

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA
ELECTIONS COMMISSION

Florida Elections Commission,
Petitioner,

v.

Agency Case No.: FEC 10-297
F.O. No.: FOFEC 11-177W

Alex Diaz,
Respondent.

FINAL ORDER

THIS CAUSE came on to be heard at an informal hearing held before the Florida Elections Commission (Commission) on November 15, 2011.

APPEARANCES

For Commission Joshua B. Moye
Assistant General Counsel
107 W. Gaines Street
Collins Building, Suite 224
Tallahassee, FL 32399

For Respondent No appearance

STATEMENT OF THE ISSUE

Whether the Respondent violated Section 106.143(1)(a), Florida Statutes, when he distributed a political advertisement that lacked the statutorily required disclaimer; Section 106.07(5), Florida Statutes, when he certified that his campaign reports were true, correct, and complete, when they were not; and Section 106.19(1)(c), Florida Statutes, when he falsely reported or deliberately failed to report information required by Chapter 106, Florida Statutes.

PRELIMINARY STATEMENT

On October 22, 2010, the Commission received a sworn complaint alleging violations of Florida's election laws. Staff of the Commission conducted an investigation to determine

whether the facts alleged in the complaint constituted probable cause to believe that the Respondent violated The Florida Election Code.

On June 20, 2011, staff drafted a Staff Recommendation recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated. On August 24, 2011, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with the following violations:

Count 1:

During his 2010 election campaign, Respondent violated Section 106.143(1)(a), Florida Statutes, when Respondent distributed a two-sided mailer in Spanish that failed to include a proper political disclaimer.

Count 2:

On or about August 7, 2010, Respondent violated Section 106.07(5), Florida Statutes, by certifying that his 2010 F2 Report was true, correct, and complete when it was not.

Count 3:

On or about August 20, 2010, Respondent violated Section 106.07(5), Florida Statutes, by certifying that his 2010 F3 Report was true, correct, and complete when it was not.

Count 4:

On or about October 21, 2010, Respondent violated Section 106.07(5), Florida Statutes, by certifying that his 2010 G3 Report was true, correct, and complete when it was not.

Count 5:

On or about August 7, 2010, Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting or deliberately failing to include information required by Chapter 106, Florida Statutes, when Respondent accepted an in-kind contribution from himself in the amount of \$1,401.70, and failed to report the full name and address as to whom Respondent made expenditures for the purpose of "POSTCARDS AND ADDRESSES."

Count 6:

On or about August 7, 2010, Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting or deliberately failing to include information required by Chapter 106, Florida Statutes, when Respondent accepted an in-kind contribution from

himself in the amount of \$1,656.56, and failed to report the full name and address as to whom Respondent made expenditures for the purpose of "USPS POSTAGE."

Count 7:

On or about August 7, 2010, Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting or deliberately failing to include information required by Chapter 106, Florida Statutes, when Respondent accepted an in-kind contribution from himself in the amount of \$720, and failed to report the full name and address as to whom Respondent made expenditures for the purpose of "POSTCARDS."

Count 8:

On or about August 20, 2010, Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting or deliberately failing to include information required by Chapter 106, Florida Statutes, when Respondent accepted an in-kind contribution from himself in the amount of \$831.50, and failed to report the full name and address as to whom Respondent made expenditures for the purpose of "MAILING SERVICES."

Count 9:

On or about August 20, 2010, Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting or deliberately failing to include information required by Chapter 106, Florida Statutes, when Respondent accepted an in-kind contribution from himself in the amount of \$622.92, and failed to report the full name and address as to whom Respondent made expenditures for the purpose of "POSTAGE."

Count 10:

On or about August 20, 2010, Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting or deliberately failing to include information required by Chapter 106, Florida Statutes, when Respondent accepted an in-kind contribution from himself in the amount of \$374.50, and failed to report the full name and address as to whom Respondent made expenditures for the purpose of "MAILING SERVICES."

Count 11:

On or about August 20, 2010, Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting or deliberately failing to include information required by Chapter 106, Florida Statutes, when Respondent accepted an in-kind contribution from himself in the amount of \$1,500.68, and failed to report the full name and address as to whom Respondent made expenditures for the purpose of "POSTAGE."

Count 12:

On or about October 21, 2010, Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting or deliberately failing to include information required by Chapter 106, Florida Statutes, when Respondent received an in-kind contribution from Francisco Amador for \$1,273.60, and falsely reported it as an in-kind contribution from Image Plus Graphics, Inc.

Count 13:

On or about October 21, 2010, Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting or deliberately failing to include information required by Chapter 106, Florida Statutes, when Respondent received an in-kind contribution from Francisco Amador for \$1,273.00, and falsely reported it as an in-kind contribution from Image Plus Graphics, Inc.

Count 14:

On or about October 21, 2010, Respondent violated Section 106.19(1)(c), Florida Statutes, by falsely reporting or deliberately failing to include information required by Chapter 106, Florida Statutes, when Respondent falsely reported an in-kind contribution from the United States Postal Service for \$3,154.47.

Respondent did not elect to have a formal or informal hearing conducted before the commission, and did not elect to settle the case with a consent order within 30 days after the filing of the Commission's allegations. Therefore, an informal hearing was scheduled, and Respondent was noticed to appear before the Commission on November 15, 2011. At the informal hearing, staff presented the undisputed facts contained in the Staff Recommendation. Respondent did not attend the hearing.

FINDINGS OF FACT

1. Respondent was a write-in candidate for the Florida House of Representatives, District 116, in the November 2, 2010 general election.
2. Complainant included three campaign advertisements with his complaint.
3. The political disclaimers on each advertisement indicated that they were paid for

by Respondent or his campaign.¹

4. Complainant alleged that one of Respondent campaign advertisements was distributed stating he was a Republican candidate instead of a write-in candidate.

5. Respondent distributed a political advertisement that included an incorrect political disclaimer.² This political advertisement was paid for by Francisco Amador.³

6. In the advertisement, Mr. Amador implored the electorate to vote for Respondent by writing his name on the ballot, and if Respondent was elected, Respondent would resign so he (Mr. Amador) could take the office.⁴ The political disclaimer on the political advertisement read: "Paid By Alex Diaz, Republican, for State Representative District 116."

7. However, the political disclaimer should have read: "Pd. Pol. Adv. sponsored and paid for in-kind by Francisco Amador, 13220 SW 12th Street, Miami, Florida 33184, Approved by Alex Diaz, write-in candidate, for State Representative, District 116."

8. Complainant also alleged that Respondent did not properly disclose the expenditures for the three campaign advertisements.

9. On August 7, 2010, Respondent filed his 2010 F2 campaign report for the reporting period of July 17 through July 30, 2010.

10. Respondent's 2010 F2 campaign report did not list the full name and address to whom Respondent made expenditures for the purpose of postcards and postage.

¹ The first advertisement was printed entirely in Spanish; the second advertisement was titled, "DO NOT VOTE FOR THE REPUBLICAN CARLOS TRUJILLO [sic];" and the third advertisement was titled, "WARNING: Election Information Alert," and featured photographs of Carlos Manrique and Carlos Trujillo.

² All three political advertisements had an incorrect disclaimer; however, the complainant only took issue with one.

³ Mr. Amador lost the 2010 Republican primary election for the Florida House of Representatives, District 116.

⁴ The third paragraph of the mailer states: "My brother-in-law Alex Diaz, was nominated as a candidate that doesn't appear on the ballot. My brother-in-law is paying with his own money but he doesn't have any interest in being a Representative. We will go through the procedure to transfer to me, Francisco Amador, the position of Representative. This is legal."

11. On August 20, 2010, Respondent filed his 2010 F3 campaign report for the reporting period of July 31 through August 19, 2010.

12. Respondent's 2010 F3 campaign report did not list the full name and address to whom Respondent made expenditures for the purpose of mailing services and postage.

13. On October 21, 2010, Respondent filed his 2010 G3 campaign report for the reporting period of September 25 through October 8, 2010.

14. Respondent reported in-kind contributions from Image Plus Graphics, Inc. However, Image Plus Graphics, Inc. did not provide an in-kind contribution to Respondent's campaign. Rather, Mr. Amador paid for all of the costs for the two postcards. More specifically, Mr. Amador paid Image Plus Graphics, Inc. \$1,273.60 upfront, and Image Plus Graphics, Inc. billed Respondent's campaign for the remaining \$1,273.00, which Mr. Amador paid.

15. Therefore, Respondent certified to the correctness of his 2010 F2, 2010 F3 and 2010 G3 campaign reports that were incorrect, false, or incomplete.

16. In addition, Respondent falsely reported or deliberately failed to report information regarding these ten in-kind contributions on his campaign treasurer's reports, which was required to be reported by Chapter 106, Florida Statutes.

17. Respondent committed the acts while knowing that, or showing reckless disregard for whether, the acts were prohibited or failed to commit an act while knowing that, or showing reckless disregard for whether, the acts were required.

CONCLUSIONS OF LAW

18. The Commission has jurisdiction over the parties to and subject matter of this cause, pursuant to Section 106.26, Florida Statutes.

19. Respondent's conduct was willful.

20. The Respondent committed one count of violating Section 106.143(1)(a), Florida Statutes, when he distributed a political advertisement without the statutorily required disclaimer; three counts of violating Section 106.07(5), Florida Statutes, when he certified that his campaign reports were true, correct, and complete, when they were not; and ten counts of violating Section 106.19(1)(c), Florida Statutes, when he falsely reported or deliberately failed to report information required by Chapter 106, Florida Statutes.

21. In determining the amount of the civil penalty, the Commission considered the mitigating and aggravating circumstances set forth in Section 106.265, Florida Statutes.

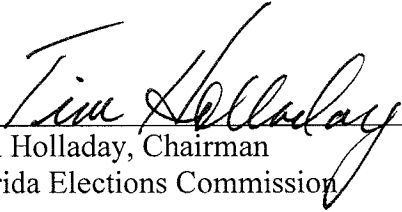
ORDER

WHEREFORE the Commission finds that Respondent has violated Sections 106.143(1)(a), 106.07(5), and 106.19(1)(c), Florida Statutes, and imposes a \$7,000 fine for the violations.

Therefore, it is

ORDERED AND ADJUDGED that Respondent shall remit a civil penalty in the amount of \$7,000. The civil penalty shall be paid money order, cashier's check, or attorney trust account check and sent to the Florida Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida, 32399-1050, within 30 days of the date this Final Order is received by Respondent.

DONE AND ORDERED by the Florida Elections Commission on
11-30, 2011.



Tim Holladay, Chairman
Florida Elections Commission

NOTICE OF RIGHT TO APPEAL

This order is final agency action. Any party who is adversely affected by this order has the right to seek judicial review pursuant to Section 120.68, Florida Statutes, by filing a notice of administrative appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Florida Elections Commission at 107 West Gaines Street, Suite 224, Collins Building, Tallahassee, Florida 32399-1050, and by filing a copy of the notice of appeal with the appropriate district court of appeal. The party must attach to the notice of appeal a copy of this order and include with the notice of appeal filed with the district court of appeal the applicable filing fees. **The notice of administrative appeal must be filed within 30 days of the date of this order is filed with the Commission.** The date this order was filed appears in the upper right-hand corner of the first page of the order.

Copies furnished to:

Joshua B. Moyer, Assistant General Counsel
Alex Diaz, Respondent (certified mail)
Juan Carlos Planas, Complainant
Dept. of State, Division of Elections, Filing Officer