

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JESSE DIAZ,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-3150121

FINAL ORDER

The Texas Ethics Commission (Commission), having heard this case and voting to find a violation of laws under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The respondent is Jesse Diaz, whose last known mailing address is 8127 Bruton Road, Dallas, Texas 75217. A sworn complaint was filed with the Commission against the respondent on February 12, 2015. The Notice of Hearing was mailed to the respondent on October 30, 2015, by certified mail, return receipt requested, restricted delivery and delivery confirmation.
2. The preliminary review hearing was held on November 30, 2015, at 2:00 p.m., by the Commission in Austin, Texas.
3. The respondent filed a response to the Notice of Hearing but did not appear at the hearing.
4. The respondent was an unsuccessful candidate for Dallas City Council, District 5, in the May 9, 2015, uniform election.

Filing of a Campaign Finance Report

5. The complaint alleged that the respondent, as a candidate for Dallas City Council, did not file a January 2015 semiannual report. The respondent lost in a runoff election for the same position in 2013.
6. According to the City of Dallas online campaign finance database, the respondent filed a campaign treasurer appointment with the Dallas City Secretary on January 29, 2013.

7. The respondent subsequently filed an amended campaign treasurer appointment with the City of Dallas on March 7, 2013. The respondent's name appeared on the May 9, 2015, ballot as a candidate for District 5 of the Dallas City Council.
8. The City of Dallas online campaign finance report database showed that as of July 16, 2015, the respondent had not filed the January 2015 semiannual report. In response to a request for information, the Dallas City Secretary confirmed via email on July 9, 2015, that the respondent had not filed a January 2015 semiannual report and had not filed a final report. The last report the respondent filed was the July 2013 semiannual report, filed on July 17, 2013. Accordingly, the campaign treasurer appointment that the respondent filed on March 7, 2013, was still in effect during the time at issue.
9. The respondent filed the January 2015 semiannual report on November 3, 2015.

Response to Notice of a Sworn Complaint

10. Sworn complaint SC-3150121 was filed on February 12, 2015. The Commission sent a notice of the sworn complaint to the respondent by certified mail, return receipt requested, on February 20, 2015. The notice was returned to the Commission as unclaimed. Upon receipt of the returned notice letter, the Commission obtained a new mailing address from the respondent to which to send the complaint, and re-sent the notice of the sworn complaint to the respondent by certified mail, return receipt requested, and delivery confirmation on March 5, 2015. According to United States Postal Service (USPS) records of the delivery, the notice of this complaint was delivered to the respondent on March 10, 2015. USPS records show that "Jesus Diaz" signed for the notice letter. The notice informed the respondent that the alleged violation in the sworn complaint was a Category One violation, and that a response was required not later than 10 business days from the date the notice was received and that failure to respond constituted a separate violation for which a separate civil penalty may be assessed. Based on the delivery date of the notice, the respondent was required to respond to the sworn complaint by March 24, 2015. The Commission did not receive a written response from the respondent until November 24, 2015.

Conclusions of Law

1. Disposition of this case is within the jurisdiction of the Commission. GOV'T CODE § 571.061.
2. The respondent received legally sufficient notice of the hearing in this case. GOV'T CODE § 571.032 and 1 TAC § 12.21. The hearing was held in accordance with section 12.23, 1 Texas Administrative Code.

Filling of a Campaign Finance Report

3. “Candidate” means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. ELEC. CODE § 251.001(1).
4. An example of affirmative action is the filing of a campaign treasurer appointment. *Id.* § 251.001(1)(A).
5. A candidate shall file two reports for each year as provided by this section. *Id.* § 254.063(a). The second report shall be filed not later than January 15 and covers the period beginning July 1, the day the candidate’s campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31. *Id.* § 254.063(c).
6. Regarding the January 2015 semiannual report, the respondent was a candidate for Dallas City Council during the period covered by the report and was required to file the report with the City of Dallas by January 15, 2015. The respondent did not file the report until November 3, 2015. Therefore, there is credible evidence of a violation of section 254.063(c) of the Election Code.

Response to Notice of Sworn Complaint

7. If the alleged violation in a sworn complaint is a Category One violation, the respondent must respond to the notice required by section 571.123(b) not later than the 10th business day after the date the respondent receives the notice. GOV’T CODE § 571.1242(a)(1). A respondent’s failure to timely respond to a sworn complaint as required by subsection (a)(1) or (b)(1) is a Category One violation. *Id.* § 571.1242(c).
8. The response required by section 571.1242 of the Government Code must be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent. Ethics Commission Rules § 12.52(a). If a respondent does not submit a response within the time period prescribed by section 571.1242 of the Government Code, the Commission may issue an order imposing a civil penalty for failure to file a response. *Id.* § 12.52(b)
9. The respondent received notice of the sworn complaint on March 10, 2015. The respondent was required to respond to the sworn complaint by March 24, 2015. The Commission did not receive a written response from the respondent until November 24, 2015. Therefore, there is credible evidence of a violation of section 571.1242(c) of the Government Code.
10. The Commission may impose a sanction against the respondent of not more than \$5,000 or triple the amount at issue, whichever amount is greater. GOV’T CODE § 571.173.

Therefore, the Texas Ethics Commission orders that:

1. The respondent pay to the Commission, within 60 days of the date of this order, a civil penalty in the amount of \$250.

Order Date: _____

FOR THE COMMISSION

Natalia Luna Ashley
Executive Director
Texas Ethics Commission