

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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STATE OF FLORIDA
ELECTIONS COMMISSION

**In Re: Robert P. Costin and Citizens for
Delray Beach, Inc.**

**Case No.: FEC 06-115
F.O. No.: FO FEC 08-076W**

CONSENT FINAL ORDER

The Respondents, Robert P. Costin and Citizens for Delray Beach, Inc., and the Florida Elections Commission (Commission) agree that this Consent Order resolves all of the issues between the parties in this case. The parties jointly stipulate to the following facts, conclusions of law, and order:

FINDINGS OF FACT

1. The Respondents are Citizens for Delray Beach, Inc., which is an electioneering communication organization (ECO), and Robert P. Costin, its chair.¹ The Complainant is Richard H. Giorgio, a political strategist and co-founder of Patriot Games, Inc..

2. On May 5, 2006, a complaint was filed with the Commission alleging that Respondents published two electioneering communications without the proper disclaimer and failed to report the expenditures for those communications, for professional fees for attorney Gary S. Rosner, and for administrative costs associated with establishing a non-profit corporation.

3. On July 3, 2008, the staff of the Commission issued a Staff Recommendation, recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated.

¹ On February 28, 2006, electronic Articles of Incorporation was filed with the Division of Corporations and on March 10, 2006, a copy was filed with the city clerk's office. The specific purpose of the corporation was, "To educate the Citizens of Delray Beach, Florida on the issue of over-development, quality of local life, community unity and leadership issues." Robert P. Costin, chair of the ECO, was also named as the corporation's president.

4. The Respondents expressed a desire to enter into negotiations directed toward reaching such a consent agreement.

5. The Respondents and the staff stipulate to the following facts:

- A. The Respondents are Citizens for Delray Beach, Inc., which is an electioneering communication organization (ECO), and Robert P. Costin, its chair.
- B. The Complainant is Richard H. Giorgio, a political strategist and co-founder of Patriot Games, Inc. He was hired by Nick Loeb, who was the target of the electioneering communications published by Citizens for Delray Beach, Inc.
- C. Complainant alleged Citizens for Delray Beach, Inc., published two electioneering communications, titled “Career of the Month Club,” and “But it’s still the truth,” with improper disclaimers. The two electioneering communication mailers that were critical of Nick Loeb, were circulated prior to the March 14, 2006 city election. Each electioneering communication contained the following disclaimer:²

**Paid political advertisement paid for by Citizens
for Delray Beach, Inc., 777 E. Atlantic Ave., Ste.
C2-343,³ Delray Beach, FL 33483.
Independently of any candidate or committee.**

D. As part of his written response to the complaint, counsel stated:

The only difference from the statutory language in the disclaimer is that it says paid “political advertisement ...” rather than paid “electioneering communication . . .”

E. Section 106.1439(1), Florida Statutes, provides that any electioneering communication shall prominently state: “Paid electioneering communication paid for by (Name and address of person paying for the communication).”

F. A proper disclaimer is:

**Paid electioneering communication paid for by
Citizens for Delray Beach, Inc., 777 E. Atlantic
Ave., Ste. C2-343, Delray Beach, FL 33483.**

² Copies of the electioneering communications are attached as Exhibits 1 and 2 to the Amended Report of Investigation.

³ Palm Beach County Property Appraiser’s website shows that the address is an actual street address and not a UPS mail box.

- G. Division of Elections opinion DE 06-12 provides that a candidate's disclaimer must use the exact words contained in the quotation marks, except when he is running for a nonpartisan office the political party is not required. This is equally applicable to Section 106.1439(1), Florida Statutes, because the disclaimer language is contained in quotation marks.
- H. In his affidavit dated December 7, 2007, Respondent Costin stated that although he did not know who was responsible for drafting the disclaimer language, he personally reviewed the two mailers prior to mailing them to the electorate and obtained assurance that the content of the mailers was true. When asked who was responsible for giving final approval for the two mailers to be distributed to the electorate, Mr. Costin stated, "I don't know."
- I. Complainant attached to his complaint a copy of Respondent's original 2006 G4 CTR report that was filed with the city clerk's office on March 10, 2006, covering the reporting period of February 28 through March 10, 2006. Complainant alleged that the report lists some, but not all, of the group's expenditures.
- J. Complainant also alleged that the 2006 G4 CTR failed to contain professional fees for attorney Gary Rosner or for administrative costs associated with establishing the ECO as a non-profit corporation.
- K. On February 28, 2006, Citizens for Delray Beach, Inc., registered with the Division of Corporations as a not-for-profit corporation. Gary Rosner was named the corporation's registered agent.
- L. As part of his response to the complaint, Mr. Feaman stated, "No professional fees were incurred or donated," for Mr. Rosner registering Citizens for Delray Beach, Inc., as a not-for-profit corporation. He further stated:

Payment to the Florida Secretary of State for the corporate filing fee and for two Certificates of Good Standing and two certified copies of the Articles of Incorporation in the amount of \$105 was paid by Gary Rosner through his personal credit card and such contribution was inadvertently omitted from the report. The reports filed with the City Clerk of Delray constitute all of the activity for the reporting period through March 31, 2006 other than the expenditure to the Florida Secretary of State of \$105.

- M. On June 5, 2006, Respondents filed an amended 2006 G4 CTR covering the reporting period of February 28 through March 10, 2006, with the city

clerk's office. The omission in the original 2006 G4 CTR of the in-kind contribution from Gary Rosner for the corporate filing fees of \$105 was added.

- N. Respondent, Robert Costin was one of the original officers of Citizens for Delray Beach, Inc., the Florida not-for-profit corporation.

CONCLUSIONS OF LAW

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

7. Section 106.25(4)(i)3., Florida Statutes, allows the Commission to approve a consent agreement with a Respondent prior to the Commission finding probable cause that a violation of the election laws occurred. The consent agreement has the same force and effect as a consent agreement reached after the Commission finds probable cause.

8. The Commission staff and the Respondents stipulate that all elements of the offenses staff recommends charging in the Staff Recommendation can be proven by clear and convincing evidence.

ORDER

9. The Respondents and the staff of the Commission have entered into this Consent Order voluntarily and upon advice of counsel.

10. The Respondents shall bear their own attorney fees and costs that are in any way associated with this case.

11. The Respondents understand that before the Consent Order becomes final agency action, the Commission must approve it at a public meeting. The Commission will consider the Consent Order at its next available meeting.

12. The Respondents voluntarily waive the right to any further proceedings under Chapters 104, 106, and 120, Florida Statutes, and the right to appeal the Consent Order.

13. This Consent Order is enforceable under Sections 106.265 and 120.69, Florida Statutes. The Respondents expressly waive any venue privileges and agrees that if enforcement of this Consent Order is necessary, venue shall be in Leon County, Florida, and Respondents shall be responsible for all fees and costs associated with enforcement.

14. If the Commission does not receive the signed Consent Order within 20 days of the date Respondents or their attorney received this order, the staff withdraws this offer of settlement and will proceed with the case.

15. Payment of the civil penalty is a condition precedent to the Commission's consideration of the Consent Order.

PENALTY

WHEREFORE, based upon the foregoing facts and conclusions of law, the Commission finds that the Respondents have violated the following provisions of Chapters 106, Florida Statutes, and imposes the following fines:

A. Section 106.1439(1) Florida Statutes, on two occasions for making an expenditure for an electioneering communication and failing to mark prominently the electioneering communication with the required disclaimer. Respondents are fined \$250 for each of the two counts for a total of \$500.

B. Section 106.07(5) Florida Statutes, on one occasion for certifying to the correctness of a campaign treasurer's report that is incorrect, false, or incomplete. Respondents are fined \$500 for this count.


Therefore it is

ORDERED that the Respondents shall remit to the Commission a civil penalty in the amount of \$1,000, inclusive of fees and costs. The civil penalty shall be paid to the Florida


Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida, 32399-1050.

The **Respondents** hereby agree and consent to the terms of this Order on

July 23, 2008.



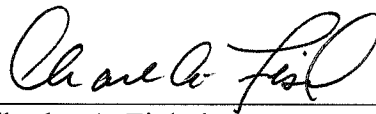
Mark Herron, Attorney for Respondents
2618 Centennial Place
Tallahassee, Florida 32308



Robert P. Costin and
Citizens for Delray Beach, Inc.
3912 Murray Cove Road
Tiger, Georgia 30576

The **Commission staff** hereby agrees and consents to the terms of this Consent Order on

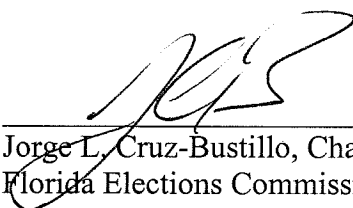
August 4, 2008.



Charles A. Finkel
General Counsel
Florida Elections Commission
107 W. Gaines Streets
Collins Building, Suite 224
Tallahassee, FL 32399-1050

Approved by the Florida Elections Commission at its regularly scheduled meeting held on August 14-15, 2008 at Tallahassee, Florida and filed with the Clerk of the Commission on

August 29, 2008, in Tallahassee, Florida.



Jorge L. Cruz-Bustillo, Chair
Florida Elections Commission

Copies furnished to:

Charles A. Finkel, General Counsel
Mark Herron, Attorney for Respondent