



New York City Campaign Finance Board

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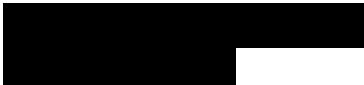
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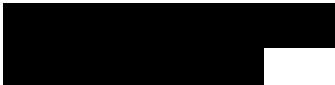
September 24, 2015

By First Class Mail and C-ACCESS

Fernando Cabrera



Paul Susana



Cabrera for City Council



FINAL BOARD DETERMINATION – EC2013 CAMPAIGN

The New York City Campaign Finance Board (“Board”), at a meeting held on September 24, 2015, made the following final determination concerning the Fernando Cabrera 2013 Campaign (“Campaign”):

The Board determined that the Candidate, the Treasurer, and the Committee named above violated the New York City Campaign Finance Act (“Act”) and Board Rules and are jointly and severally liable for paying \$966 in penalties as follows:

1. A penalty of \$93 for failing to report transactions. See Admin. Code §§ 3-703(1)(d), (g), (6), (11), (12); Board Rules 1-09, 3-03(c), (d), (e), 4-01.

The Campaign accepted a \$200 contribution from JFA Food Corp. (“JFA”) and a \$200 contribution from 60 W. 183 St. Food Court (“Food Court”). On December 27, 2011, the Campaign reported issuing a \$200 check to each entity to refund the contributions. After a few weeks, the checks had not cleared the Committee’s bank account. The Campaign then issued, but failed to report, \$200 certified checks to JFA and

Candidate ID Number: 1256-P

Food Court in January 2012. (After the issuance of the certified checks, JFA and Food Court both cashed the original checks).

The Campaign also failed to report three contributions totaling \$4,250 from Fernando Cabrera (the “Candidate”) to the Bronx Democratic County Committee (“Bronx Democratic”). Campaigns are required to report candidates’ personal contributions of \$99 or more to political committees that support candidates in New York City and throughout New York State (except political committees of other candidates). Such contributions are presumptively campaign expenditures, unless the candidate rebuts the presumption. *See* Board Final Determination No. 2009-1. Here, Bronx Democratic’s reporting to the State Board of Elections indicates that the Candidate had only made one \$500 contribution to Bronx Democratic prior to the 2013 election cycle, and he therefore did not have a prior pattern of regularly contributing to the political committee. As such, the Campaign did not overcome the presumption that the Candidate’s personal contributions during the 2013 election cycle were campaign expenditures and should have been disclosed as such.

2. A penalty of \$773 for accepting in-kind contributions from corporations or limited liability corporations. *See* N.Y.C. Charter § 1052(a)(13); Admin. Code §§ 3-702(8), 3-703(1)(l); Board Rules 1-04(c)(1), (e), (g), 1-05.

The Campaign received a \$123 discount off the cost of goods or services provided by Zippityprint LLC (“Zippityprint”), an Ohio limited liability corporation. The Campaign failed to provide documentation from Zippityprint showing that the discount was generally available to the public. This discount therefore constituted a prohibited in-kind contribution from Zippityprint to the Campaign.

The Campaign held a December 7, 2011 fundraiser at the Monte Carlo Room (“Monte Carlo”), which is operated by Jerome Restaurant Corp. (“JRC”). The Campaign provided a \$150 invoice for the event from Monte Carlo and reported an in-kind contribution from Carlos Abrue for the invoiced expenses. Abrue was Monte Carlo’s president and the chief executive officer of JRC. The Campaign did not provide any documentation showing that Abrue, in a personal capacity, paid the invoice and, as such, it appears that the \$150 in-kind contribution was actually from Monte Carlo/JRC, a corporate entity.

3. A \$100 penalty for failing to document joint expenditures. *See* Admin. Code §§ 3-703(1)(d), (g), (11), (12), 3-715; Board Rules 1-09, 4-01(a), (c), (g), (k), 4-03. The Campaign provided a copy of a \$681.67 invoice from Century Direct for its proportional share of 2013 Bronx Democratic County joint designating petitions.

However, the Campaign failed to provide documentation showing the total cost of the expenditure or a basis for the stated cost allocation. As such, the Campaign failed to adequately document the joint expenditure.

4. A violation and no associated penalty for failing to demonstrate that spending was in furtherance of the campaign. *See* Admin. Code §§ 3-702(8), (21)(a), (b); 3-703(1)(d), (g), (6), (11); Board Rules 1-03(a), 4-01(e).

On February 2, 2013, the Campaign ordered \$145.79 in greeting cards from Staples. The Campaign failed to explain or document how the purchase of the cards furthered the campaign.

The Campaign accepted \$200 contributions from JFA Food Corp. (“JFA”) and 60 W. 183 St. Food Court (“Food Court”). *See also* violation 1, above. On December 27, 2011, the Campaign issued \$200 checks to each entity to refund the contributions. After a few weeks, the checks had not cleared the Committee’s bank account. The Campaign then issued certified checks to JFA and Food Court in January 2012. The original checks cleared the Campaign bank account on February 29, 2012 and December 26, 2012. As such, the Campaign made \$200 in excess contribution refunds each to JFA and Food Court. These excess payments, totaling \$400, were not in furtherance of the Campaign.

Although the Campaign made these expenditures that were not in furtherance of the Campaign, it returned all of the public funds it received during the 2013 elections.

5. A violation and no associated penalty for making an impermissible post-election transaction. *See* Admin. Code §§ 3-702(21)(a)(8), 3-703(1)(d), (g), (6), (11), 3-710(2)(c); Board Rules 1-03(a), 1-08(b), 5-03(e)(2). The Campaign received \$23,100 in public funds during the 2013 elections. On March 25, 2014, the Campaign made a \$33,000 transfer from the Committee account to the bank account of a different committee, Cabrera for Senate. The CFB staff notified the Campaign that it was required to return all leftover campaign funds to the Board before making such a transfer. On July 29, 2014, the Campaign returned the full \$23,100 it had received in public funds.

The Board determined that the amount due is \$966. By a check dated November 11, 2015, the Campaign paid \$966, the full amount due.

You may challenge this final determination, within four months, in the New York State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

If you have any questions concerning this Final Board Determination, please contact Ashley E. Siegel, Associate Counsel, at (212) 409-1866 or asiegel@nyccfb.info.

Signature on original



Sue Ellen Dodell
General Counsel

**NEW YORK CITY
CAMPAIGN FINANCE BOARD**

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