STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Lynette Dumalag,

Complainant,

vs.

John Basill,

Respondent.

ORDER OF DISMISSAL

This matter came before Administrative Law Judge Jessica A. Palmer-Denig for a probable cause hearing held by telephone on November 5, 2021. The hearing addressed a campaign complaint (Complaint) filed by Lynette Dumalag (Complainant) under the Fair Campaign Practices Act. The hearing record closed at the conclusion of the proceeding.

Complainant appeared on her own behalf, without legal counsel. John Basill (Respondent) appeared on his own behalf without legal counsel.

Based upon the record and all the proceedings in this matter, and for the reasons set forth in the attached Memorandum, which is incorporated herein, the Administrative Law Judge makes the following:

ORDER

1. There is no probable cause to believe that Respondent violated Minn. Stat. § 211B.04 (2020), as alleged in the Complaint.

2. The Complaint is **DISMISSED**.

Dated: November 10, 2021

JESSICA A. PALMER-DENIG
Administrative Law Judge

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

Minn. Stat. § 211B.34, subd. 3 (2020), provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two (2) business days after this dismissal.

If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minn. Stat. § 211B.35 (2020) within five (5) business days after granting the petition.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 211B.36, subd. 5 (2020), and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63-.69 (2020).

MEMORANDUM

I. Factual and Procedural Background

Both Complainant and Respondent were candidates for the St. Louis Park City Council, Ward 2 seat in the general election held on November 2, 2021.[1] Respondent ran as a write-in candidate.[2] On October 29, 2021, Complainant filed a Complaint under the Fair Campaign Practices Act.[3] The Complaint alleges that Respondent disseminated campaign lawn signs, campaign literature, and posts on social media websites promoting his candidacy, and that these materials lacked disclaimers in the form required by Minn. Stat. § 211B.04.[4] Complainant included with her Complaint scanned images of Respondent's lawn sign and other campaign material.[5]

By Order dated November 2, 2021, the Administrative Law Judge found that the Complaint established prima facie violations of Minn. Stat. § 211B.04, and set this matter on for a probable cause hearing to be conducted by telephone on November 5, 2021.[6]

On November 4, 2021, Respondent filed a response to the Complaint.[7] Respondent asserts that he was not required to include a disclaimer on his campaign material because he meets the exemption to the disclaimer requirement provided for candidates who are not required to file campaign financial reports under Minn. Stat. §§ 211A.01-.14 (2020).[8] Respondent submitted his own affidavit as well as an affidavit of his spouse, Susan Basill.[9] Both attest in their affidavits that Respondent did not receive

[1] Testimony (Test.) of Lynnette Dumalag; Test. of John Basill.
[2] Test. of J. Basill.
[3] Minn. Stat. §§ 211B.01-.37 (2020).
[4] Complaint (Oct. 29, 2021).
[5] *Id*.; Exhibits (Ex.) 1-4.
[6] Notice of Determination of Prima Facie Violation and Notice and Order for Probable Cause Hearing (Prima Facie Order) (Nov. 2, 2021).
[7] Resp't's Response (Nov. 4, 2021).
[8] *See* Minn. Stat. § 211B.04, subd. 3(b).
[9] Resp't's Response, Affidavit (Aff.) of John Basill, Aff. of Susan Basill.

contributions or make campaign expenditures of more than $750.[10] Respondent also submitted scanned images of invoices related to his campaign expenditures.[11]

During the probable cause hearing, Complainant relied on the images she submitted of Respondent's lawn sign and other campaign material. None of the material includes a disclaimer identifying who or what committee prepared and paid for the material.[12]

Respondent testified that he decided to run as a write-in candidate in early October. Respondent asserted that he reviewed the Campaign Manual provided to candidates and noted the disclaimer exemption.[13] Respondent maintains that he received no campaign contributions and that he spent less than $750 on his campaign.[14] Respondent's invoices reflect expenditures of $694.75 on materials and $30 for a registered voter list.[15]

At the close of the probable cause hearing, both parties agreed to submit this matter on the record to a panel of administrative law judges and to waive the evidentiary hearing in the event probable cause was found.

II. Legal Standard

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to establish a reasonable belief that the respondent committed the violation of law as alleged in the complaint.[16] The administrative law judge must decide whether, given the facts disclosed in the record, it is fair and reasonable to require the respondent to address the claims in the complaint at a hearing on the merits.[17] If the administrative law judge is satisfied that the facts appearing in the record, including reliable hearsay, would preclude the granting of a motion for a directed verdict in a like civil case, the campaign violation complaint should be allowed to proceed.[18]

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[10] Aff. of J. Basill; Aff. of S. Basill.
[11] Resp't's Exs. A-E.
[12] Complaint, Exs. 1-4.
[13] *See* Minn. Stat. § 211B.14.
[14] Test. of J. Basill.
[15] Resp't's Exs. A-E; Aff. of J. Basill.
[16] *See Weinberger v. Maplewood Review*, 668 N.W.2d 667, 664 (Minn. 2003) ("[I]n civil cases probable cause constitutes a *bona fide* belief in the existence of the facts essential under the law for the action and such as would warrant a person of ordinary caution, prudence and judgment, under the circumstances, in entertaining it") (quoting *New England Land Co. v. DeMarkey*, 569 A.2d 1098, 1103 (Conn. 1990)) (internal punctuation omitted); *see also State v. Florence*, 239 N.W.2d 892, 903-04 (Minn. 1976) (explaining operation of probable cause standard in criminal context).
[17] *See In re Hortman v. Republican Party of Minn.*, No. 15-0320-17530, PROBABLE CAUSE ORDER at 3 (Minn. Office Admin. Hearings, Oct. 2, 2006).
[18] In civil cases, a motion for a directed verdict presents a question of law regarding the sufficiency of the evidence to raise a fact question. The court must view all the evidence presented in the light most favorable to the adverse party and resolve all issues of credibility in the adverse party's favor. *See, e.g.,* Minn. R. Civ. P. 50.01; *Midland National Bank v. Perranoski*, 299 N.W.2d 404, 409 (Minn. 1980); *LeBeau v. Buchanan*, 236 N.W.2d 789, 791 (Minn. 1975).

III. Analysis

Under Minn. Stat. § 211B.04, it is unlawful to prepare or disseminate most types of campaign material without prominently disclosing the name and address of the person or committee causing the material to be prepared or disseminated.[19] The statute requires the disclaimer provide the name and address of the committee that prepared and paid for the material, and must read substantially as follows: "Prepared and paid for by the _____ committee _____ (address)."[20] The purpose of the disclaimer requirement is to "identify who or what committee prepared, disseminated and paid for the campaign material."[21]

Campaign material is defined as any material disseminated for the purpose of influencing voting.[22] Respondent's lawn signs and other campaign material meet the definition of "campaign material" and are required to include a disclaimer "substantially in the form" provided in Minn. Stat. § 211B.04, subd. 1(b), unless an exemption applies.

Minn. Stat. § 211B.04, subd. 3(b) provides an exemption to the disclaimer requirement for individuals who are not required to report under Minn. Stat. ch. 211A. Chapter 211A governs the campaign financial reporting requirements for those seeking election to county, municipal, and other local offices.

Pursuant to Minn. Stat. § 211A.02, only candidates or committees that receive or make disbursements of more than $750 in a calendar year are required to report. An individual or committee that does not spend or receive contributions of more than $750 in a calendar year is not required to file campaign finance reports under Minn. Stat. §§ 211A.01-.14. Such an individual is also not required to include a disclaimer on campaign material, under Minn. Stat. § 211B.04, subd. 3(b).

Respondent provided affidavits and invoices to support his assertion that he did not meet the reporting threshold under Minn. Stat. § 211A.02. Complainant did not offer any evidence to counter Respondent's assertions.[23] Instead, Complainant argued generally that the disclaimer requirement should apply to all candidates regardless of the amount of campaign contributions received or money spent.

The Minnesota legislature exempted from the disclaimer and financial reporting requirements those candidates who make expenditures or receive contributions in amounts of $750 or less. Complainant may disagree that this exemption should exist, but the law provides otherwise.

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[19] Minn. Stat. § 211B.04, subd. 1(b).
[20] *Id*.
[21] *Hansen v. Stone*, No. 4-6326-16911, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Minn. Office Admin. Hearings Oct. 28, 2005).
[22] *See* Minn. Stat. § 211B.01, subd. 2.
[23] Complainant elicited testimony from Respondent regarding an additional expenditure beyond the invoiced amounts addressed in Respondent's filings. Respondent provided cupcakes to attendees at a small gathering in Respondent's back yard the night of the election. Test. of J. Basill. Respondent testified that the gathering was sparsely attended and that the cost of the cupcakes did not push his expenditures over the threshold requiring reporting and the use of disclaimers. *Id.* Complainant provided no evidence to the contrary.

The burden of establishing probable cause or a reasonable belief that Respondent violated the Fair Campaign Practices Act is on Complainant. Complainant did not put forward sufficient facts to support finding Respondent made expenditures or received contributions in an amount greater than $750, requiring him to include a disclaimer on his campaign materials.

IV. Conclusion

Complainant failed to demonstrate probable cause to believe Respondent violated Minn. Stat. § 211B.04 as alleged. The Complaint is, therefore, **DISMISSED**.

J. P. D.