

MEMORANDUM

TO: San Jose Elections Commission
FROM: Hanson Bridgett LLP
DATE: July 14, 2010
RE: **Supplemental Report of Investigation**

Citizen Complaint

Complainant: **Robert Sandoval**
Respondent: **Minh Duong / Minh Duong for Council Committee**
Alleged Violations: **Violation of the Campaign Ordinance: Filing Inaccurate/Incomplete Campaign Reports**
Complaint Filed: **May 19, 2010**

I. INTRODUCTION

Since submitting our Report of Investigation ("Report"), we have received additional information related to the allegations and our findings and conclusions.¹ Although we do not believe that this additional information alters our conclusions or recommendations, this information is relevant to the Commission's consideration of the Complaint and related allegations and determination of appropriate disposition.

II. ADDITIONAL FACTS

In our Report, we noted that Respondent met with representatives of ICG in mid-June and tendered a payment of \$18,834 (see Report, Section V.A, p.4) to satisfy outstanding invoices. We noted that the proffered payment did not correspond precisely to the outstanding invoices (which totaled \$22,459). We have since learned that the \$18,834 represented a compromise payment to satisfy both of the outstanding invoices.²

An email message from Respondent to Mr. Wong further confirms the fact of the meeting in mid-June described in our Report and the timing of that meeting. (**Exhibit K**) From

¹ We have provided this information to Respondent's representative.

² We spoke with the attorney representing ICG in the underlying lawsuit. He explained the \$18,834 and provided the additional facts related in this report. The explanation of the \$18,834 is consistent with what we learned in our interview of the Respondent.

Memorandum To:
San Jose Elections Commission
July 14, 2010
Page 2

this message, it is apparent that Respondent made a payment to ICG as reported earlier; the message also indicates Respondent instructed ICG not to cash the check representing the payment. The context and tone of the message do not reflect a dispute with ICG as to the obligation; rather, the issue appears to be a request for forbearance by ICG in negotiating the check.

On July 2, 2008, Mr. Wong wrote to Respondent, indicating a need to deposit the check tendered in mid-June. Respondent replied to this message the same day, with a request to extend the time to make payment. The follow-up email from Respondent to ICG on July 2, 2008, indicates the payment proffered in mid-June was not made. (**Exhibit L**) Again, this is consistent with our initial Report.³

III. FACTUAL FINDINGS AND ANALYSIS OF ISSUES

The additional information does not change our initial impression of the relevant facts and conclusions. In our Report, we noted that the fact of Respondent's acknowledged attempt to pay ICG made clear that the campaign was aware of an obligation that should have been reported as an accrued expense. (see Report, Sections VII.A, p. 20; VII.D, pp. 21-22) We also found that there was sufficient evidence (i.e., Respondent's admission that payment on the \$18,834 check was stopped) to undermine the accuracy of the termination Form 460 filed on June 30, 2008. (see Report, Sections VII.B and C, p. 21)

Exhibits K and L are not inconsistent with these findings and conclusions. In our initial Report, we stated that Respondent disputed any obligation to ICG because of lack of documentation to support the invoices (see Report, Sections V.A, pp. 4-5; VII.D and F, pp. 21-23 [footnote 16]); however, the Commission could find from these messages that there was no dispute. Ultimately, we do not believe that such a finding alters the conclusion as to the sustained violations, but we acknowledge that it is relevant to the Commission's determination of corrective action if the recommendations of the Report are adopted.

In our view, these messages are not determinative of the question of what is owed to ICG. Accordingly, our recommendation to defer disposition of the allegation regarding violation of Title 12, Chapter 6, Part 7 of the Municipal Code is unchanged. (see Report, Section VII.F, pp. 22-23)

Respectfully submitted,

M. D. Moye, rm

M. D. Moye

³ We note, however, that the language in the message indicates Respondent's intent to pay the outstanding obligation to ICG.

EXHIBITS TO SUPPLEMENTAL REPORT OF INVESTIGATION

- **Exhibit K -** Electronic Mail message, dated June 12, 2008, from Minh Duong to R. Wong et al., subject: Postpone Check Deposit.
- **Exhibit L-** Electronic Mail message, dated July 2, 2008, from Minh Duong to R. Wong et al., subject: re: Check.

EXHIBIT K

From: MDUONG100@aol.com [mailto:MDUONG100@aol.com]
Sent: Thursday, June 12, 2008 12:54 AM
To: ron.wong@sbcglobal.net; gzago@icgworldwide.com
Subject: Postpone check deposit

Hello Ron and Joe,

I reconciled my books and found that I am behind on the amount necessary to clear the check I signed. Please give me a until the end of the month or so to have fund ready for you. As I explained, I am going through a lot trying to get back to normal. I will take care of you. However, I need time to get things through. I was going to further explain on this, but you need to leave early so I figure I should explain to you through email about this. Please don't deposit just yet. Please hang on and bear with me. Thanks Joe for the proof.

As you know, I am a responsible person. I will take care of things, but I just need some time. Please cooperate with me.

Sincerely Thanks,

Minh

Vote for your city's best dining and nightlife. [City's Best 2008](#).

EXHIBIT L

From: mduong100@aol.com [mailto:mduong100@aol.com]
Sent: Wednesday, July 02, 2008 11:20 PM
To: ron.wong@sbcglobal.net; gzago@icgworldwide.com
Subject: Re: Check

Hello Ron and Joe,

Hope all is well. However, for me things have been hell after the election. My building in Fresno burned and all in a sudden I am overwhelmed with mortgage increases. I am extremely stressed out. I have been in and out of town a lot lately because of the fire. My business is not doing so well and my cash out loan didn't go through again because of the tightened banking criterias. I am left with not many choices. I am ready to snap at any moment.

As for your payment, I have to ask for your understanding in making arrangements to pay you in installments. As I have always said, I will pay you off and not owing a penny. However, things are extremely tight for me. I can make payments in increment of about \$2000/month until payoff. I have no choice now, but to cry out for help. If things turn out better, I will accelerate the payment. I just want you to know that I don't like owe anybody money at all.

I have lost so much in this campaign. Campaign cost+ Time+ Effort + Opportunity Cost (very high). I don't think I'll be running again ever. I've gained some experience and perspective at a very high cost. Anyhow, regardless of how it turned out, thanks for showing me the world of politics and for giving me a hand in the process.

Thanks sincerely for your understanding and consideration.

Please accept my deepest apologies.

Minh Duong

-----Original Message-----

From: RON WONG <ron.wong@sbcglobal.net>
To: minhduong4council@yahoo.com; MDUONG100@aol.com
Sent: Wed, 2 Jul 2008 12:02 pm
Subject: Check

Hi Minh,
Please give me a call when you get the chance. I need to deposit the check—so please make sure \$\$ is available.

Thanks!

Ronald W. Wong, President
Imprenta Communications Group, Inc
www.icgworldwide.com
(213) 258-8726

The Famous, the infamous, the lame - in your browser. [Get the TMZ Toolbar Now!](#)