

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOSHUA FEUERSTEIN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3240116

FINAL ORDER

I. Recitals

The Texas Ethics Commission (TEC) held a preliminary review hearing on June 18, 2024, to consider sworn complaint SC-3240116. A quorum of the TEC was present. The respondent received legally sufficient notice of the hearing but did not appear at the hearing. The TEC proceeded with the hearing in the respondent's absence and found credible evidence of violations of Sections 252.001 and 253.031(a) of the Election Code. The TEC voted to issue this final order.

II. Allegations

The complaint alleged that the respondent, as a candidate for Texas State Representative, House District 4, in the March 2024 primary election: 1) failed to file a campaign treasurer appointment, in violation of Section 252.001 of the Election Code; and 2) accepted campaign contributions and/or made or authorized campaign expenditures without a campaign treasurer appointment on file, in violation of Section 253.031(a) of the Election Code.¹

III. Findings of Fact and Conclusions of Law

Credible evidence available to the TEC supports the following findings of facts and conclusions of law:

1. The respondent was an unsuccessful non-incumbent candidate for Texas State Representative, House District 4, in the March 5, 2024 primary election.

Campaign Treasurer Appointment

2. The complaint alleged that the respondent failed to file a campaign treasurer appointment.

¹ Although the sworn complaint did not cite Section 253.031 of the Election Code, the complaint sufficiently describes facts that, if true, could constitute a violation of that section of law. *See* 1 Tex. Admin. Code § 12.59.

3. On December 4, 2023, the respondent filed a ballot application for the general primary election with the Republican Party of Texas and paid the \$750 filing fee. The respondent did not file a campaign treasurer appointment until February 5, 2024.
4. In response to the complaint, the respondent stated that he disclosed the identity of his campaign treasurer when he applied for his candidacy on December 4, 2023, and believed this was sufficient to comply with the requirement to file a campaign treasurer appointment.
5. Each candidate and each political committee shall appoint a campaign treasurer as provided by Chapter 252 of the Election Code. Tex. Elec. Code § 252.001.
6. “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. Examples of affirmative action include the filing of an application for a place on the ballot. *Id.* § 251.001(1).
7. Credible evidence indicates the respondent filed an application for a place on the ballot without a campaign treasurer appointment on file. The submission of an application for a place on the ballot constituted an affirmative action for the purpose of gaining nomination or election to public office and made the respondent a candidate. Accordingly, the respondent was a candidate and did not have a campaign treasurer appointment on file. Therefore, there is credible evidence of a violation of Section 252.001 of the Election Code.

Campaign Contributions and/or Campaign Expenditures without a Campaign Treasurer Appointment on File

8. The complaint further alleged that the respondent accepted campaign contributions and/or made or authorized campaign expenditures without a campaign treasurer appointment on file.
9. Included with the complaint was a screenshot of the respondent’s campaign website, which showed a donation tab that individuals could click on to directly donate to the respondent’s campaign.
10. In response to the complaint, the respondent provided a purported campaign finance report. In this would-be report, the respondent indicated that he accepted \$13,685 in total campaign contributions and made \$5,219.21 in total political expenditures. The respondent listed \$5,377.13 in total political expenditures on the report form. However, one of the political expenditures that the respondent listed on the form, of \$157.92, was dated February 5, 2024, the same date that the respondent filed his campaign treasurer

appointment. Therefore, the available evidence does not clearly indicate that the respondent made this expenditure before he filed his campaign treasurer appointment. Regarding the campaign contributions, the respondent noted that the donations were for his political campaign and were deposited in his designated campaign account. The respondent sent the filled-out report form to TEC staff, but did not file it using the electronic portal for TEC filers or complete the affidavit required to file the report on paper. *See* Tex. Elec. Code § 254.036. The report remains unfiled.

11. 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).
12. Credible evidence indicates the respondent accepted \$13,685 in campaign contributions and made \$5,219.21 in political expenditures prior to filing his campaign treasurer appointment on February 5, 2024. Therefore, there is credible evidence of violations of Section 253.031(a) of the Election Code.

IV. Default Judgment

1. The preliminary review hearing was held on June 18, 2024, at 10:00 a.m., in person at the State Capitol Extension, Room E1.014, in Austin, Texas. The respondent was also given the option to appear 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 TEC may send the respondent any additional notices regarding the complaint by regular mail unless the respondent has notified the TEC 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 TEC 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. The first notice of hearing was sent to the respondent on May 1, 2024, by USPS first class mail with delivery confirmation, to the physical address provided by the respondent and on file with the TEC. The notice provided the date, time, and place of the hearing, and notified the respondent of the option to appear by video teleconference. The notice also stated 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. USPS records confirm the notice was delivered on May 3, 2024. A second notice of hearing was sent to the respondent on May 13, 2024, by USPS first class mail with delivery confirmation, at the same physical address as the first notice. A courtesy email of the second notice of hearing was sent to the respondent's three email addresses, which TEC staff had previously used to communicate with the respondent. Two of the email addresses bounced back as undeliverable, but the other email address was valid. Included with the second notice of hearing was TEC staff's motion to find credible evidence, copies of all documents expected to be used at the hearing, and a list of all witnesses that TEC staff proposed to call at the hearing. USPS records confirm the notice sent by delivery confirmation was delivered on May 15, 2024. The respondent did not respond to the notices.

6. The TEC finds that the respondent received legally sufficient notice of the sworn complaint and the June 18, 2024 preliminary review hearing for this case. The respondent did not respond to the notices of hearing or appear at the hearing, despite multiple notices from the TEC and attempts by TEC staff to communicate with the respondent and resolve the complaint. The TEC proceeded in the respondent's absence and issued this final order in accordance with Section 12.23 of the TEC Rules. By failing to appear at the preliminary review hearing, the respondent forfeited his right to further proceedings before the TEC in this matter. This final order is a final and complete resolution of this sworn complaint before the TEC, except for the issue of collection of the civil penalty.
7. The TEC finds credible evidence of violations of Sections 252.001 and 253.031(a) of the Election Code.

V. Sanction

1. The TEC 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 TEC, whichever amount is more, for a delay in complying with a TEC order or for violation of a law administered and enforced by the TEC. Tex. Gov't Code § 571.173.
2. The TEC 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. The respondent, as a TEC filer, did not sign the required security form that would allow him to file his reports electronically with the TEC. TEC filing services staff informed the respondent by email that he needed to submit the form. However, the respondent's

campaign treasurer did not respond. Shortly after filing services staff sent the reminder email, the respondent's campaign treasurer emailed a completed campaign finance report form to TEC enforcement staff. This report was labeled as a 30-day pre-election report, and covered dates within the reporting periods for both the January 2024 semiannual report and the 30-day pre-election report for the March 5, 2024 election.

4. After the respondent's campaign treasurer emailed the completed campaign finance report form to enforcement staff, enforcement staff attempted to contact the respondent and the respondent's campaign treasurer by email. Enforcement staff sent emails to the respondent's two email addresses and the campaign treasurer's email address. TEC staff had successfully reached the respondent and his campaign treasurer at these email addresses before. In the emails, enforcement staff reminded the respondent that he did not validly file the report as required by the relevant legal authorities and TEC policy, and that in order for the report to be accepted, he would have to file it through the TEC's electronic filing portal. Enforcement staff also reminded the respondent that he was required to file a January 2024 semiannual campaign finance report, a 30-day pre-election campaign finance report, and a personal financial statement. However, the respondent's emails were returned as undeliverable. It appears that the respondent closed the email accounts, with which he had recently communicated with enforcement staff, to evade enforcement staff's communications. TEC staff has heard nothing from the respondent or his campaign treasurer since the respondent closed his email accounts.
5. The respondent did not file anything with the TEC until two months after he launched his campaign, and had almost \$20,000 in campaign financial activity during the period in which he had no treasurer appointment on file. Because the respondent still has not validly filed any report disclosing his campaign financial activity, the public has received no notice of any of the respondent's activity.
6. After considering the seriousness of the violations described under Section III, the respondent's failure to respond to the sworn complaint in good faith, and the other factors enumerated by Section 571.177 of the Government Code, the TEC orders that the respondent pay to the TEC, within 30 days of the date of this order, a civil penalty in the amount of \$5,000. If the respondent does not pay the \$5,000 civil penalty within 30 days of the date of this order, then the civil penalty will be referred to the Office of the Attorney General of Texas for collection.

Order Date: June 24, 2024

FOR THE TEC

J.R. Johnson

J.R. Johnson
Executive Director
Texas Ethics Commission