

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MATT ARMSTRONG,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-32205248CI

FINAL ORDER

I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on September 28, 2022, to consider sworn complaint SC-32205248CI. A quorum of the Commission was present. The respondent received legally sufficient notice of the hearing but did not appear at the hearing. The Commission proceeded with the hearing in the respondent's absence and found credible evidence of violations of Sections 252.002(a), 252.003(a)(1), 255.001, and 255.004 of the Election Code and Section 571.1242 of the Government Code. The Commission voted to issue this final order.

II. Allegations

On May 11, 2022, the Commission, by its own motion, initiated a preliminary review in accordance with Section 571.124(b) of the Government Code. The Commission alleges that the respondent:

1. Filed with the Commission on October 28, 2020, a campaign treasurer appointment for the general-purpose committee Citizens for a Better Farmers Branch that contained incorrect information for the campaign treasurer's name, the campaign treasurer's residence or business street address, the campaign treasurer's telephone number, and the name of the person making the appointment, in violation of Section 252.002(a) of the Election Code;
2. Filed with the Commission on October 28, 2020, a campaign treasurer appointment for the general-purpose committee Citizens for a Better Farmers Branch that contained incorrect information for the name of each person who determines to whom the committee makes contributions (contribution decision makers) and the name of each person who determines for what purposes the committee makes expenditures (expenditure decision makers), in violation of Section 252.003(a)(1) of the Election Code;
3. With intent to injure a candidate or influence the result of an election, entered into a contract or other agreement to print, publish, or broadcast political advertising that purported to emanate from a source other than its true source, in violation of Section 255.004 of the Election Code; and

4. Knowingly caused to be published, distributed, or broadcast political advertising containing express advocacy that did not contain a proper political advertising disclosure statement because it did not include the correct name of the person who paid for the political advertising, or the political committee authorizing the political advertising, in violation of Section 255.001 of the Election Code.
5. At the hearing, the Commission also considered whether the respondent failed to 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 is a political consultant in Flower Mound, Texas.

Filing of False Campaign Treasurer Appointment

2. Allegations 1 and 2 are based on a campaign treasurer appointment (form GTA) filed October 28, 2020, for the putative general-purpose committee Citizens for a Better Farmers Branch.
3. The Commission alleged that the respondent filed the form GTA for a non-existent group. The form GTA purported to appoint Steve Mickelson as campaign treasurer. The appointment contained an incorrect and incomplete address for the campaign treasurer and a telephone number that is disconnected. The form listed Steve Mickelson as the expenditure decision maker and the person who appointed the treasurer. Lastly, the form purported to contain the signature of Steve Mickelson in the section titled “signature of campaign treasurer.”
4. The Commission received the treasurer appointment by email from a Protonmail email address. Protonmail is a Switzerland-based email provider that markets itself as a secure and anonymous email service that “does not give data to foreign governments” and generally does not log IP addresses, making finding the identity of a Protonmail account holder extremely difficult.
5. The Commission has been unable to contact the purported campaign treasurer. Using public records databases, the Commission identified approximately ten people named Steve Mickelson who live or have recently lived in Texas. None has an apparent connection to the address disclosed on the campaign treasurer appointment form, Farmers Branch, or Citizens for a Better Farmers Branch.

6. The only known activity of the putative political committee is sending a flyer through the United States Postal Service that expressly advocated for the defeat of the incumbent Farmers Branch mayor in the November 2020 election. The flyer used a bulk mail permit that is owned by Digital Room, LLC. In response to a subpoena that sought information regarding the purchaser of the flyer, Digital Room, LLC provided a paid invoice that identified GrassRoutes PR and Matt Armstrong as the purchaser.
7. The creation of Citizens for a Better Farmers Branch appears to follow the same pattern of practice that took place in the creation of McKinney Citizens United, a general-purpose committee. On April 9, 2021, the Commission received an amended campaign treasurer appointment (Form AGTA) for McKinney Citizens United. The AGTA named Carol Williams as the new treasurer of the committee. When notified by the Commission that McKinney Citizens United failed to file campaign finance reports, Ms. Williams, who goes by her married surname Mitchell, informed the Commission that she never agreed to be treasurer of the political committee and never signed the form AGTA. She also provided contemporaneous communications that indicate the respondent signed the AGTA for Ms. Mitchell without her consent. The signature alleged to be forged by the respondent on the Form AGTA filed for McKinney Citizens United, and the signature on the Form GTA filed for Citizens for a Better Farmers Branch, bear a strong resemblance.
8. The respondent did not file a written response to the allegations in the complaint until the morning of the preliminary review hearing, on September 28, 2022. In response, the respondent submitted an affidavit and swore that he was responsible for sending the flyer, but stated that he was “not aware who the treasurer is” for Citizens for a Better Farmers Branch.
9. Section 252.002(a) of the Election Code states that a campaign treasurer appointment must be in writing and include: (1) the campaign treasurer’s name; (2) the campaign treasurer’s residence or business street address; (3) the campaign treasurer’s telephone number; and (4) the name of the person making the appointment.
10. Section 252.003 of the Election Code states that, in addition to the information required by Section 252.002, a campaign treasurer appointment by a general-purpose committee must include: (1) the full name, and any acronym of the name that will be used in the name of the committee as provided by Subsection (d), of each corporation, labor organization, or other association or legal entity that directly establishes, administers, or controls the committee, if applicable, or the name of each person who determines to whom the committee makes contributions or the name of each person who determines for what purposes the committee makes expenditures.
11. Based on the facts above, including the invoice showing the respondent’s involvement in the purchase of the flyer on behalf of Citizens for a Better Farmers Branch, the incorrect or incomplete information for Steve Mickelson, the similarity in signatures on the Citizens

for a Better Farmers Branch and McKinney Citizens United treasurer appointments, and the respondent's apparent practice of filing treasurer appointments for unwilling or unwitting campaign treasurers, there is credible evidence the respondent filed a campaign treasurer appointment with incorrect information on it for the sham political committee Citizens for a Better Farmers Branch.

12. There is credible evidence to show that the campaign treasurer appointment form filed by the respondent on October 28, 2020 contained the following false information: 1) the campaign treasurer's name, the campaign treasurer's residence or business street address, the campaign treasurer's telephone number, and the name of the person making the appointment, in violation of Section 252.002(a) of the Election Code; and 2) the name of each person who determines for what purposes the committee makes expenditures (expenditure decision makers), in violation of Section 252.003(a)(1) of the Election Code.

Misleading and Inaccurate Political Advertising Disclosure Statement

13. Allegations 3 and 4 are based on a flyer sent in October 2020 under the name Citizens for a Better Farmers Branch.
14. The flyer expressly advocated for the defeat of the incumbent Farmers Branch mayoral candidate. The flyer contained a political advertising disclosure statement that stated "Paid for by Citizens for a Better Farmers Branch." For the reason stated above, including the respondent's admission that he paid for the flyer himself and did not receive reimbursement, credible evidence indicates the respondent sent the flyer, not the sham political committee Citizens for a Better Farmers Branch.
15. Section 255.004 of the Election Code states: "a person commits an offense if, with intent to injure a candidate or influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source."
16. Certain forms of political advertising also require a disclosure statement identifying the person who paid for it. Tex. Elec. Code § 255.001. Section 255.001(a) of the Election Code states:

A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising, and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate.

17. Political advertising means, in relevant part, a communication supporting or opposing a candidate for election to a public office that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication, or on an Internet website. Tex. Elec. Code § 251.001(16).
18. As stated above, the Commission obtained an invoice that indicates the respondent or respondent's business GrassRoutes PR entered into a contract with Digital Room LLC, and paid \$1,531.02 for the flyer at issue. Citizens for a Better Farmer Branch has not filed any campaign finance reports. There is no indication that anyone other than the respondent paid for the flyer. Digital Room LLC has no record of communications with Steve Mickelson, the purported treasurer of Citizens for Better Farmers Branch. Credible evidence indicates the respondent filed form GTA for the sham PAC Citizens for a Better Farmers Branch. Credible evidence also indicates the respondent knowingly caused to be published or distributed the flyer that purported to emanate from Citizens for a Better Farmers Branch, when it was actually from the respondent.
19. For the same reason, the flyer also contained an inaccurate political advertising disclosure statement, which is required to include the name of the person who actually paid for the political advertising or the name of the political committee that authorized it. The flyer contains a political advertising disclosure statement that indicates it was paid for by Citizens for Better Farmers Branch. However credible evidence indicates Citizens for a Better Farmers Branch is a sham PAC and the flyer was paid for by the respondent. Therefore, the flyer contains an incorrect political advertising disclosure statement in violation of Section 255.001 of the Election Code.

Failure to Respond to Sworn Complaint

20. On May 11, 2022, the Commission voted to initiate sworn complaint SC-32205248CI. On May 17, 2022, the Commission sent notice of the complaint by delivery confirmation and certified mail, return receipt requested, to a Flower Mound office address that the respondent had given as his contact address on various campaign finance filings, including the campaign treasurer appointment form by which he was appointed treasurer of a different political committee and campaign finance reports that he filed for the committee. The notice letter was also sent by email to the respondent to two email addresses: one of the email addresses was obtained from the campaign treasurer appointment form by which the respondent was appointed treasurer of a political committee, and the other email address was the same email address the respondent used to communicate with Carol Mitchell, as shown in the documents that were included in her affidavit. United States Postal Service (USPS) records show the letter sent by delivery confirmation was delivered on May 19, 2022. The letter sent by certified mail was returned as unclaimed. The Notice of Complaint letter designated the alleged violations as Category One violations, to which a response was required within ten business days.

21. On August 1, 2022, Commission staff sent a notice of the September 28, 2022 preliminary review hearing to the respondent via email, first-class mail with delivery confirmation, and by personal service. The notice included the original notice of complaint letter with all original attachments. The respondent was personally served with the notice by a professional process server in Denton, Texas, on August 9, 2022. Therefore, even assuming the respondent did not receive the initial notice of complaint letters, there is credible evidence to show the respondent personally received notice of the complaint on August 9, 2022, and was required to respond, at the very latest, by August 23, 2022. The respondent did not file a written response to the allegations in the complaint until the morning of the preliminary review hearing, on September 28, 2022.
22. A notice required to be sent to a respondent under Chapter 571 of the Government Code shall be sent to the address provided by the complainant or to the address most recently provided by the respondent. 1 Tex. Admin. Code § 12.21(b).
23. If an alleged violation is a Category One violation, a respondent must respond to the notice required by Section 571.123(b) of the Government Code not later than the 10th business day after the date the respondent receives the notice. Tex. Gov't Code § 571.1242(a). A respondent's failure to timely respond as required by Subsection (a) is a Category One violation. *Id.* § 571.1242(c). The response required by Subsection (a) 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).
24. The respondent was required to file a written response to the complaint. The respondent did not file a written response to the complaint until September 28, 2022, despite receiving multiple notices from the Commission that he was required to respond in writing within 10 business days after receiving notice of the complaint under Section 571.1242(a) of the Government Code. Therefore, there is credible evidence of a violation of Section 571.1242 of the Government Code.

IV. Default Judgment

1. The preliminary review hearing was held in person and by video teleconference on September 28, 2022, at the State Capitol Extension, Room E1.014, in Austin, Texas. The respondent failed to appear at the hearing, either in person or remotely.

2. A notice required to be sent to a respondent under Chapter 571 of the Government Code shall be sent to the address provided by the complainant or to the address most recently provided by the respondent. 1 Tex. Admin. Code § 12.21(b).
3. After the initial written notice regarding the filing of a sworn complaint has been sent to a respondent by registered or certified mail, restricted delivery, return receipt requested, the Commission may send the respondent any additional notices regarding the complaint by regular mail unless the respondent has notified the Commission to send all notices regarding the complaint by registered or certified mail, restricted delivery, return receipt requested. Tex. Gov't Code § 571.032.
4. If a respondent fails to appear at a hearing, the Commission may proceed in the respondent's absence and may find credible evidence of the violations alleged in the complaint and may issue a final order imposing a civil penalty. 1 Tex. Admin. Code § 12.23.
5. Commission staff sent the first notice of hearing to the respondent on August 1, 2022. The notice stated that the hearing would be held on September 28, 2022, at 1:45 p.m., in the State Capitol Extension, Room E1.014, Austin, Texas. The notice further stated that the respondent could participate in the hearing either by appearing physically or by video teleconference. The notice cautioned that if the respondent failed to appear at the hearing, then the allegations may be deemed admitted as true and the relief sought may be granted by default. Commission staff sent the first notice of hearing to the respondent's Flower Mound office address via first class mail with delivery confirmation, and via email. The physically mailed notice was sent to the Flower Mound address used in the respondent's campaign finance filings for the GPAC; the email was sent to both of the email addresses Commission staff had for the respondent, including the email address at which Commission staff had previously corresponded with the respondent. The respondent was also personally served with the first notice of hearing in Denton, Texas.
6. Commission staff sent a second notice of hearing to the respondent on August 29, 2022. This notice also stated that the hearing would be held on September 28, 2022, at 1:45 p.m., in the State Capitol Extension, Room E1.014, Austin, Texas, and that the allegations may be deemed admitted as true and the relief sought may be granted by default if the respondent failed to appear. Commission staff sent the second notice of hearing by physical mail to a new address that the respondent had given the process server, and by email to the same email addresses as the first notice of hearing. The respondent's last known address was 2201 Spinks Road, #168, Flower Mound, Texas 75022-4451.
7. On the morning of the preliminary review hearing, the respondent sent to Commission staff an email informing staff that he was "unable to attend the hearing this afternoon." The respondent explained that he would be undergoing a medical procedure at the time of the hearing; the respondent had not previously expressed any need to reschedule the

preliminary review hearing for medical reasons. Commission staff again cautioned the respondent that if he did not appear at the hearing, the Commission could proceed in his absence on a default basis. In response to Commission staff's question, the respondent confirmed that he was not requesting a continuance of the hearing, and had simply contacted staff to inform them that he would be "unable to attend."

8. The Commission finds that the respondent received legally sufficient notice of the sworn complaint and the September 28, 2022 preliminary review hearing in this case. The respondent received actual notice of the hearing and contacted Commission staff to inform them that he would not attend. The Commission proceeded in the respondent's absence and issued this final order in accordance with Section 12.23 of the Ethics Commission Rules. By failing to appear at the preliminary review hearing, the respondent forfeited his right to further proceedings before the Commission in this matter. This final order is a final and complete resolution of this complaint before the Commission, except for the issue of collection of the civil penalty.
9. The Commission finds credible evidence of violations of Sections 252.002(a), 252.003(a)(1), 255.001, and 255.004 of the Election Code and Section 571.1242 of the Government Code.

V. 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. A substantial penalty is required for the violations found by the Commission in this sworn complaint. The respondent's conduct in this case is consistent with a broader pattern of deception and concealment that is apparent in the other two sworn complaints resolved at the September 28, 2022 preliminary review hearing, sworn complaints SC-32105131 and SC-32202102CI. In sworn complaint SC-32105131, there is credible evidence to show the respondent intentionally failed to disclose a political expenditure for mailers, obscured the true source of a \$10,000 political contribution, and then corrected the report to disclose an inaccurate amount for the expenditure. In sworn complaint SC-32202102CI there is

credible evidence that the respondent filed a campaign treasurer appointment on behalf of an unwitting campaign treasurer.

4. The pattern of behavior shows a deliberate effort by the respondent to evade disclosure and mislead the public. The respondent also ignored the Commission by failing to timely respond to the complaint and failing to participate in the preliminary review hearing.
5. Therefore, the Commission orders that the respondent pay to the Commission, within 30 days of the date of this order, a civil penalty in the amount of \$15,000. If the respondent does not pay the \$15,000 civil penalty within 30 days of the date of this order, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

Order Date: _____

FOR THE COMMISSION

J.R. Johnson
Executive Director
Texas Ethics Commission