. In the event the Commission refuses to accept this Stipulation, it shall become null and
18 void, and within fifteen business days after the Commission meeting at which the
19 Stipulation is rejected, all payments tendered by Respondents in connection with this
20 Stipulation will be reimbursed to them; and
- 21 10. In the event the Commission rejects the Stipulation and a full evidentiary hearing before
22 the Commission becomes necessary, neither any member of the Commission, nor the
23 Executive Director, shall be disqualified because of prior consideration of this
24 Stipulation.

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1 Dated: _____
2
3 Kellie F. Johnson, Enforcement Chief of the City of
4 Oakland Public Ethics Commission, Petitioner

5 Dated: _____
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7 Dorian Gray, Respondent

8 **DECISION AND ORDER**

9 The foregoing Stipulation of the parties to “In the Matter of Dorian Gray,” PEC Case No. 18-
10 03, including all attached exhibits, is hereby accepted as the final Decision and Order of the
11 City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

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15 Dated: _____
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17 James Jackson, Chair
18 City of Oakland Public Ethics Commission
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CASE SUMMARY

INTRODUCTION

In February 2018, the Public Ethics Commission opened a pro-active investigation into the alleged bribery of an Oakland City Councilmember, Larry Reid and City Employee Gregory Minor by Dorian Gray, the Respondent. The Respondent, in an effort to secure a marijuana permit for a business associate, offered to pay the City Councilmember \$10,000 and provide and all-expense paid trip to Spain for Gregory Minor. Local Newspapers had reported that the Oakland City Administrator Sabrina Landreth had referred the report of bribery to the Alameda County District Attorney's Office for criminal investigation.

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.

Bribery

No person shall offer or make... anything of value in exchange for the performance of any official act.¹

Violation of Gift Restriction

GEA § 2.25.060(C)(1): A person shall not offer or make... a gift when it is reasonably foreseeable that the Public Servant or candidate could be influenced by the gift valued at more than \$50 cumulatively to a Public Servant.

Definition- Gift

PRA § 82028(a): "Gift" means any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received.

FACTUAL SUMMARY:

In 2017, about a year after California legalized the sale of marijuana, the City of Oakland crafted an application process for interested businesses/investors to open marijuana dispensaries in the City. Interested parties could apply for a general license or apply for the lottery. The City approved eight dispensaries that year, four by application and four by lottery (the lottery was for equity businesses). More than 100 people applied for the equity dispensary permits.

The Respondent's business associate Aiden Sciandra, (DBA "The Plug) applied for a general permit. Due to the number of applications, it was highly unlikely that Sciandra would be granted a permit.

¹ O.M.C. § 2.25.070.

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1 Around December 17, 2019, the Respondent contacted Councilman Larry Reid and asked him to set up a
2 meeting with Greg Minor (Minor). Minor is the Assistant to the City Administrator in the Nuisance
3 Abatement and Special Activity Permits Division. Councilman Reid called and left a message for Minor
4 to inform him that the Respondent would be contacting him.

5 Around December 19, 2017, the Respondent met with Minor at his office in City Hall. The Respondent
6 told Minor that he was working with a group called "The Plug," that had submitted a general application
7 for a dispensary permit. The Respondent was not a disclosed applicant for a general permit, but Aiden
8 Sciandra applied for a general permit and referenced "The Plug" in his application. The Respondent told
9 Minor that he was working with some people from Spain and that they would be willing to pay for Minor
10 to go to Spain to learn about their cannabis permit process. When Minor questioned the Respondent about
11 the purpose of a paid trip to Spain, the Respondent could not answer. Minor informed the Respondent that
12 it would not be appropriate for him to accept a trip to Spain from the Respondent or his associate.

13 After meeting with the Respondent, Minor contacted City Administrator Sabrina Landreth and advised
14 her that he was offered a trip to Spain. Minor also told other employees that worked on his floor.

15 Within a week of meeting the Respondent, a local newspaper journalist contacted Minor about his
16 interaction with the Respondent. The journalist informed Minor that it was rumored that certain people
17 could get a marijuana dispensary permit through connections with Councilmembers Lynette Gibson-
18 McElhaney or Larry Reid.

19 Later that day, Minor encountered Councilmember Reid and told him about his encounter with the
20 Respondent and informed him of what the journalist said. Councilmember Reid told him that he too was
21 contacted by the Respondent and although he did not know him that well, he knew of him and that the
22 Respondent offered him \$10,000 in an exchange for a dispensary permit.

23 The Respondent had attempted to reach Reid three to four times. Reid did not return his calls. The
24 Respondent showed up at Reid's office to meet with him in person but was turned away. The Respondent
25 was able to obtain Reid's home number and contacted him at home. The Respondent asked Reid for ten
26 minutes of his time. Reid agreed to meet him at his office in City Hall. The Respondent contacted Reid at
27 his office and told Reid he had an envelope with ten-grand with his name on it. Reid told the Respondent
28 that is not how he works. The Respondent told Reid that he and his partner, who was from Spain, was
interested in getting a cannabis license. Reid told the Respondent that he would need to speak to Minor
who is familiar with the City's process on granting dispensary permits. As the Respondent started to leave
Reid's office, he asked Reid if he was sure that he did not want the money. Reid told the Respondent
again that he did not work that way. Reid also contacted the City Administrator to inform her of his
encounter with the Respondent.

On February 1, 2018, The Alameda County District Attorney's Office opened an investigation into the
Respondent's Bribery allegation. An Alameda County Grand Jury indicted the Respondent for Bribery
and related offenses. On or about February 3, 2020, the Respondent entered a plea negotiation in Alameda
County Superior Court on his criminal matter pleading to two counts of Bribery. The sentencing on the
criminal matter was set over until July 31, to allow for completion of community service and resolution of
the Public Ethics Commission (PEC) violations.

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1 As a part of his criminal settlement, the PEC Enforcement Staff agreed to recommend that the PEC
2 impose a penalty of \$8,000.

3 VIOLATIONS:

4 For the reasons stated above, staff submits that there is probable cause to find Dorian Gray violated the
5 following violations of the Government Ethics Act.

6 **Count 1: Making a Bribe in Exchange for Performance of an Official Act**

7 On or between November 1, 2017 through January 31, 2018, Respondent, Dorian Gray, violated
8 O.M.C.2.25.070(A) of the Oakland Government Ethics Act by making an offer to Councilman Larry
9 Reid, a Public Servant/Elected Official, to provide a thing of value (\$10,000) in exchange for the issuance
10 of a City of Oakland Marijuana Dispensary Permit (for the performance of an official act).

11 **Count 2: Violation of Gift Restriction**

12 On or between November 1, 2017 through January 31, 2018, Respondent, Dorian Gray, violated O.M.C.
13 2.25.060(C)(1) of the Oakland Government Ethics Act by making or offering a gift (all-expense paid trip
14 to Spain) when it is reasonably foreseeable that the Public Servant (Greg Minor) could be influenced by
15 the gift valued at more than \$50 cumulatively to a Public Servant.

16 PENALTIES:

17 GEA authorizes the Commission to impose maximum administrative penalties of up to \$5,000, or three
18 times the amount not properly reported or received (whichever is greater), per violation of the Oakland
19 Government Ethics Act.

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

- 22 1. The seriousness of the violation, including, but not limited to, the extent of the public impact or
23 harm;
- 24 2. The presence or absence of any intention to conceal, deceive, or mislead;
- 25 3. Whether the violation was deliberate, negligent, or inadvertent;
- 26 4. Whether the violation was isolated or part of a pattern;
- 27 5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the
28 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;

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1 8. The relative experience of the respondent.

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

8 For serious violations, such as Bribery and violations that do not qualify for a warning letter or the
9 streamlined stipulation program, the PEC will start a penalty amount with a “base-level” amount and then
10 adjust the penalty amount based on mitigating and aggravating factors of the enforcement action.

11 Aggravating Factors

12 Here, the circumstances of Gray's conduct establish several aggravating factors that should increase the
13 severity of the penalty:

- 14 1. The Respondent sought to persuade a public servant in a high-level decision-making position to
15 abuse his position of trust and authority. His willful target and bribery of a Councilman in a
16 position of authority designed to protect the public and the safety of the community posed a great
17 harm to Oakland citizens;
- 18 2. Gray's conduct was deliberate, he singled out two public officials to induce them for a favor for
19 his own personal gain;
- 20 3. His conduct was part of a pattern of conduct that he used on more than one Public Servant; and
- 21 4. Gray failed to take any steps to cure any of the enumerated violations. For example, he did not
22 accept responsibility for his conduct and initially denied publicly that he did anything
23 inappropriate.

24 Mitigating Factors

- 25 1. Gray has no previous history of violations in the City of Oakland;
- 26 2. He has been sanctioned by a separate state authority.

27 CONCLUSION

28 The Respondent should be held accountable by the City of Oakland for offering bribes in violation of the
public's trust. Although not all ethics violations are treated equally, punishments correspond to how bad
an instance of misconduct is viewed in the eyes of the community and in consideration of the harm a
violation may cause. The most severe consequences are normally reserved for cases of bribery and related
violations.

Here, the aggravating factors outweigh the mitigating factors and demonstrate that the Respondent's
failure to comply with the Oakland Government Ethics Act warrants a substantial penalty.

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1 The purpose of administrative penalties like those provided in the GEA is to promote transparency, gain
2 compliance with City ethics requirements and protect the public from persons who have not discharged,
3 will not discharge or are unlikely to properly discharge their professional duties. The public rightfully
4 expects the Commission to enforce the GEA requirements and hold those responsible who fail to comply.

5 **PROPOSED RESOLUTION:**

6 Staff recommends that the Commission impose the following administrative penalties:

7 **Bribery Violation:**

8 Count 1, Bribery is the most serious violation of the Oakland Governmental Ethics Act. Pursuant to the
9 Penalty Guideline, the base-level penalty amount for Bribery is \$5,000, which is also the maximum
10 penalty amount for each bribery violation. Staff recommends a \$5,000 penalty.

11 **Violation of Gift Restriction:**

12 Count 2, is a violation to Oakland's Gift Restrictions. The Penalty Guideline provides the base-level
13 penalty amount for a gift violation is \$1,000. The statutory limit is \$5,000 or three times the unlawful
14 amount, whichever is greater. Based on the aggravating factors in this case, Staff recommends a \$3,000
15 penalty.

16 **RECOMMENDATION:**

17 Staff recommends an administrative penalty in the total amount \$8,000 (\$5,000 for Bribery and \$3,000
18 for the violation of a Gift Restriction).