OAH 65-0325-39618

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Frank Jewell,

Complainant,

vs.

Forever Duluth PAC,

Respondent.

NOTICE OF DETERMINATION OF PRIMA FACIE VIOLATION AND NOTICE OF AND ORDER FOR PROBABLE CAUSE HEARING

On November 3, 2023, Frank Jewell (Complainant) filed a Fair Campaign Practices Complaint (Complaint) with the Office of Administrative Hearings (OAH). The Complaint alleges that Forever Duluth PAC (Respondent) violated campaign financial reporting requirements under Minn. Stat. § 211A.02 (2022) related to the Duluth mayoral election to be held November 7, 2023.

Following a review of the Complaint and attached documents, the undersigned Administrative Law Judge determines that the Complaint establishes a prima facie violation of Minn. Stat. § 211A.02. For the reasons detailed in the Memorandum below, the Complaint will proceed to a probable cause hearing.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a probable cause hearing to be held before the undersigned Administrative Law Judge at **10:30 a.m.** on **Thursday, November 9, 2023**. The hearing will be held by call-in telephone conference. At the appointed time, the parties are directed to call **1 651-395-7448** and enter conference code **874 189 243#**.

The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34 (2022). Information about the probable cause proceedings and copies of state statutes may be found online at http://mn.gov/oah and www.revisor.leg.state.mn.us.

At the probable cause hearing, all parties have the right to be represented by legal counsel or appear on their own behalf. In addition, the parties have the right to submit evidence, affidavits, documentation, and argument for consideration by the Administrative Law Judge.

By **12:00 p.m.** on **Wednesday, November 8, 2023**, the parties shall provide to the Administrative Law Judge **all evidence bearing on the case**, with copies of the same items sent to the opposing party.

Any document filed with the Office of Administrative Hearings, or any documents that a party wishes to make part of the hearing record, may be filed in one of the following

ways: (1) by **eFiling** through the Office of Administrative Hearings' eFiling system; (2) by **mail**; (3) by **facsimile**; or (4) by **personal delivery**.

The eFiling system is accessible at: http://mn.gov/oah/forms-and-filing/efiling/.

The Office of Administrative Hearings' facsimile number is (651) 539-0310.

After the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the Complaint based on a determination that the Complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the Complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the Complaint has occurred and refer the case to the Chief Administrative Law Judge to schedule an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35 (2022).

If the Administrative Law Judge dismisses the Complaint, the Complainant may seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability to participate in this hearing process may request one. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900.

A failure by any party to participate and appear by telephone at the probable cause hearing may result in a finding of default, and the Complaint may be dismissed or disposed of pursuant to Minn. Stat. § 211B.35, subd. 2.

Dated: November 7, 2023

ANN O'REILLY
Administrative Law Judge

MEMORANDUM

Respondent is a political committee supporting the election of Roger Reinert for Mayor of the City of Duluth in the general election on November 7, 2023. The Complaint alleges that Respondent violated campaign financial reporting requirements under Minn. Stat. § 211A.02 by failing to timely file a financial report ten days before the general election, and by including a corporate name and address for a campaign contributor that could not be verified by Complainant.[1]

I. Standard for Prima Facie Determinations

To establish a prima facie violation of the Fair Campaign Practices Act, a complainant must allege sufficient facts to show that a violation of law has occurred.[2] The complaining party must submit evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37 (2022).[3]

For purposes of a prima facie determination, this tribunal must accept the facts that are alleged in the Complaint as true, without independent substantiation, provided that those facts are not patently false or inherently incredible.[4] In determining whether a complaint alleges sufficient facts to state a prima facie case, reasonable inferences must be drawn in the light most favorable to the complainant.[5]

A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of Minn. Stat. §§ 211A.01-.14, 211B.01-.37.[6]

II. Campaign Financial Reporting (Minn. Stat. § 211A.02)

Under Minn. Stat. § 211A.02, subd. 1, candidates or committees who receive contributions or make disbursements of over $750 in a calendar year must file financial reports with the appropriate filing officer.[7] A candidate or committee who receives contributions or makes disbursements of more than $750 in a calendar year must submit an initial report to the filing officer within 14 days after the candidate or committee receives or makes disbursements of more than $750.[8]

Thereafter, the candidate or committee shall continue filing the reports listed in Minn. Stat. § 211A.02, subd. 1(b), until a final report is filed.[9] These reports include a

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[1] Complaint at 2.
[2] Minn. Stat. § 211B.32, subd. 3.
[3] *Barry v. St. Anthony-New Brighton Indep. Sch. Dist. 282*, 781 N.W.2d 898, 902 (Minn. Ct. App. 2010).
[4] *Id*.
[5] *Abrahamson v. St. Louis Cty. Sch. Dist.*, 819 N.W.2d 129, 136 (Minn. 2012).
[6] *Barry,* 781 N.W.2d at 902.
[7] The "filing officer" is the officer authorized to accept affidavits of candidacy or nominating petitions for an office. *See* Minn. Stat. § 211A.01, subd. 7.
[8] Minn. Stat. § 211A.02, subd. 1(a).
[9] *Id*.

report filed ten days before the primary election, ten days before the general election, and 30 days after the general election.[10]

Minn. Stat. § 211A.02, subd. 2, governs the information a candidate or committee is required to include in the campaign financial report. Candidates or committees are required to report their total cash on hand, the total amount of contributions and disbursements, and the amount, date, and purpose of each disbursement.[11] They are also required to provide the name, address, employer, or occupation if self-employed, of each individual contributor who made a contribution that exceeds $100.[12]

In support of his Complaint, Complainant submitted a campaign financial report filed by Respondent.[13] The report purports to cover the period from August 9, 2023, through October 23, 2023.[14] While the report submitted with the Complaint is not dated, Complainant alleges the report was filed on October 31, 2023.[15]

The general election in this case is scheduled for November 7, 2023. Therefore, ten days prior to the election would require a report to be filed on October 28, 2023.

The report identifies a total of $132,000 in contributions received and $26,394.16 in cash on hand.[16] The report also identifies a list of contributions and disbursements in two separate attachments to the report.[17] Of note to Complainant, Respondent details two $10,000 contributions made by Exodus Life, LLC: the first on August 25, 2023, and the second on September 8, 2023.[18]

Complainant asserts that, pursuant to section 211A.02, subd. 1(b)(2), Respondent was required to file its campaign financial report ten days before the general election, which would have been October 28, 2023. Complainant contends that Respondent's failure to timely file the report by October 28, 2023, violated section 211A.02, subd. 1(b)(2). Complainant does not allege how he came to know the report was untimely filed.

Complainant also asserts that Respondent violated section 211A.02, subd. 2(6), by failing to report a verifiable corporate entity and address for a specific contributor, Exodus Life, LLC. In support of his claim, Complainant states that he could not locate Exodus Life, LLC on the Minnesota Secretary of State's website database as an entity registered to do business in the State of Minnesota.[19] Complainant notes that, as a limited liability corporation, Exodus Life, LLC meets the definition of a corporation under the Fair

[10] *Id*., at subd. 1(b).
[11] *Id*. at subd. 2(3)-(5).
[12] *Id*. at subd. 2(6).
[13] Complaint at 7.
[14] *Id*.
[15] *Id*. at 2 and 7.
[16] *Id*.
[17] *Id*. at 8-9.
[18] *Id*. at 8.
[19] *Id*. at 2; Complainant does not provide the search terms used or copies of the search results with his Complaint. Complainant also does not indicate whether Exodus Life, LLC is located, or conducts business, at the address provided in the report.

Campaign Practices Act.[20] Therefore, Complainant argues that Respondent's report should identify Exodus Life LLC's "principal place of business" or otherwise provide information that could allow said entity to be verified.

Accepting the facts alleged as true, which is required at this stage of review, the Administrative Law Judge finds Complainant has alleged sufficient facts to support finding a prima facie violation of section 211A.02, subd. 1(b)(2). If Respondent has a continuing obligation to report under section 211A.02, Respondent was required to file a campaign finance report ten days before November 7, 2023, general election, which would have been October 28, 2023. Complainant asserts that the report was not filed until October 31, 2023. Therefore, this claim will proceed to the probable cause hearing.

As for the alleged violation of Minn. Stat. § 211A.02, subd. 2(6), Complainant asserts that a search of the Minnesota Secretary of State corporate database does not identify Exodus Life, LLC as a corporate entity registered to do business in the state of Minnesota. Therefore, Complainant was unable to verify that Exodus Life, LLC is a real entity and Complainant was unable to verify if the address listed for the entity was correct. Inherent in the statutory obligation to provide the name and address of all contributors on the financial disclosure, is the requirement that the information provided on the report is accurate and not fabricated. Such disclosures would be meaningless if reporters could simply fabricate the name and addresses of donors. Accordingly, this claim will also proceed to a probable cause hearing.

III. Conclusion

Complainant has established a prima facie violation of Minn. Stat. § 211A.02, subd. 1(b)(2) and subd. 2(6) by Respondent. These claimed violations will proceed to a probable cause hearing as ordered above.

A.C.O.

[20] Complaint at 2-3, citing Minn. Stat. § 211B.15, subd. 1(3).