

## **James Wu, CD #20 (2009)**

### **1. Failing to report a bank account \$250**

Candidates must report and document all bank accounts. *See* Admin. Code § 3-703(1)(d), (g), Board Rules 1-11(d), 2-06.

Documentation submitted by the Campaign showed that it had an account with Apple Bank that it did not report on its Certification.

The Board assessed a penalty of \$250 for this violation.

### **2. Filing two disclosure statements late \$450**

Candidates must file disclosure reports listing contributions and expenditures at such times as the CFB requires. *See* Admin. Code § 3-703(6), Board Rule 3-02.

The Campaign filed Statement 10 six days late and Statement 12 three days late.

The Board assessed a penalty of \$450 for these violations.

### **3. Failing to file daily pre-election disclosure statements \$200**

Candidates must report all contributions from a single source in excess of \$1,000, received within 14 days of an election, and must disclose these within 24 hours of receipt. *See* Admin. Code § 3-703(6)(a), Board Rule 3-02(e).

The Campaign failed to file daily disclosure statements to report eleven transactions.

The Board assessed a penalty of \$200 for these violations.

### **4. Failing to provide merchant account statements \$250**

Candidates must report and document all merchant accounts. *See* Admin. Code § 3-703(1)(d), (g), Board Rules 1-11(d), 2-06, 4-01(f).

The Campaign failed to report its PayPal account in its Certification, and failed to submit merchant account statements for the PayPal account.

The Board assessed a penalty of \$250 for this violation.

**5. Accepting three over-the-limit contributions \$4,842**

Candidates for City Council in the 2009 election were prohibited from receiving contributions in excess of \$2,750 from a single contributor. *See* Admin. Code § 3-703(1)(f). Loans made to a candidate that are not repaid by the date of the election become contributions. *See* Admin. Code § 3-702(8).

Danny Chao (“Chao”) made contributions of \$20 and \$2,750. The CFB notified the Campaign of the \$20 overage, and the Campaign promptly refunded it. Chun Y. Xiao (“Xiao”) made contributions of \$175 and \$2,750. The CFB notified the Campaign of the \$175 overage, and the Campaign promptly refunded it.

Thomas Wu (the candidate’s brother) made a \$2,750 contribution to the Campaign. Bank records show that Thomas Wu also made an unreported \$24,122 advance on behalf of the Campaign to 360 JMG, one of the Campaign’s vendors. The Campaign misreported this \$24,122 advance as a \$20,030 loan, and subsequently issued checks to Thomas Wu totaling \$20,030. However, it did not repay Thomas Wu the \$4,092 outstanding balance. Thus, the \$4,092 amount is considered a contribution that exceeds the contribution limit by \$4,092.

The Board assessed a penalty of \$4,842 for these violations.

**6. Accepting a contribution from a corporation \$6,600**

Candidates are prohibited from accepting contributions from corporations. *See* Admin. Code § 3-703(1)(l), Board Rule 1-04(e). When a candidate has received a prohibited contribution, the candidate must promptly refund the contribution. *See* Board Rule 1-04(c)(1). Debts incurred by a candidate that are forgiven become in-kind contributions. *See* Board Rule 1-04(g)(1), (5).

On August 7, 2008, the Campaign signed an agreement for services with Sheinkopf LTD (“Sheinkopf”), a corporation, which required payment of an \$11,000 retainer. An invoice from Sheinkopf showed an outstanding balance of \$5,500 for the retainer. The Campaign also incurred a separate \$850 liability to Sheinkopf, which remains outstanding. The \$6,350 total outstanding amount is considered an in-kind contribution.

The Board assessed a penalty of \$6,600 for this violation.

**7. Failing to properly document two transactions \$100**

Candidates must accurately document all receipts and disbursements. *See* Admin. Code § 3-703(1)(d), (g), Board Rule 4-01(a), (b), (c), (e), (f), (g).

A 2009 invoice from Sheinkopf Ltd. showed an outstanding balance of \$5,500 for the retainer. However, the Campaign’s bank records do not show any payment to Sheinkopf, and the Campaign failed to report any payment for, or outstanding liability resulting from, the \$5,500 retainer fee. Therefore, this \$5,500 transaction has not been properly documented.

The Campaign reported a \$1,742 liability to Marching Technologies on September 14, 2009. The Campaign stated that Judy Wu paid this liability as an in-kind contribution. However, the Campaign has failed to provide any documentation of Judy Wu's alleged payment (i.e., showing that Marching Technologies was paid and the identity of the payor). The Campaign's reporting to the New York State Board of Elections indicates that this liability remains outstanding.

The Board assessed a penalty of \$100 for these violations.

**8. Failing to provide a petty cash journal \$50**

Candidates must provide a petty cash journal upon request. *See* Admin. Code § 3-703(1)(d), (g), Board Rule 4-01(e)(2).

In the Draft Audit Report, CFB staff requested that the Campaign submit its petty cash journal, but the Campaign failed to do so.

The Board assessed a penalty of \$50 for this violation.

**9. Maintaining a petty cash fund greater than \$500 \$50**

Candidates may not maintain a petty cash fund greater than \$500. *See* Board Rule 4-01(e)(2).

On August 18, 2009, the Campaign issued and cashed Checks No. 234 (\$400) and No. 237 (\$380), which resulted in the Campaign having a petty cash fund of \$780.

The Board assessed a penalty of \$50 for this violation.

**10. Intentionally furnishing false documentation and information \$5,000**

Campaigns may not intentionally or knowingly furnish false documentation or information to the Board. *See* Admin. Code § 3-711(3).

The Campaign reported receiving a \$20,030 loan from Thomas Wu on September 2, 2009, and submitted a notarized loan agreement, dated September 2, 2009. However, this amount was never deposited into the Campaign's bank account. The Campaign made subsequent payments to Thomas Wu, in 2009 and 2011, totaling \$20,030.

CFB staff asserted in the May 11, 2012 Penalty Notice that, because the loan had never been deposited, the repayment to Thomas Wu indicated that Campaign funds had been converted to personal use. In response, the Campaign stated that the money from Thomas Wu was not actually a "loan," but instead was "a payment to 360 JMG made by direct wire," and that the Campaign "recorded incorrectly" the amount and "commensurate invoice." Thomas Wu's bank records show that he made a \$24,122 payment on behalf of the Campaign (an advance) on

August 31, 2009, which was never reported. In addition to reporting and submitting false loan documents, the Campaign's repayments to Thomas Wu, for this purported loan, totaled an entirely different amount: \$20,030.

Because loans are deposited in a campaign's bank account and expenditures are subsequently made from that account and separately reported, the Board does not consider a loan or its repayment to be expenditures. The Board does not attempt to identify specific transactions associated with the funds loaned to ensure that they are properly disclosed, because they are paid from the campaign's bank account. In contrast, advances are never deposited in a campaign's bank account, and are considered expenditures. Advances must be correctly reported, so that the Board can request relevant documentation, ensure that payees are accurately disclosed, and track expenditure limit compliance.

The Campaign misreported the date, amount, and nature of the Thomas Wu advance, and issued repayments to him in the incorrect amount. The Campaign correctly categorized and reported three other loans it received, but by incorrectly categorizing this advance as a loan, it concealed its expenditure to 360 JMG.

By failing to report the advance, and instead reporting and submitting documentation of a non-existent "loan," the Campaign intentionally furnished false documentation and information that materially misrepresented the totality of the Campaign's expenditures.

The Board assessed a penalty of \$5,000 for this violation.