



**New York City
Campaign Finance Board**

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**By Certified and First Class Mail,
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January 17, 2008

TO: Miguel Martinez
Placido Rodriguez
Martinez 2001

FINAL BOARD DETERMINATION NO. 2008-1

The New York City Campaign Finance Board (the “Board”), at a meeting held on January 17, 2008, determined that the candidate, the treasurer, and the committee named above (collectively, the “Campaign”) violated the New York City Campaign Finance Act (New York City Administrative Code §§ 3-701, *et seq.*), and assessed \$44,780 in penalties jointly and severally against the candidate, the treasurer, and the committee named above, as enumerated below.

Following the conclusion of the 2001 elections, Board staff requested expenditure documentation from the Campaign to conduct its standard post-election audit. An April 30, 2002 request included a list of expenditures the Campaign reported to the Board, and asked the Campaign to provide the Board with copies of the cancelled checks and bills for the expenditures listed. The letter also asked for “a written explanation for documentation requested in this letter which your Committee is not able to provide.”

Rather than provide such a written explanation, the Campaign requested multiple extensions to gather documentation, and in June 2002 provided the Board with minimal paperwork which did not include documentation justifying any qualified expenditures. Instead, the Campaign explained that “because of the closing of the campaign headquarters’ [sic] and moving and storage of documents some information may still be missing to provide a full audit

response.” The response did not indicate that documents did not exist or that the Campaign intended to self-create non-contemporaneous documentation made to look like originals.

On November 20, 2002, the Board issued a Draft Audit Report to the Campaign, which included a finding that the Campaign had not documented any qualified expenditures. The Draft Audit Report stated, in relevant part:

The Committee received \$128,786 in public funds for the primary and general elections. Board staff requested that the Committee provide documentation, *i.e.*, bills and cancelled checks (front and back), for a sample of expenditures to demonstrate that public funds received were used for qualified expenditures. The Committee did not provide sufficient documentation for any items in the sample...If the Committee does not document \$128,786, the Committee must repay the Board this amount. Since the Committee did not provide either the cancelled checks and/or the invoices for these expenditures...Board staff could not determine whether these expenditures were qualified or actually paid.

Although a response to the Draft Audit Report was initially due the following month, at the Campaign’s request, the Board granted the Campaign an extension to January 2003. Finally, on March 11, 2003, the Campaign responded to the Draft Audit Report with some documentation and a one-sentence cover memo initialed by Miguel Martinez, which stated: “Please find enclosed copies of the remaining invoices and checks of expenditures for Martinez 2001.” No narrative was provided to explain the delay in providing documentation, and the Campaign did not indicate in any way that the documents submitted were not, as they appeared on their face to be, contemporaneous documents from the individual vendors.

After reviewing the documentation submitted, Board staff sent a letter, dated July 8, 2003, requesting further information and clarification from the Campaign. The Campaign was also asked to provide a verified answer explaining certain specific discrepancies in the submitted documents.

On July 18, 2003, the Board received an unverified, unsigned answer from the Campaign. On August 8, 2003 Board staff objected to the Campaign’s answer and instructed the Campaign to submit a signed, verified response to its letter of July 8, 2003. Soon thereafter, on August 14, 2003, the Campaign submitted a signed, verified answer which included materially different information from its July 18, 2003 answer, even though both letters purported to present an accurate account of the same transactions and events. The second answer did not acknowledge or explain the inconsistencies.

In a letter from Board staff to the Campaign, dated October 9, 2003, the Campaign was given a final opportunity to document qualified expenditures from its 2001 campaign. The letter also explained that if no response was received by October 23, 2003, the Campaign would be required to repay the amount of undocumented qualified expenditures to the Public Fund. The letter stated:

Board staff has found that the committee has not documented qualified expenditures equal to the amount of public funds received for the 2001 elections, \$128,786. Based on documentation submitted for a sample of expenditures totaling \$173,204 that was repeatedly sent to the Committee, the Committee has only adequately documented at most approximately \$80,000. This approximate figure is subject to ongoing review and audit. Therefore, Board staff is enclosing an additional list of expenditures for which documentation was not previously requested. The Committee is requested to provide copies of invoices, contracts, fronts and backs of cancelled checks, etc. for this additional list of expenditures.

The Campaign responded to this request for expenditure documents on October 22, 2003 with a letter and “documentation for approximately \$26,500 of the expenditures listed” on the October 9, 2003 expenditure report.¹ The Campaign’s October 22, 2003 response, however, did not indicate that the documents submitted were created by the Campaign in response to the Board’s request, or that they merely represented historical chronicles of expenditures. The Campaign did claim, however, that it “will continue its on-going efforts to obtain and submit all documentation requested” by the Board.

Suspicious that the documentation submitted by the Campaign was non-contemporaneous but made to look like originals, the Board issued a Notice of Alleged Violations to the Campaign in November 2004, and a supplemental notice in January 2005. The Campaign then sued the Board, claiming that the allegations were too vague and unspecific for it to respond, and the Supreme Court granted a preliminary injunction preventing the Board from moving forward on most of the fraud allegations. After the Board prevailed on appeal, it issued a new, extremely detailed Notice of Alleged Violations on June 7, 2007 (the “Notice”)(see attached [Exhibit A](#)), to which the Campaign responded on July 26, 2007.

The Board held two hearings on the allegations contained in the Notice, on August 9, 2007 and on September 6, 2007. The Board heard testimony from Board staff and from the candidate and his legal counsel at both hearings. At the September 6, 2007 Board hearing, memoranda on the applicable definitions of fraud and/or material misrepresentation, and the breach of certification rule (Board Rule 2-02) were requested of Board staff and the Campaign. These memoranda were later exchanged between the parties and submitted to the Board.

Following careful deliberations, the Board has reached this determination based on the factual and legal presentations of Board staff and of the Campaign. The Board concluded that some allegations contained in the Notice were unnecessarily duplicative, and therefore chose not to assess penalties for all violations alleged. The Board also reduced some penalties recommended in the Notice. Further, the Board determined that the actions of the Campaign did not rise to the level of fraud. Nevertheless, the Board found that the Campaign committed many serious violations of the New York City Campaign Finance Act and Rules rising to the level of breach of certification and requiring the return of all public funds received by the Campaign for the 2001 elections. While detailed below, the essence of the Board’s findings are that the Campaign submitted self-created, non-contemporaneous documentation made to look like originals coming from the vendor to represent authentic, contemporaneous records (hereinafter

¹ In 2007 testimony before the Board, the Campaign admitted that some documents submitted were self-created and non-contemporaneous.

referred to as “fabricated”) in an attempt to avoid a significant public funds repayment obligation.

The Board determined that the Campaign violated the New York City Campaign Finance Act, and assessed penalties against the candidate, treasurer, and committee named above, as follows:

- 1) \$10,000 for misrepresentation in connection with the Campaign’s accounting for reported expenditures to campaign service vendors Gustavo Madera Co., Comite Del Desfile Dominicano, Greater Manhattan Group, Casa Borinquen, Suma Entertainment, Francisco Jimenez, Caridad Restaurant, Diogenes Almonte, Lucretia Spinner, Inc., Rafael Herrera, Universal Prensa, Teatro Estudios International, El Latino News, La Nueva Opcion, and P & R Auto Body Repair, Inc., including the fabricated documentation submitted in support of the expenditures. The Campaign submitted invoices to Board staff which appeared on their face to be generated by the above vendors at the time of the purported expenditures. However, the invoices submitted were fabricated documentation not contemporaneous to the expenditures. The invoices submitted were created by the Campaign after the conclusion of the 2001 election to induce the Board to accept them as valid documentation and thus avoid the Campaign’s public funds repayment obligation. *See* New York City Charter §§ 1052(a)(5), (8), (10), New York City Administrative Code §§ 3-703(1)(d), (g), 3-708(5), (8), (11), 3-710(1), 3-711, and Board Rules 1-08(g), 2-02, 4-01, 4-05, and 5-01(a), (f).
- 2) \$10,000 for misrepresentation in connection with the Campaign’s accounting for reported expenditures to campaign workers Miguel Lauriano, Franklyn Valdez, Margarita Perez, Roberto de la Rosa, and Florida Zapita, including the fabricated documentation submitted in support of the expenditures. In response to an October 9, 2003 letter from Board staff, the Campaign submitted “employee contracts” to document reported expenditures to the above individuals. The documentation submitted was purportedly executed contemporaneously to the performance of campaign-related duties by the above individuals in 2001. However, the alleged contracts are almost identical to a sample wage record form developed by the Board and first issued in May 2002, and to a sample form published in the Board’s 2003 candidate handbook. The submitted documentation was fabricated to resemble authentic, contemporaneous records of employee contracts. The production of these employee contracts and their submission to the Board was a misrepresentation for the purpose of avoiding the Campaign’s public funds repayment obligation. *See* New York City Charter §§ 1052(a)(5), (8), (10), New York City Administrative Code §§ 3-703(1)(d), (g), 3-708(5), (8), (11), 3-710(1), 3-711, and Board Rules 1-08(g), 2-02, 4-01, 4-05, and 5-01(a), (f).
- 3) \$10,000 for misrepresentation in connection with the Campaign’s accounting for reported expenditures to individuals for primary election and general election get-out-the-vote activities, including the fabricated documentation submitted in support of the expenditures. The Campaign submitted fabricated and non-contemporaneous work agreements/contracts with Paula Ali, Alba Eduardo, Luisa Rosario, Jose Fernandez, Fermin Luna, Jiovanny Paulino, and Paola Veras for 2001 general election get-out-the-vote activities. The purported signatures of the above payees on listed work agreements/contracts appear to be signed by the same individual, and, in some cases, do

not match the signatures of these individuals on other documents submitted to the Board. The mismatching signatures are evidence that these work agreements/contracts were created after the 2001 election. In addition, the Campaign submitted fabricated and non-contemporaneous primary election day sign-in sheets purportedly executed by get-out-the-vote workers Diogenes Almonte, Emma Brea, Eduardo Melenciano, Nidia Tollenchi, Javier Zavala, and Ramon Montilla. The signatures of the above individuals on the “Election Day Sign-in Sheet[s]” provided by the Campaign to document these expenditures do not match their signatures on other documents provided by the Campaign. The mismatching signatures are evidence that these election day sign-in sheets were created after the 2001 election. *See* New York City Charter §§ 1052(a)(5), (8), (10), New York City Administrative Code §§ 3-703(1)(d), (g), 3-708(5), (8), (11), 3-710(1), 3-711, and Board Rules 1-08(g), 2-02, 4-01, 4-05, and 5-01(a), (f).

- 4) \$10,000 for failing to adequately respond to the Board, lack of cooperation with the Board in connection with the Campaign’s two written responses to Board staff’s letter of July 8, 2003, and misrepresenting the substance of the responses. After failing to submit a verified response in the first instance, the Campaign included material changes in its second submitted response, even though both letters purported to present an accurate account for the same transactions and events. Further, both responses to the Board staff’s letter of July 8, 2003 contained material omissions. *See* June 7, 2007 Notice of Alleged Violations, Proposed Penalties, and Opportunity to Respond. *See also* New York City Charter §§ 1052(a)(5), (8), (10), New York City Administrative Code §§ 3-703(1)(d), (g), 3-708(5), (8), (11), 3-710(1), 3-711, and Board Rules 2-02, 4-05, and 5-01(a), (f).
- 5) \$500 for misrepresentation in connection with the Campaign’s accounting for reported expenditures for rent to Northern Manhattan Democrats for Change (“NMDC”), including the fabricated lease agreements submitted in support of the expenditures. *See* New York City Charter §§ 1052(a)(5), (8), (10), New York City Administrative Code §§ 3-703(1)(d), (g), 3-708(5), (8), (11), 3-710(1), 3-711, and Board Rules 1-08(g), 2-02, 4-01, 4-05, and 5-01(a), (f). The Campaign misrepresented its reporting of the rent and submitted fabricated documentation in support of these expenditures.
- 6) \$2,500 for the Campaign’s unreported and unaccounted-for coordinated activity in connection with an NMDC mailing sent between September 12, 2001 and September 24, 2001. The Campaign coordinated with NMDC in the design, production, and distribution of the mailing, yet the Campaign failed to report the mailing as an in-kind contribution from, or expenditure to, NMDC. *See* New York City Charter §§ 1052(a)(5), (8), (10), New York City Administrative Code §§ 3-702(8), 3-703(1)(d), (f), (g), 3-703(6), 3-708(5), (8), (11), 3-710(1), 3-711, and Board Rules 1-02, 1-04(g), 1-08(f), 2-02, 4-05, and 5-01(a), (f).
- 7) \$500 for making prohibited expenditures between September 12, 2001 and September 24, 2001 in connection with the NMDC mailing. *See* New York City Charter §§ 1052(a)(5), (8), (10), New York City Administrative Code §§ 3-703(1)(d), 3-708(5), (8), (11), 3-710(1), 3-711, Board Rule 4-05, and Board Advisory Opinion No. 2001-12 (September 20, 2001).

- 8) \$1,000 for failing to provide any of the Campaign's bank deposit slips. *See* New York City Charter §§ 1052(a)(5), (8), (10), New York City Administrative Code §§ 3-703(1)(d), (g), 3-708(5), (8), (11), 3-710(1), 3-711, and Board Rules 1-08(g), 4-01(b),(f), and 4-05. *See also* Finding 6 of Draft Audit Report; Exhibit IX, Finding E of July 8, 2003 letter.
- 9) \$80 for failing to report an in-kind contribution of two computers. Although the candidate stated during a compliance visit by Board staff that this contribution would be reported in a disclosure statement, the Campaign failed to report the contribution. *See* New York City Charter §§ 1052(a)(5), (8), (10), New York City Administrative Code §§ 3-702(8), 3-703(1)(d), (g), 3-703(6), 3-708(5), (8), (11), and Board Rules 1-02, 1-04(g), 3-03(c)(1), and 4-05.
- 10) \$100 for failing to report, or otherwise establish the absence of, subcontractors used concerning \$7,380 reported as paid to LB Graph-X, \$32,720 reported as paid to Lino Press, and \$20,411 reported as paid to Parkside Group. *See* New York City Charter §§ 1052(a)(5), (8), (10), New York City Administrative Code §§ 3-703(1)(d), 3-708(5), (8), (11), 3-710(1), 3-711, and Board Rules 3-03(e)(3), 4-01(h), and 4-05. *See also* Finding 4 of Draft Audit Report; Exhibit IX, Finding C of July 8, 2003 letter.
- 11) \$100 for maintaining a petty cash fund in excess of \$500, constituted by cash withdrawals from the Committee's bank account of \$750 on June 16, 2000 and \$1,400 on August 6, 2001. *See* New York City Charter §§ 1052(a)(5), (8), (10), New York City Administrative Code §§ 3-703(1)(d), 3-708(5), (8), (11), 3-710(1), 3-711, and Board Rule 4-01(e)(2).
- 12) Accepting two \$100 corporate contributions from Jose Goris, M.D., P.C., on September 13, 2001. *See* New York City Charter §§ 1052(a)(5), (8), (10), New York City Administrative Code §§ 3-703(1)(d), (l), 3-708(5), (8), (11), 3-710(1), 3-711, and Board Rule 1-04(e). The Board did not assess a penalty for this violation.

The total penalty amount assessed by the Board for Violations ## 1 - 11 above is \$44,780. In addition, Violations ##1- 6 above, individually and collectively, constitute a breach of the candidate's certification pursuant to Board Rule 2-02:

The Board considers each of the following activities to be a fundamental breach of the obligations affirmed and accepted by the participant or limited participant in the certification:

- (a) submission of fraudulent matchable contribution claims;
- (b) use of public funds to make or reimburse substantial campaign expenditures which the participant knew or should have known were fraudulent;
- (c) cooperation in alleged independent expenditures, whereby material or activity that directly or indirectly assists or benefits a participant's or limited participant's nomination or election, which is purported to be

paid by independent expenditures, was in fact authorized, requested, suggested, fostered, or cooperated in by the participant or limited participant; and

(d) use of a political committee or other entity over which a participant or limited participant exercises authority to conceal from the Board expenditures that directly or indirectly assist or benefit the participant's or limited participant's nomination or election.

In the event of a fundamental breach, the participant will be deemed by the Board to be ineligible for public funds and to have forfeited all public funds previously received for the elections covered by the certifications and the participant or limited participant will be subject to such civil and criminal sanctions as are applicable under §3-711 of the Code and other applicable law. This rule is not intended to be an enumeration of all circumstances that may constitute a fundamental breach of obligations, as may be determined by the Board (emphasis added).

The Campaign's unreported and unaccounted-for coordinated activities, as penalized in Violation #6 above, are sufficient for a finding that the candidate breached his certification under Board Rule 2-02(c) and (d). Further, breaches of a participant's certification that the Board considers fundamental are not limited to the four enumerated provisions of Rule 2-02. The Rule was created by the Board to deter severe abuses of Program obligations, as exist here. Thus, the Rule contains a catch-all provision in its final sentence to enable the Board to determine, as it has here, that the activities of the Campaign, as penalized in Violations ##1 - 6 above, constitute a fundamental breach of the candidate's obligations, affirmed and accepted by the candidate in the certification. See FINAL AMENDMENTS TO CAMPAIGN FINANCE BOARD RULES (Feb. 16, 2000).

The Campaign submitted self-created, non-contemporaneous documentation made to look like originals coming from the vendor to represent authentic, contemporaneous records in an attempt to avoid its public funds repayment obligation. The fabricated documents were created to resemble actual expenditure records and were scattered throughout larger packages of documentation submitted to the Board. The Campaign's submission of fabricated documentation, as described in Violations ##1, 2, 3, and 5 above, constitutes misrepresentation. This is exactly the severe abuse of Program obligations that Board Rule 2-02 was intended to deter. Such misrepresentation is sufficient to find that the candidate breached his certification.

The Campaign's failure to respond adequately to the Board, its lack of cooperation with the Board in connection with the Campaign's two written responses to Board staff's letter of July 8, 2003, and its misrepresentation of the substance of the responses, as described in Violation #4 above, also constitute a violation of the Campaign Finance Act. The Campaign had the obligation to respond fully and truthfully to Board requests, including the obligation to inform the Board in its two written responses that it had submitted fabricated documentation, but failed to do so. Such omissions are sufficient to support a finding that the candidate breached his certification.

The activities of the Campaign that form the basis of Violations ##1 – 6 above, individually and collectively, fall squarely within the language of New York City Administrative

Code Section 3-711(3) and constitute circumstances that require the repayment of public funds. Section 3-711(3) states:

The intentional or knowing furnishing of any false or fictitious evidence, books or information to the board under this chapter, or the inclusion in any evidence, books, or information so furnished of a misrepresentation of a material fact, or the falsifying or concealment of any evidence, books, or information relevant to any audit by the board or the intentional or knowing violation of any other provision of this chapter shall be punishable as a class A misdemeanor in addition to any other penalty as may be provided under law, including subdivision one of this section. The board shall assess penalties for such conduct and seek to recover any public funds obtained.

As a result of the Campaign’s misrepresentations, omissions, and unreported and unaccounted-for coordinated activity, the Campaign will be required to return all \$128,786 in public funds previously received and also will not be eligible to receive additional public funds for the 2001 elections pursuant to Rule 2-02 and New York City Administrative Code § 3-711(3).

You must pay to the Board the full \$173,566 no later than February 29, 2008. Checks should be made payable to the “New York City Election Campaign Finance Fund,” and may be mailed to the attention of Mark Sattinger, Associate Counsel, New York City Campaign Finance Board, 40 Rector Street, 7th Floor, New York, New York 10006 or delivered to the offices of the Board. If the Board is not in receipt of the full \$173,566 by February 29, 2008, the candidate’s name and the amount of the unpaid penalties and unreturned public funds will be posted on the Board’s website and the Board may initiate a civil action against Miguel Martinez, Placido Rodriguez, and Martinez 2001 to compel payment.

Questions concerning this Final Board Determination may be directed to Mr. Sattinger at (212) 306-7168.



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CAMPAIGN FINANCE BOARD**

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