



State of Washington
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908

(360) 753-1111 • FAX (360) 753-1112

Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdca.wa.gov

May 14, 2020

Sent electronically to dan@danbradylaw.com

Subject: Complaint filed by Jeanne Martin, PDC Case 47998

Dear Dan Brady, legal counsel Our Olympic Communities Enterprise Washington:

Enclosed is a copy of an electronic letter sent to Jeanne Martin concerning a complaint filed with the Public Disclosure Commission (PDC) against Our Olympic Communities Enterprise Washington (Committee) alleging violations of: (1) RCW 42.17A.335 by making a false statement of material fact about Irene Bowling in opposition ads; RCW 42.17A.335 by sponsoring an ad that falsely represents Candidate Bowling as an incumbent ("headphones" opposition ad); (2) RCW 42.17A.240 for failing to fully report expenditures for mailers distributed in 2018 general election; and (3) RCW 42.17A.320 and WAC 390-18 by failing to identify the Top Five Contributor information on political, independent expenditure or electioneering communication advertising sponsored by the Committee and by failing to comply with the required sponsor identification by positioning that information upside-down and in a much lighter-colored or half-toned font on the advertisements.

As you know, the Commission has separately scheduled the Committee for an enforcement hearing to be held May 28, 2020, concerning the Committee's alleged violations of RCW 42.17A.255, .260 or .305 for failing to timely file Independent Expenditure Reports (C-6 reports) disclosing the costs of independent expenditure or electioneering communication advertising in support of Tim Sheldon and in opposition to Irene Bowling.

As noted in the letter to Jeanne Martin, the PDC has dismissed the remaining allegations in accordance with RCW 42.17A.755(1) and will not conduct a more formal investigation into these allegations or take further enforcement action in this matter.

However, pursuant to WAC 390-37-060(1)(d), this letter serves as a formal written warning concerning the failure to comply with the filing and disclosure requirements noted in the enclosed letter. This formal written warning comes with staff's expectation the Committee will: (1) fully identify Top Five Contributors on all future political advertising, independent expenditures (IE) or electioneering communications (EC); (2) provide the required sponsor identification on all future political advertisements, IE's and EC's in accordance with statutes and rules; and (3) file timely and complete C-4 and C-6 reports in future years in accordance with PDC laws and rules, including disclosing the required expenditure detail in accordance with RCW 42.17A.240.

The Commission will consider this formal written warning in deciding on further Commission action if there are future violations of PDC laws or rules.

If you have questions, you may contact Alice Fiman at (360) 586-4746, toll-free at 1-877-601-

2828, or by e-mail at pdcc@pdcc.wa.gov

Sincerely,

/s_____

Alice Fiman
Compliance Officer

Endorsed by,

/s_____

Peter Lavalley
Executive Director



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May 13, 2020

Sent electronically and via U.S. mail to Jeanne Martin at jcarolmartin@gmail.com and P.O. Box 116, Seabeck, WA 98380

Subject: Our Olympic Communities Enterprise Washington, PDC Case 47998

Dear Jeanne Martin:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed February 28, 2019 against Our Olympic Communities Enterprise Washington (Committee) concerning activities undertaken during the 2018 election.

As to the Committee's alleged violations of RCW 42.17A.255, .260 or .305 for failing to timely file Independent Expenditure Reports (C-6 reports) disclosing the costs of independent expenditure or electioneering communication advertising in support of Tim Sheldon and in opposition to Irene Bowling, the Commission has scheduled the Committee for an enforcement hearing to be held May 28, 2020.

Your complaint alleged the Committee may have violated: (1) RCW 42.17A.335 by making a false statement of material fact about Irene Bowling in opposition ads; RCW 42.17A.335 by sponsoring an ad that falsely represents Candidate Bowling as an incumbent ("headphones" opposition ad); (2) RCW 42.17A.240 for failing to fully report expenditures for mailers distributed in 2018 general election; and (3) RCW 42.17A.320 and WAC 390-18 by failing to identify the Top Five Contributor information on political, independent expenditure or electioneering communication advertising sponsored by the Committee and by failing to comply with the required sponsor identification by positioning that information upside-down and in a much lighter-colored or half-toned font on the advertisements.

PDC staff reviewed your allegations and attachments; the applicable statutes, rules, and reporting requirements; the C-3 and C-4 reports filed by the Committee, and the response from Dan Brady, legal counsel for the Committee, to determine whether the record supports a finding of one or more violations. Based on staff's review, we found the following:

Allegation #1: Failure to fully include Top Five Contributor information on political advertising

- In response, Mr. Brady stated that the Committee had only received contributions from three contributors at the time four of the mail pieces were printed, and "Unfortunately, three of the four mail pieces inadvertently do not list the Washington Association of

Realtors PAC (the PAC) as one of the top contributors as they should. The fourth mailing does list the PAC as a top five contributor. The Committee regrets the oversight.”

Allegation #2: Sponsoring political advertising that made a false statement of material fact about a candidate

- RCW 42.17A.335 prohibits a person from sponsoring political advertising, independent expenditure or electioneering communication advertising with actual malice, that includes a false statement of material fact about a candidate for public office that constitutes libel or defamation per se. The violation must be proven by clear and convincing evidence.
- In his response, Mr. Brady stated the complaint failed to provide any evidence that the statements made in the political advertisements sponsored by the Committee were not true. He stated that the “burden of proof is on the Complainant to show by clear and convincing evidence that the characterization presented in the mail pieces is a false statement of material fact. Instead, the Complainant has provided virtually no evidence of any kind. The Committee maintains that the characterization of Ms. Bowling’s legislative commitments and her affiliation with the Democratic party are accurate.”
- There was no clear and convincing evidence of defamatory or libelous statements made with actual malice.

Allegation #3: Failure to fully report expenditures for mailers distributed in 2018 general election

- The Committee timely filed its C-4 reports during the 2018 election, including the 21-Day and 7-Day Pre-Election C-4 reports. However, staff noted that some of the C-4 reports, especially the 21-Day and 7-Day Pre-Election C-4 reports, failed to disclose the required expenditure details in accordance with RCW 42.17A.240.
- The C-4 reports filed by the Committee disclosed vendors used and a brief description of the services provided (i.e., Direct Mail, Postage and Digital Media Ad). Staff found in most cases the initial C-4 reports filed by the Committee failed to disclose the candidates supported or opposed, the number of items mailed or produced, and dates the advertisements were presented to the public.
- On May 3, 2019, the Committee filed amended 21-Day and 7-Day Pre-Primary and General Election C-4 reports, and Post-Primary and General Election C-4 reports for the 2018 election, disclosing additional expenditure information details, including candidates supported or opposed, number of items mailed, run dates for advertising and dates items were presented to the public. The information filed on those amended C-4 reports was disclosed between 185 and 290 days late and 178 days after the 2018 General Election.

Allegation #4: Sponsor identification was positioned upside-down & using a light-colored font

- In response Mr. Brady stated the Committee “maintains that the disclaimer in this mail piece meets all the requirements for clarity, contrast and placement. There is no orientation requirement for text in a disclaimer and the Complainant notes herself in her March 9, 2019 email on page 3, section 2 that “the disclaimer is actually easy to read...”
- Mr. Brady also stated the complainant suggests “the disclaimer in the ‘headphones’ mail piece might also be upside-down. This disclaimer is not upside down in relation to other text on the page and, in fact, the Complainant does not allege that the disclaimer on this

or any other mail piece is oriented improperly.”

- He noted “as with the previous mail piece, the Committee maintains that the disclaimer in this mail piece meets all the requirements for clarity, contrast and placement as required in Chapter 42.17A RCW and Title 390 WAC.”

As mentioned above, the Commission has scheduled an enforcement hearing for May 28, 2020, concerning the Committee’s alleged violations of RCW 42.17A.255, .260 or .305.

Based on these findings, staff has determined that in this instance, the remaining allegations do not amount to actual violations warranting further investigation. However, pursuant to WAC 390-37-060(1)(d), Our Olympic Communities Enterprise Washington will receive a formal written warning concerning the Committee’s failure to comply with filing and disclosure requirements as noted in this letter.

The formal written warning will include staff’s expectation the Committee will: (1) fully identify Top Five Contributors on all future political advertising, independent expenditures (IE) or electioneering communications (EC); (2) provide the required sponsor identification on all future political advertisements, IE’s and EC’s in accordance with statutes and rules; and (3) file timely and complete C-4 and C-6 reports in future years in accordance with PDC laws and rules, including disclosing the required expenditure detail in accordance with RCW 42.17A.240. The Commission will consider the formal written warning in deciding on further Commission action if there are future violations of PDC laws or rules.

Based on this information, the PDC finds that no further action is warranted and has dismissed the remaining allegations in accordance with RCW 42.17A.755(1). If you have questions, you may contact Alice Fiman toll-free at 1-877-601-2828, or by e-mail pdcc@pdc.wa.gov.

Sincerely,

/s _____
Alice Fiman
Compliance Officer

Endorsed by,

/s _____
Peter Lavalley
Executive Director

/s _____