

TEXAS ETHICS COMMISSION

IN THE MATTER OF
THOMAS ANNUNZIATO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-280271

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 13, 2008, to consider sworn complaint SC-280271. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 572.023 of the Government Code, a law administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegation

The complaint alleges that the respondent failed to properly disclose information in a personal financial statement.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent was a candidate for state representative for District 99 in a primary election held on March 4, 2008.
2. At issue in the complaint is the respondent's personal financial statement (PFS) covering calendar year 2007 that was due on February 11, 2008.
3. The complaint alleges that the respondent failed to disclose a beneficial interest in two properties located in Tarrant County. The respondent disclosed, on Part 7A of his PFS, a beneficial interest in real property located at an address in Fort Worth, Texas. The respondent also described the property as "PERSONAL RESIDENCE AND AN ADJOINING LOT" and indicated that there were no persons retaining an interest in the property.

4. Tax appraisal rolls maintained by the Tarrant Appraisal District (TAD) indicate that in 2007 the respondent and his spouse were owners of a vacant lot on Cambria Court and a vacant lot and a residence on Northview Drive in a single block in Fort Worth.
5. A special warranty deed filed with the Tarrant County Clerk (“the clerk”) indicates that the respondent and his spouse borrowed \$38,800 to purchase the lot on Cambria Court on November 26, 2004, and that they received the property subject to a vendor’s lien. The deed states that the respondent and his spouse held “surface estate only” in the lot.
6. Warranty deeds filed with the clerk indicate that the respondent and his spouse borrowed \$375,000 to purchase the two lots on Northview Drive on June 30, 1999, and to construct a residence on the land. The respondent and his spouse received the lots subject to a vendor’s lien. Two deeds of trust that renewed and extended the debt and dated separately on May 8 and May 9, 2002, state that the lots held a single address on Northview Drive in Aledo, Texas.
7. The respondent did not disclose in his PFS that he or his spouse had a total financial liability of more than \$1,000 in the form of a personal note or lease agreement during 2007. There is no evidence that the respondent or his spouse was released of the liability on the notes executed to borrow the purchase money for the lots.
8. In response to the allegation, the respondent swears that he disclosed his residence and an adjoining lot in his PFS, that the residence and two vacant lots adjoin each other and collectively comprise his house and yard, and that the three properties are surrounded by one fence.
9. A map of the area provided by TAD indicates that the three lots are adjoining and form a triangular area, such that each lot adjoins the other two lots.
10. The complaint alleges that the respondent failed to disclose his status as president and director of three businesses that he held in 2007 on his PFS. The allegations are based on Texas franchise tax public information reports (PIRs) that were filed with the Texas Secretary of State (SOS) in 2006.
11. Tom Annunziato, O.D., P.C., is a professional corporation that filed articles of incorporation with the SOS on January 28, 2000. The articles state that the corporation has only the respondent as a director. PIRs filed with the SOS state that the respondent was both president and a director of the corporation in 2006 and 2007.
12. I Vision Management Company is a business corporation that filed articles of incorporation on January 14, 2000. The articles state that the corporation had two directors, one of whom was the respondent. PIRs filed with the SOS state that the respondent was both president and a director of the corporation in 2006 and 2007.

13. North American Eyewear, Inc., is a business corporation that filed articles of incorporation with the SOS on October 11, 2002. PIRs filed with the SOS state that the respondent was treasurer and a director of the corporation in 2006 and 2007.
14. The respondent's PFS covering 2007 disclosed that the respondent held a board or executive position with four entities, none of which were the three businesses at issue in the complaint. Elsewhere in the PFS, the respondent disclosed that he was self-employed as an optometrist, and held shares of stock and a beneficial interest in the three businesses at issue. In the sections of the PFS used to disclose the assets and liabilities of any business in which a filer holds 50 percent or more of the outstanding ownership in the business, the respondent disclosed the assets and liabilities of the three businesses at issue.
15. In response to the allegation, the respondent swears that he disclosed his ownership of the three corporations at issue and the assets and liabilities of the corporations in other sections of the PFS. He also swears that he hired his CPA to assist him with the preparation of the PFS. He also swears that neither he nor his CPA realized that he had to disclose a membership of position with the corporations after disclosing his interests in them in other sections of the PFS. Lastly, he swears that this was the first time either he or his CPA had completed the PFS and that they were unaware that the businesses needed to be disclosed in three different parts of the form.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

1. Not later than the 40th day after the date of the regular filing deadline for an application for a place on the ballot in the general primary election, an individual who is a partisan or independent candidate for an office as an elected officer shall file the financial statement required by this subchapter. GOV'T CODE § 572.027(a).
2. A financial statement must include an account of the financial activity of the individual required by this subchapter to file a financial statement and an account of the financial activity of the individual's spouse and dependent children if the individual had actual control over that activity for the preceding calendar year. *Id.* § 572.023(a).
3. The account of financial activity consists of, in pertinent part, identification by description of all beneficial interests in real property and business entities held or acquired, and if sold, the category of the amount of the net gain or loss realized from the sale. *Id.* § 572.023(b)(6). The account of financial activity also consists of, in pertinent part, identification of each guarantor of a loan and identification of each person or financial institution to whom a personal note or notes or lease agreement for a total financial liability in excess of \$1,000 existed at any time during the year, and the category of the amount of the liability. *Id.* § 572.023(b)(5).

4. The respondent was a candidate for public office in the primary election held on March 4, 2008, and was required to file a PFS covering calendar year 2007 by February 11, 2008. There is credible evidence that the respondent and his spouse held a beneficial interest in the three properties in calendar year 2007 and are legally considered three separate properties by the TAD, Tarrant County, and the original sellers of the properties. Thus, the respondent was required to disclose the interests in the properties in his PFS.
5. The respondent disclosed a beneficial interest in his residence on Northview Drive, which was described as a “personal residence and an adjoining lot,” but did not disclose an interest in the other two properties or that his spouse held an interest in any of the properties. The evidence also indicates that a vendor’s lien was retained on all of the properties at issue in 2007 because the respondent borrowed funds to purchase the properties and a release of such obligations was never issued. Thus, the respondent was required to disclose the name of each person that retained a vendor’s lien on the property, which was not disclosed. Therefore, there is credible evidence that the respondent violated section 572.023(b)(6) of the Government Code.
6. The respondent was also required to disclose that he held a financial liability in excess of \$1,000 on each of the personal notes that were executed to borrow the funds to purchase the three lots at issue in the complaint. He did not disclose any financial liability on a personal note or lease agreement in his PFS. Therefore, there is credible evidence that the respondent violated section 572.023(b)(5) of the Government Code.
7. The account of financial activity consists of, in pertinent part, a list of all boards of directors of which the individual is a member and executive positions that the individual holds in corporations, firms, partnerships, limited partnerships, limited liability partnerships, professional corporations, professional associations, joint ventures, or other business associations or proprietorships, stating the name of each corporation, firm, partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association or proprietorship and the position held. GOV’T CODE § 572.023(b)(10).
8. The evidence indicates that, in 2007, the respondent was the president and a member of the board of directors of Tom Annunziato, O.D., P.C., and I Vision Management Company. The respondent was also the treasurer and a member of the board of directors of North American Eyewear, Inc. Thus, the respondent was required to disclose his status as a member, and his executive positions, with the businesses in his PFS. Although the respondent disclosed some of the required information with respect to those entities, he did not disclose the board or executive positions. Therefore, there is credible evidence that the respondent violated section 572.023(b)(10) of the Government Code.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a financial statement must include an identification by description of all beneficial interests in real property and business entities held or acquired, and if sold, the category of the amount of the net gain or loss realized from the sale; an identification of each guarantor of a loan and identification of each person or financial institution to whom a personal note or notes or lease agreement for a total financial liability in excess of \$1,000 existed at any time during the year, and the category of the amount of the liability; and a list of all boards of directors of which the individual is a member and executive positions that the individual holds in corporations, firms, partnerships, limited partnerships, limited liability partnerships, professional corporations, professional associations, joint ventures, or other business associations or proprietorships, stating the name of each corporation, firm, partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association or proprietorship and the position held. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the commission has determined is neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-280271.

AGREED to by the respondent on this _____ day of _____, 20____.

Thomas Annunziato, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director