



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17 and RCW 42.17A

The National Association of
Realtors Fund

Respondent.

PDC Case No. 14-009

Report of Investigation

I.

Background

- 1.1 The National Association of Realtors Fund (NAR Fund) is organized as a tax-exempt organization under Section 527 of the Internal Revenue Code. It receives all of its funding from the National Association of Realtors (NAR) and does not solicit or accept contributions from others. The NAR and NAR Fund are located in Chicago, Illinois.
- 1.2 The NAR is a trade association involving all aspects of the residential and commercial real estate industries and representing one million members nationwide which includes residential and commercial realtors who are brokers, salespeople, property managers, appraisers, and others engaged in the real estate industry. There are more than 1,400 local realtor associations/boards and 54 state and territory associations throughout the United States, including Washington State.
- 1.3 On November 7, 2013, Rebecca Lewis filed a complaint citing a November 5, 2013 article in *The Seattle Times* that reported that NAR Fund had not timely reported \$76,000 worth of expenditures for direct mail, phone calls, and online advertising first presented to voters on October 11, 2013 in support of Bellevue City Council candidate Kevin Wallace and Vancouver Mayor Tim Leavitt.

II.

Allegations in Complaint

- 2.1 The complaint alleged that NAR Fund failed to timely report electioneering communications expenditures totaling \$76,400. It alleged that NAR Fund was required to report its expenditures electronically by October 14, 2013 (the first working day after its communications were presented to the public) but instead waited until October 30,

2013, a week before the election, to file a paper report, and did not file electronically until election day on November 5, 2013. **Exhibit #1.**

- 2.2 The complainant further stated that she believed NAR Fund was in direct violation of RCW 42.17A.205 (requirement to register as an in-state political committee in Washington State); RCW 42.17A.220 (requirement to deposit contributions received by an in-state political committee); and RCW 42.17A.225 (requirement to file on-going reports of contributions and expenditures as a continuing political committee).
- 2.3 The complainant did not provide any evidence that NAR Fund is a Washington State political committee.

III.

Summary of Investigative Findings

- 3.1 As a sponsor of political advertising and electioneering communications, NAR Fund was required to deliver a report of Independent Expenditures (PDC form C-6) within twenty-four hours of, or on the first working day after, the date it first published, mailed, or otherwise presented Independent Expenditure political advertising to the public within 21 days of an election, valued at \$1,000 or more. NAR was required to electronically file a report of Electioneering Communications (PDC form C-6) within twenty-four hours of, or on the first working day after, the date it first broadcast, transmitted, mailed, erected, distributed, or otherwise published an electioneering communication within 60 days of an election.
- 3.2 NAR Fund spent \$8,500 for Independent Expenditures first presented to the public on August 2, 2013 for voter identification and candidate advocacy phone calls supporting Gary Wright, a candidate for Snohomish County Council. NAR Fund was required to deliver a C-6 report by August 5, 2013. NAR Fund faxed a C-6 report one day later on August 6, 2013, the date of the primary election. The report was substantially timely. **Exhibit #2.**
- 3.3 NAR Fund spent \$76,400 for communications first presented to the public on October 11, 2013, including direct mail Electioneering Communications, and Independent Expenditure advocacy phone calls and online advertising supporting Kevin Wallace, a Bellevue City Council candidate, and Tim Leavitt, a candidate for Vancouver Mayor. NAR Fund was required to electronically file a C-6 report by October 14, 2013 for the direct mail Electioneering Communications, and was required to deliver a C-6 report by the same day for the Independent Expenditure telephone calls and online advertising. NAR Fund faxed a C-6 report 16 days later on October 30, 2013, six days before the general election. However, NAR did not electronically file its C-6 report, as required for the direct mail Electioneering Communications, until November 5, 2013, 22 days late and on the date of the general election. **Exhibit #3 and Exhibit #4.**
- 3.4 NAR Fund stated through its legal counsel that on October 8, 2013, it inadvertently included \$76,400 in Washington State Electioneering Communications and Independent Expenditure political advertising on political committee forms filed with the Office of Campaign Finance for the Government of the District of Columbia in Washington D.C., believing it was meeting its filing requirement with the State of

Washington. NAR Fund stated that this filing error was due to the inexperience of the individual tasked with reporting its expenditures concerning candidates in Washington State made during October 2013. **Exhibit #5.**

3.5 NAR Fund spent \$48,700 for Electioneering Communications first presented to the public on October 17, 2013, for direct mail advertising supporting the following candidates for the offices listed:

- Nancy Backus, for Mayor, City of Auburn;
- Dino Davis, for City Councilmember, City of Bremerton;
- Don Barnes, for Port Commissioner, Port of Kennewick;
- Steve Hastings, for City Councilmember, City of Puyallup;
- John Hopkins, for City Councilmember, City of Puyallup; and
- Chris McNutt, for City Councilmember, City of Puyallup.

NAR Fund was required to electronically file a C-6 report by October 18, 2013. NAR Fund faxed a C-6 report 12 days later on October 30, 2013, however, it did not electronically file its C-6 report, as required, until November 5, 2013, 18 days late and on the date of the general election. **Exhibit #3 and Exhibit #4.**

Detailed Findings

3.6 NAR Fund spent \$8,500 for Independent Expenditures first presented to the public on August 2, 2013 for voter identification and candidate advocacy phone calls supporting Gary Wright, a candidate for Snohomish County Council. NAR Fund was required to deliver a C-6 report by August 5, 2013. NAR Fund filed a faxed C-6 report on August 6, 2013. The report was substantially timely. **Exhibit #2.**

3.7 On October 30, 2013, NAR Fund filed two C-6 reports by facsimile, on paper, disclosing a total of \$125,100 in expenditures in support of eight local mayoral and city council candidates for public office in 2013. **Exhibit #3.**

3.8 On November 5, 2013, NAR filed two C-6 reports electronically disclosing the same information disclosed by facsimile on October 30, 2013, a total of \$125,100 in electioneering communications that supported eight local mayoral and city council candidates in 2013. **Exhibit #4.** The two C-6 reports disclosed the following electioneering communications:

Advertising Presented to the Public on October 11, 2013:

- NAR Fund made two expenditures on October 3, 2013 totaling \$76,400 for direct mail Electioneering Communications, Independent Expenditure telephone calls, online advertising, and related polling and consulting expenses that supported two candidates for local office: (1) Tim Leavitt, Mayor, City of Vancouver (\$40,000); and (2) Kevin Wallace, City Councilmember, City of Bellevue (\$36,000).

- NAR Fund presented the advertising to the public on October 11, 2013, and was required to deliver a C-6 report by October 14, 2013, the first working day after the ads were presented to the public. The report of Electioneering Communications was required to be filed electronically.
- NAR Fund faxed a C-6 report on October 30, 2013, six days before the general election. The report disclosed NAR Fund's Independent Expenditure telephone calls and online advertising 16 days late, and also disclosed NAR Fund's direct mail Electioneering Communications, though not electronically. NAR Fund electronically filed this C-6 report with the PDC on November 5, 2013, the date of the general election. This electronic report disclosed NAR Fund's direct mail Electioneering Communications 22 days late.

Advertising First Presented to the Public on October 17, 2013:

- NAR Fund made two expenditures totaling \$48,700 for direct mail, polling and consulting expenses that supported six candidates for local office: (1) Nancy Backus, Mayor, City of Auburn (\$11,200); (2) Dino Davis, City Councilmember, City of Bremerton (\$6,200); (3) Don Barnes, Port Commissioner, Port of Kennewick (\$8,200); (4) Steve Hastings, City Councilmember, City of Puyallup (\$7,700); (5) John Hopkins, City Councilmember, City of Puyallup (\$7,700); and (6) Chris McNutt, City Councilmember, City of Puyallup (\$7,700).
- Even though the C-6 report states that NAR Fund first presented the advertising to the public on October 28, 2013, NAR Fund confirmed that the communications represented by the expenditures shown in the C-6 report were first distributed on October 17, 2013, with subsequent distribution on October 22 and October 24, 2013. NAR Fund was required to file a C-6 report by October 18, 2013. NAR Fund filed a faxed C-6 report on October 30, 2013, however, it did not electronically file its C-6 report, as required, until November 5, 2013, 18 days late.

Response from NAR Fund (Exhibit #5)

- 3.9 On January 16, 2014, Mark Lamb, an attorney with the North Creek Law Firm, provided a written response on behalf of NAR Fund. **Exhibit #4.** Mr. Lamb stated the following:
- a. On November 5, 2013, Marc Gall, a member of the NAR Fund Finance staff, filed two C-6 reports on behalf of NAR Fund. Mr. Gall was new to the responsibility of preparing and filing campaign finance reports in various state and local jurisdictions in which NAR Fund was engaged in campaign activity during the 2013 election season. During the time relevant to the complaint he was also involved in assisting with the preparation of some of the approximately 250 such reports filed by NAR Fund in other states and local jurisdictions.
 - b. Mr. Gall did not receive sufficient training or information about the electioneering communication reporting requirements in Washington State prior to being assigned the responsibility of filing C-6 reports. As a result, he was not aware of the Washington State requirement to file those reports within 24 hours of, or on

the first working day after, the date the communications were first presented to the public, or the requirement to file those reports electronically.

- c. On October 8, 2013, Mr. Gall inadvertently filed information about NAR Fund's initial \$76,400 in expenditures that supported Tim Leavitt and Kevin Wallace on forms with the Office of Campaign Finance for the Government of the District of Columbia in Washington D.C., believing he was meeting NAR Fund's filing requirement with the State of Washington. On October 31, 2013, Mr. Gall corrected his filing with the Office of Campaign Finance for the Government of the District of Columbia by removing the \$76,400 in expenditures made in Washington State.
- d. NAR Fund discovered its C-6 reporting error for the \$76,400 in Electioneering Communications and Independent Expenditure political advertisements supporting Tim Leavitt and Kevin Wallace when NAR Fund staff was preparing the C-6 report for its \$48,700 in Electioneering Communication expenditures for direct mail, polling and consulting expenses that supported six additional candidates. When that oversight was discovered the correct report for expenditures totaling \$76,400 was immediately prepared and filed. Both reports were initially filed by facsimile, based on Mr. Gall's mistaken understanding that Washington State allowed C-6 reports of Electioneering Communications to be filed by fax. When NAR Fund was informed of the requirement to file C-6 Electioneering Communication reports electronically, the electronic reports were promptly prepared and filed.
- e. The C-6 report that disclosed \$48,700 in additional electioneering communications that was electronically filed on November 5, 2013 showed total expenditures of \$125,100 for the entire campaign. This report indicated that the \$48,700 in new electioneering communications were first presented or mailed on October 28, 2013 and October 24, 2013. Those communications were actually first presented to the public on October 17, 2013 with subsequent distributions on October 22 and October 28, 2013. Due to Mr. Gall's inexperience, he did not appreciate the significance of the "First Presentation" dates and unintentionally included only the latest, rather than the earliest, presentation date on the C-6 report.
- f. On October 30, 2013, NAR Fund staff prepared and filed two C-6 reports by facsimile "*...based on Mr. Gall's mistaken understanding that fax filing was permitted in Washington; when the requirement that the reports be filed electronically was called to NAR's attention the electronic reports were promptly prepared and filed.*"

2013 NAR Fund C-6 Filing history with the PDC

- 3.10 On April 18, 2013, NAR timely filed one C-6 report electronically disclosing a total of \$9,500 in expenditures for Independent Expenditure advertisements of more than \$1,000 supporting an April 23, 2013 Mountlake Terrace Civic Center bond measure. The C-6 report disclosed that online advertisements and telephone calls to voters were first presented to the public on April 17, 2013.

IV.
Scope

- 4.1 PDC staff reviewed the complaint filed by Rebecca Lewis against NAR Fund on November 7, 2013.
- 4.2 Staff reviewed the C-6 reports filed by NAR Fund.
- 4.3 Staff reviewed the January 16, 2014, response submitted by Mark Lamb on behalf of NAR Fund.

V.
Laws

- 5.1 **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.
- 5.2 **RCW 42.17.005(26)** states, (26) "Independent expenditure" means an expenditure that has each of the following elements:

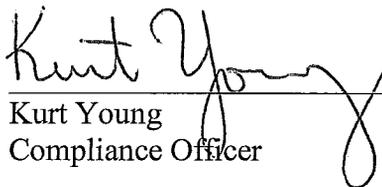
(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure 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. 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.

- 5.3 **RCW 42.17.260** states in part, (1) The sponsor of political advertising who, within twenty-one days of an election, publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more shall deliver, either electronically or in written form, a special report to the commission within twenty-four hours of, or on the first working day after, the date the political advertising is first published, mailed, or otherwise presented to the public.
- 5.4 **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 identified in the electioneering communication, the office being sought by each candidate, and the amount of the expenditure attributable to each candidate. Electioneering communications shall be reported electronically by the sponsor using software provided or approved by the commission.

Respectfully submitted this 24th day of November, 2014.


Kurt Young
Compliance Officer

List of Exhibits

- Exhibit #1** Complaint filed November 7, 2013 by Rebecca Lewis against NAR Fund.
- Exhibit #2** One C-6 report of Independent Expenditure political advertisements totaling \$8,500, submitted by fax on August 6, 2013, and electronically on January 31, 2014, supporting one County Council candidate.
- Exhibit #3** Two C-6 reports of Electioneering Communications and Independent Expenditure political advertisements totaling \$125,100, submitted by fax on October 30, 2013, supporting two 2013 Mayoral candidates and six City Council candidates.
- Exhibit #4** Two C-6 reports of Electioneering Communications and Independent Expenditure political advertisements totaling \$125,100, submitted electronically on November 5, 2013, supporting two 2013 Mayoral candidates and six City Council candidates.
- Exhibit #5** NAR Fund response to complaint, received January 16, 2014 from Mark Lamb on behalf of NAR Fund.