

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RANDY NAIDOO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-32205238

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on September 27, 2023, to consider sworn complaint SC-32205238, which was filed on May 6, 2022. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 254.064(b), 254.031(a)(1), 254.031(a)(1-a), 254.031(a)(5), and 253.031(a) of the Election Code, and Section 571.1242 of the Government Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The sworn complaint alleged, concerning the respondent's 30-day pre-election report for the May 7, 2022 election, that: 1) the report did not cover the correct dates, in violation of Section 254.064(b) of the Election Code; 2) the respondent failed to properly disclose two political contributions that the respondent accepted from anonymous contributors, in violation of Sections 254.031(a)(1) and 254.031(a)(1-a) of the Election Code; and 3) the respondent failed to correctly disclose the total amount or a specific listing of the political expenditures of \$190 or less made by credit card during the reporting period, in violation of Section 254.031(a)(5) of the Election Code. The sworn complaint further alleged that the respondent accepted political contributions at a time when he did not have a campaign treasurer appointment in effect, in violation of Section 253.031(a) of the Election Code.

The Commission also considered whether the respondent failed to timely respond to the complaint, in violation of Section 571.1242 of the Government Code.

III. Findings of Fact and Conclusions of Law

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

1. The respondent was an unsuccessful candidate for Lovejoy ISD Board of Trustees, Position 1, in the May 7, 2022, general election.

Period Covered by 30-Day Pre-Election Report

2. The complaint alleged that the respondent's 30-day pre-election report for the May 7, 2022 general election did not cover the correct time period, as prescribed by Section 254.064(b) of the Election Code. Specifically, the complaint stated that the start date of the report, which was February 28, 2022, should have been the date the respondent first became a candidate, which was on or before February 18, 2022. Additionally, the complaint stated that the end date should have been March 28, 2022, which was the 40th day before the election, not April 7, 2022. In support of this allegation, the complaint included a copy of the respondent's filed 30-day pre-election report and an email from the Lovejoy ISD superintendent indicating that as of February 18, 2022, the respondent had submitted an application for a place on the May 7, 2022 general election ballot.
3. The respondent failed to admit or deny this violation in his response to the complaint. Additionally, the respondent informed Commission staff that he did not have a copy of his campaign treasurer appointment.
4. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning 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 chapter, as applicable, and continuing through the 40th day before election day. Tex. Elec. Code § 254.064(a)-(b).
5. Based on information contained in the Lovejoy ISD superintendent's email, there was at least one other individual running for Lovejoy ISD Board of Trustees, Position 1. Commission staff confirmed this by reviewing the election results for the May 7, 2022 election found on the Collin County Elections webpage.
6. A review of the respondent's 30-day pre-election report for the May 7, 2022 general election shows that it covers the period beginning February 28, 2022 through April 7, 2022. The respondent did not deny the complaint's allegation that the start date of his 30-day pre-election report should have been on or before February 18, 2022, or provide any evidence to indicate why his report should cover the dates that it covered. Furthermore, the 40th day before the May 7, 2022 general election was March 28, 2022.
7. Based on these facts, credible evidence shows that the respondent was an opposed candidate, and that the period covered by his 30-day pre-election began at least 10 days after the respondent filed his campaign treasurer appointment and continued 10 days past the 40th day before the May 7, 2022 election. These dates are inconsistent with the dates prescribed by Section 254.064(b) of the Election Code. Therefore, there is credible evidence of a violation of Section 254.064(a)-(b) of the Election Code.

Anonymous Political Contributions

8. The complaint also alleged that the respondent's 30-day pre-election report failed to properly disclose two political contributions that the respondent accepted from anonymous

contributors. In support of this allegation, the complaint referenced the respondent's 30-day pre-election report, which disclosed one anonymous political contribution dated March 15, 2022, in the amount of \$125. The complaint also included screenshots of the respondent's GiveSendGo campaign contribution webpage, which showed three separate "anonymous" political contributions received by the respondent: 1) \$100 on March 15, 2022; 2) \$25 on March 21, 2022; and 3) \$100 on March 22, 2022.¹ The complaint alleged that two of these three contributions constituted the \$125 contribution disclosed on the respondent's report, and that the respondent had failed to disclose these correctly.

9. In response to the complaint, the respondent denied that he accepted any anonymous contributions. He also provided a print-out from Stripe showing the political contributions he received through his GiveSendGo contribution webpage, which showed the identity of each of the respondent's contributors and the date of each political contribution. Stripe is a company used by GiveSendGo to process its payments.
10. Each report filed under Chapter 254 of the Election Code must include the amount of political contributions from each person that in the aggregate exceed \$50 (\$90 as of January 1, 2022) and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. Tex. Elec. Code § 254.031(a)(1).
11. Additionally, each report must include the amount of political contributions from each person that are made electronically and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. *Id.* § 254.031(a)(1-a).
12. The respondent's 30-day pre-election report disclosed a \$125 contribution dated March 15, 2022. Despite having records identifying each of his contributors, the respondent listed the purported contributor of \$125 as "anonymous." Further, the respondent provided no address for the contributor. The records provided by the respondent show that the respondent did not receive a political contribution in the amount of \$125 on March 15, 2022. However, the Stripe print-out did show that the respondent received a \$100 political contribution on March 15, 2022 and another contribution of \$25 on March 21, 2022. Both of these political contributions were received electronically. Furthermore, the \$100 contribution on March 15, 2022 exceeds the \$90 reporting threshold for political contributions under Section 254.031(a)(1).
13. Based on these facts, credible evidence shows that the respondent failed to properly disclose on his 30-day pre-election report the amount and full name and address of the person who made an electronic political contribution to his campaign in the amount of \$100

¹ The respondent's GiveSendGo webpage did not provide actual dates for the political contributions he accepted. Rather, the webpage notes how many days it has been since a political contribution was made. Based on this information and the Stripe print-out, which provides the actual date for each political contribution, Commission staff was able to calculate and then verify the date of each political contribution.

on March 15, 2022. Credible evidence also shows that the respondent failed to properly disclose on his 30-day pre-election report the date, amount, and full name and address of the person who made an electronic political contribution to his campaign in the amount of \$25 on March 21, 2022. Therefore, there is credible evidence of violations of Sections 254.031(a)(1) and (a)(1-a) of the Election Code.

Reporting Political Expenditures

14. The complaint further alleged that the respondent's 30-day pre-election report failed to correctly disclose the total amount or a specific listing of the political expenditures of \$190 or less made by credit card during the reporting period, in violation of Section 254.031(a)(5)'s requirement that each campaign finance report accurately disclose separately or in total the filer's unitemized political expenditures during the reporting period. In support of this allegation, the complaint referred to the respondent's 30-day pre-election report, on which he reported \$2,119.04 in total political expenditures, but also reported \$2,119.04 in unitemized political expenditures, \$2,114.04 in itemized political expenditures made by credit card, and a \$425 expenditure from political contributions to make a credit card payment.
15. The respondent failed to admit or deny this allegation in his response to the complaint. However, he did provide Commission staff with copies of credit card statements documenting his political expenditures between February 28, 2022 and May 27, 2022.²
16. Each report filed under Chapter 254 of the Election Code must include the total amount or a specific listing of the political expenditures of \$100 (\$190 as of January 1, 2022) or less made during the reporting period. Tex. Elec. Code § 254.031(a)(5).
17. A review of the respondent's credit card statement for the period of February 28, 2022 through March 27, 2022 shows that the respondent made six political expenditures totaling \$2,119.04 by credit card. Each of these expenditures was itemized on the respondent's 30-day pre-election report except one \$5 expenditure. Additionally, the credit card statement for the period of March 28, 2022 through April 27, 2022, shows a \$400 credit card payment dated April 3, 2022.³ Therefore, the respondent's itemized political expenditures for this period totaled \$2,514.04, and his unitemized political expenditures totaled \$5. As noted above, the respondent disclosed \$2,119.04 in total unitemized political expenditures on the cover sheet of his report.

² The respondent only ever disclosed the political expenditures he incurred between February 28, 2022 and March 27, 2022. However, the credit card statements provided by the respondent show that he continued to make political expenditures after March 27, 2022, which he never reported. The respondent's unreported political expenditures total at least \$2,090.12, which does not include any processing fees charged by GiveSendGo. The respondent's failure to disclose this activity was not alleged in the sworn complaint. The respondent's credit card statements also show that the respondent failed to report credits totaling \$666.14 that he received from a print shop and in rewards from the card issuer on Schedule K of his report.

³ The respondent reported this payment on Schedule F1, but reported the amount as \$425. Commission staff asked the respondent to explain the discrepancy between the amount listed in the credit card statement and the amount reported in his Schedule F1, but the respondent failed to do so.

18. Based on these facts, credible evidence shows that the respondent did not correctly disclose the total amount of itemized and unitemized political expenditures for the period of time covered by his 30-day pre-election report. Therefore, there is credible evidence of a violation of Section 254.031(a)(5) of the Election Code for the respondent's failure to correctly disclose his unitemized expenditures during the reporting period.

Acceptance of Political Contributions without a Campaign Treasurer Appointment

19. Lastly, the complaint alleged that the respondent accepted political contributions at a time when he did not have a campaign treasurer appointment in effect. In support of this allegation, the complaint included the respondent's 30-day pre-election report, which included a designation of final report, and screenshots of the respondent's GiveSendGo campaign contribution webpage.
20. The respondent failed to admit or deny this allegation in his response to the complaint. However, he did provide a Stripe print-out documenting all the political contributions he received through his GiveSendGo contribution webpage between March 5, 2022 and April 28, 2022.
21. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. Tex. Elec. Code § 253.031(a).
22. If a candidate expects no reportable activity in connection with the candidacy to occur after the period covered by a report filed under this subchapter, the candidate may designate the report as a "final" report. The designation of a report as a final report relieves the candidate of the duty to file additional reports under this subchapter, except as provided by Subsection (c), and terminates the candidate's campaign treasurer appointment. *Id.* § 254.065.
23. The respondent's 30-day pre-election report was filed on April 7, 2022 and included a designation of final report. A review of the respondent's GiveSendGo campaign contribution webpage and the Stripe print-out he provided with his response to the complaint shows that the respondent accepted seven political contributions totaling \$475 after April 7, 2022.⁴
24. Based on these facts, credible evidence shows that the respondent terminated his campaign treasurer appointment on April 7, 2022, and accepted \$475 in political contributions after

⁴ In addition to the credit card statements, the respondent also produced a user printout from the Stripe payment processing service indicating payments his contributors had made via Stripe. At the bottom, this printout read "Managed by GiveSendGo," apparently to indicate that GiveSendGo uses Stripe's services to facilitate payments. The transactions on the Stripe printout generally track the contributions that the respondent received via GiveSendGo, but the amount of some of the transactions exceeds by a few dollars the amounts shown on the respondent's GiveSendGo page. GiveSendGo presents contributors the opportunity to donate an additional sum to support GiveSendGo itself. These payments are not fees paid for processing services. The totals on the Stripe printout appear to include such additional sums contributed to GiveSendGo itself. Because these additional payments likely weren't directed at the respondent and were not required to facilitate the financial contributions to the respondent, the \$475 figure given here is based on the GiveSendGo numbers, which appear to exclude these additional sums.

that date. Therefore, there is credible evidence of violations of Section 253.031(a) of the Election Code.

Failure to Respond to Sworn Complaint

25. Sworn complaint SC-32205238 was filed on May 6, 2022. That same day, Commission staff called the telephone number provided in the complaint, which was for the respondent's place of employment as a physician. No voicemail was left for the respondent, but Commission staff followed up by sending the respondent an email to the email address provided on the complaint. Later on May 6, 2022, Commission staff contacted Lovejoy ISD in an attempt to reach the respondent. Commission staff left a voicemail for Lovejoy ISD's Executive Director of Human Resources and Communications requesting information on a Board of Trustees candidate, whom staff did not specifically name in the voicemail.
26. Since the Commission did not receive a response from the respondent, a follow-up call was made on May 9, 2022 to Lovejoy ISD's Executive Director of Human Resources and Communications. No one answered the telephone call so a second voicemail message was left. Commission staff also called Shine Pediatrics a second time on May 12, 2022, and received a message stating that the office was closed. No voicemail was left.
27. On May 13, 2022, the Commission accepted jurisdiction over the complaint and sent notice of the complaint by certified mail, return receipt requested, to the address listed on the complaint, 950 Bentwater Drive, Lucas, Texas 75002-8790. However, the notice and complaint were returned by the United States Postal Service ("USPS") to the Commission in July 2022.
28. On July 18, 2022, the Commission resent the notice of the complaint by delivery confirmation through the USPS to the address listed on the complaint. USPS records show the notice of complaint was delivered on July 20, 2022.
29. The notice letter designated the allegations as Category One violations and notified the respondent that, by law, he was required to respond to the allegations not later than 10 business days after the notice was received, and that a failure to respond constituted a separate violation for which a separate civil penalty could be assessed. Based on the delivery date of the notice letter, the respondent was required to respond to the complaint by August 3, 2022.
30. On January 5, 2023, Commission sent the respondent a quarterly notice via first class mail informing him that his response to the complaint had not been received and that a failure to respond would constitute a separate violation for which a separate civil penalty could be assessed.
31. On February 3, 2023, Commission staff called the respondent's office again, but received a message stating that the office was closed. Staff left no voicemail. That same day, Commission staff tried calling a telephone number found online that appeared to be the respondent's personal telephone number. The respondent answered the telephone and stated that he was unaware of the complaint and had never received any documentation

from the Commission. However, the respondent did state that a member of his campaign team mentioned the Texas Ethics Commission to him months earlier. Additionally, the respondent confirmed the address found on the complaint, 950 Bentwater Drive, Lucas, Texas 75002-8790. At the end of the conversation, the respondent requested that a copy of the notice be resent.

32. On February 6, 2023, a copy of the notice was sent by email to the email address provided by the respondent. Additionally, a copy was also sent on February 7, 2023, by certified mail, return receipt requested.
33. The respondent's response to the complaint was received by the Commission on February 10, 2023.
34. If the alleged violation 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 under Section 571.123(b). Tex. Gov't Code § 571.1242(a). A respondent's failure to timely respond is a Category One violation. *Id.* § 571.1242(c).
35. The response must include any challenge the respondent seeks to raise to the Commission's exercise of jurisdiction. In addition, the respondent may: (1) acknowledge the occurrence or commission of a violation; (2) deny the allegations contained in the complaint and provide evidence supporting the denial; or (3) agree to enter into an assurance of voluntary compliance or other agreed order, which may include an agreement to immediately cease and desist. *Id.* § 571.1242(d).
36. The respondent received legally sufficient notice of the complaint and was required to submit a written response by August 3, 2022. The respondent did not submit a response to the complaint until February 10, 2023, despite receiving multiple notices from the Commission. Therefore, there is credible evidence of a violation of Section 571.1242 of the Government Code.

IV. 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 findings of fact and conclusions of law described under Section III, and consents to the entry of this order and agreed resolution solely for the purpose of resolving and settling this sworn complaint.
2. The respondent consents to this order and agreed resolution before any adversarial evidentiary hearings or argument before the Commission, and before any formal adjudication of law or fact by the Commission. The respondent waives any right to a hearing before the Commission or an administrative law judge and consents to Commission staff presenting this order and agreed resolution to the Commission outside of the respondent's presence. The respondent further waives any right to a post-hearing procedure established or provided by law. The Commission and respondent agree that the entry of this order and agreed resolution will be a full and complete resolution of sworn complaint SC-32205238 and the respondent's failure to timely respond to the complaint.

3. The respondent understands and agrees that the Commission will consider this order and agreed resolution in any future sworn complaint proceedings against the respondent regarding similar violations that occur after the date this agreement is executed.

VI. Confidentiality

This order and agreed resolution describes violations that the Commission has determined are 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

1. The Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for violation of a law administered and enforced by the Commission. Tex. Gov't Code § 571.173.
2. The Commission shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations, and 5) any other matters that justice may require. *Id.* § 571.177.
3. Although the respondent was unsuccessful in his candidacy, a substantial penalty is warranted in this case given the respondent's disregard for the filing requirements under the Election Code. First, the respondent knowingly continued to engage in campaign finance activity through the month of April despite having filed a final report and terminating his campaign treasurer appointment approximately one month earlier.
4. Additionally, the respondent has not taken any steps to amend the campaign finance report in this case. On May 12, 2023, Commission staff sent the respondent an email with a detailed list of the corrections needed to remedy the violations at issue. However, the respondent did not file any corrections, or even respond to the email directing that corrections should be made. Further, the respondent's initial response failed to directly address the allegations. This forced Commission staff to send formal discovery requests. Given the respondent's failure to correct an increased penalty is required.
5. Lastly, there is the respondent's failure to timely respond to the complaint. Based on USPS records, the respondent received notice of the complaint on July 20, 2022, at the address he later verified for Commission staff. Therefore, the respondent's written response was due on August 3, 2022. However, the respondent did not provide his response until February 10, 2023.
6. Therefore, after considering the nature and circumstances of the violations described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$2,500 civil penalty.

VIII. Order

The Commission hereby orders that if the respondent consents to this order and agreed resolution, it is a final and complete resolution of SC-32205238.

AGREED to by the respondent on this _____ day of _____, 2023.

Randy Naidoo, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
J.R. Johnson, Executive Director