



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In the Matter of Enforcement
Action Against

Lucy DeYoung

Respondent.

PDC Case No. 14-008

Notice of Administrative Charges

I. Jurisdiction

1. The Public Disclosure Commission (PDC) has jurisdiction over this proceeding pursuant to Chapter 42.17A RCW, the state campaign finance and disclosure laws; Chapter 34.05 RCW, the Administrative Procedure Act; and Title 390 WAC. These charges incorporate the Report of Investigation and all related exhibits by reference.

II. Allegations

2. Staff alleges that Lucy DeYoung violated RCW 42.17A as follows:
 - A. RCW 42.17A.255 by failing to timely file a C-6 report of Independent Expenditures disclosing approximately \$2,905 for a postcard presented to the public on August 29, 2013 opposing Bernie Talmas, a Woodinville City Council candidate, running for re-election in the November 5, 2013 general election. The Independent Expenditure Political Advertising has not been reported.
 - B. RCW 42.17A.255 by failing to timely file a C-6 report of Independent Expenditures disclosing \$298 for advocacy phone calls opposing Mr. Talmas that were presented to the public on October 21, 2013 at a cost of \$298. A C-6 report of Independent Expenditures was filed 105 days late, by facsimile.
 - C. RCW 42.17A.305 by failing to timely file a C-6 report of Electioneering Communications disclosing \$11,740 for direct mail postcards opposing Mr. Talmas.

Four direct mail postcards were presented to the public on September 9, 2013, September 23, 2013, October 7, 2013, and October 18, 2013, each costing \$2,935.05 for a total cost of \$11,740, and were filed 150, 136, 122, and 109 days late, by facsimile.

- D. RCW 42.17A.320 by using the assumed name “Ethical Woodinville” as the sponsor of Independent Expenditure Political Advertising and failing to include the name of the actual sponsor, Lucy DeYoung, and the required language, "No candidate authorized this ad. It is paid for by (name, address, city, state).”
- E. RCW 42.17A.435 by concealing her identity as the source of the Electioneering Communications and Independent Expenditure Political Advertising totaling expenditures of approximately \$14,973 for direct mail and advocacy phone calls opposing Mr. Talmas.

III. Facts

- 3. On March 28, 2013, Bernie Talmas filed a Candidate Registration (C-1 report) declaring his candidacy for re-election to the Woodinville City Council in 2013. Mr. Talmas served as Mayor of Woodinville during 2013.
- 4. At the July 16, 2013 Woodinville City Council meeting, the council discussed amending the language about the removal of the Mayor and Deputy Mayor in the Council’s “Rules of Procedure” in Resolution No. 436. The council also discussed amending the Council’s “Code of Ethics” to add language for a censure process in the Rules of Procedure for a violation of General Decorum.

Direct Mail Postcards and Advocacy Calls

- 5. Between August 29, 2013 and October 21, 2013, Lucy DeYoung sponsored Independent Expenditure Political Advertising and Electioneering Communications that cost approximately \$14,973 for direct mail postcards and advocacy phone calls opposing Bernie Talmas, a Woodinville City Council candidate, running for re-election in the November 5, 2013 general election. Five direct mail postcards were presented to the

public on August 29, 2013, September 9, 2013, September 23, 2013, October 7, 2013, and October 18, 2013, each costing approximately \$2,935.05. Advocacy phone calls were presented to the public on October 21, 2013 at a cost of \$298.

6. A C-6 report of Independent Expenditures was required to be filed by October 28, 2013 for the advocacy phone calls, but was not reported until February 7, 2014, 105 days late, by facsimile. The C-6 report was refiled electronically on March 4, 2014.
7. Four direct mail postcards were presented to the public on September 9, 2013, September 23, 2013, October 7, 2013, and October 18, 2013, each costing \$2,935.05 for a total cost of \$11,740, and were required to be reported on September 10, September 24, October 8, and October 21, 2013. They were reported 109 to 150 days late on February 7, 2014, by facsimile. A C-6 report for these four expenditures was refiled electronically on March 4, 2014.
8. A direct mail postcard was presented to the public on August 29, 2013 opposing Mr. Talmas. A C-6 report of Independent Expenditure Political Advertising disclosing approximately \$2,905 in expenditures was required to be reported on a C-6 report by September 3, 2013, but has not been reported.
9. The direct mail postcards attacked the character and campaign tactics of Mr. Talmas, making the ads subject to only one reasonable interpretation: an exhortation to vote against Mr. Talmas. They were presented to public within 60 days of an election and, in aggregate, cost more than \$1,000.

Sponsor Identification for Postcards/Telephone Calls

10. None of Ms. DeYoung's electioneering communication postcards, her independent expenditure political advertising postcard, or her independent expenditure political advertising telephone calls included a statement of sponsor identification taking the form, "No candidate authorized this ad. It is paid for by (name, address, city, state)." Rather, the postcards identified Ethical Woodinville with a web address and a rented UPS mailing address. The telephone calls identified Ethical Woodinville with a web address

and telephone number. None of the communications identified Ms. DeYoung as their sponsor.

Concealment of Expenditures for Direct Mail and Advocacy Phone Calls

11. Ethical Woodinville is not a registered political committee nor a separate legal entity of any kind. It is an assumed name, created, funded, and controlled by Lucy DeYoung for the purpose of sponsoring various forms of election related communications. Despite considerable media attention seeking the identity of the person or persons behind Ethical Woodinville in the weeks leading up to the election, Ms. DeYoung failed to identify herself as the sponsor of the communications attributed to Ethical Woodinville.

IV. Law

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 42.17A.005(36) defines "Political advertising" to include any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

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.¹ 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.

Washington State Supreme Court's ruling in *Washington State Republican Party v. Public Disclosure Commission*, 141 Wn.2d245 (2000) (WSRP). (Excerpt) The Court further stated, in defining "express" advocacy, that when an ad "is unmistakable and unambiguous in its meaning, and presents a clear plea for the listener to take action to defeat[a] candidate," it is "express" advocacy. *Id.* At 273. The Supreme Court held as "important" that if, in an ad, "a candidate's character and campaign tactics are attacked, the ad may be subject to only one reasonable interpretation: an exhortation to vote against the candidate." *Id.* At 270. In contrast, the Court described "issue" advocacy as advocacy that "intend[s] to inform the public about political issues germane to [an] election." *Id.* At 272. This paragraph is from the meeting materials for the January 26, 2012 Commission Meeting, on page 122 of 312.

RCW 42.17A.255 states: (1) For the purposes of this section the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240. ... (2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission an initial report of all independent expenditures made during the campaign prior to and including such date.

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

¹ Per WAC 390-05-400, in 2013 this dollar amount was set at \$900.

identified in the electioneering communication, the office being sought by each candidate, and the amount of the expenditure attributable to each candidate.

RCW 42.17A.320 requires (1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

(2) In addition to the information required by subsection (1) of this section, except as specifically addressed in subsections (4) and (5) of this section, all political advertising undertaken as an independent expenditure or an electioneering communication by a person or entity other than a bona fide political party must include as part of the communication:

(a) The statement: "No candidate authorized this ad. It is paid for by (name, address, city, state)";

...

RCW 42.17A.435 states that no contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment.

RESPECTFULLY SUBMITTED this 25th day of November, 2014.


Philip E. Stutzman
Director of Compliance