



Summary of Final Board Determination

Alan Gerson

Candidate, 2009, City Council District 1

Program participant: \$0 in public funds received¹

1. Accepting over-the-limit doing business contributions \$2,250

Campaigns may not accept contributions from individuals or entities that have business dealings with New York City government (the “City”) in excess of the applicable Doing Business contribution limit for the entire election cycle. *See* Admin. Code §§ 3-702(8), (18), (20), 3-703(1-a), (1-b); Board Rules 1-04(c)(1), (h). The Doing Business limit for contributions to City Council candidates in the 2009 election was \$250. *See* Admin. Code §§ 3-703(1-a), (1-b). When a candidate receives a contribution in excess of the limit for contributions from contributors who have business dealings with the City, the candidate must return the excess portion to the contributor by bank check or certified check made out to the contributor within twenty days of being notified by the CFB. *See* Board Rule 1-04(c)(1).

The Campaign accepted two contributions in excess of the doing business limit. It refunded the over-the-limit portion of one contribution after the statutory deadline and did not refund the over-the-limit portion of the other.

The Board assessed a penalty of \$2,250 for these violations.

2. Failing to accurately report disbursements, \$200 resulting in a 17.13% variance

Campaigns are required to report every contribution, loan, receipt, and disbursement. *See* § 3-703(6); Board Rule 3-03. The Campaign’s bank records and information submitted showed a 17.13% variance between total reported monetary disbursements and total debits documented in bank statements.

The Board assessed a penalty of \$200 for this violation.

3. Failing to properly report and account for loans \$2,000 and loan repayments

Campaigns must properly report and provide documentation for loans and loan repayments, such as evidence of the source of each loan, to the CFB upon request. *See* Admin. Code §§ 3-703(1)(d), (g); Board Rule 4-01(g). In addition, campaigns must provide copies of

¹ Mr. Gerson elected to have a proceeding before the Office of Administrative Trials and Hearings (“OATH”). On February 19, 2016, Judge Kevin F. Casey issued a final report and recommendation in the matter of *Campaign Finance Board v. Alan Gerson and Friends for Gerson* (OATH Index No. 2421/14). The Board’s final determination reflects Judge Casey’s recommendation for all penalties except the one for exceeding the expenditure limit.



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checks, bills, or other documentation to verify all transactions reported in their disclosure statements. *See* Admin. Code §§ 3-703(1)(d), (g); Board Rule 4-01. A loan not repaid by the day of the election is considered a contribution subject to the contribution limit. Loans that are forgiven or settled for less than the amount owed are also considered contributions. *See* Admin. Code § 3-702(8); Board Rules 1-05(a), (j).

The Campaign submitted two loan agreements. The first was a personal loan of \$45,075 from J.P. Morgan Chase to the Candidate (“Loan 1”). The second was a loan from the Candidate to the Campaign (“Loan 2”), which contained an interest provision. The Campaign failed to report the principal portion of each payment as a loan repayment and the interest portion as an expenditure. Additionally, the interest for months in which the Campaign did not make payments under the terms of Loan 2 was not properly reported as an outstanding liability. The Campaign also did not report a loan payment of \$8,000 that appeared on its bank statement.

The Board assessed a penalty of \$2,000 for these violations.

4. Accepting over-the-limit contributions \$10,000

Campaigns may not accept contributions from a single source in excess of the applicable contribution limit for the entire election cycle. *See* Admin. Code §§ 3-702(8), 3-703(1)(f), (11), (12); Board Rules 1-04(c)(1), 1-04(h), 1-07(c). The contribution limit for City Council candidates in the 2009 election was \$2,750, and the contribution limit for candidates contributing to their own campaigns was \$8,250. Admin. Code 3-703(1)(f). If a campaign accepts an over-the-limit contribution, it must return the excess portion to the contributor. *See* Board Rule 1-04(c)(1).

The Campaign accepted aggregate contributions totaling \$110,636.07 from the Candidate, exceeding the contribution limit for candidates contributing to their own campaigns by \$102,386.07. The Campaign also reported a \$33,000 bank check as an expenditure, but the check did not originate from the bank accounts listed in the Candidate’s Certification. The check is considered an over-the-limit in-kind contribution, exceeding the applicable contribution limit by \$30,250.

The Board assessed a penalty of \$10,000 for these violations.

5. Failing to report an in-kind contribution \$20

Campaigns are required to report all in-kind contributions received. *See* Admin. Code §§ 3-703(6); Board Rule 3-03. In-kind contributions are goods or services provided to a campaign for free, paid by a third party, or provided at a discount not available to others. The amount of the in-kind contribution is the difference between the fair market value of the goods or services and the amount the campaign paid. *See* Admin. Code § 3-702(8); Board Rules 1-02, 1-04(g).

The Campaign provided an invoice from MarketxMarket totaling \$1,363.92, but reported a payment of \$565. The \$798.92 balance is considered an in-kind contribution.



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The Board assessed a penalty of \$20 for this violation.

6. Accepting contributions from corporations, limited liability companies, or partnerships \$550

Campaigns may not accept, either directly or indirectly, a campaign contribution or loan from any corporation. *See* Admin. Code § 3-703(1)(l); Board Rule 1-04(e). This prohibition also applies to contributions received after December 31, 2007 from any partnership, limited liability partnership, or limited liability company. *See* New York City Charter § 1052(a)(13); Admin. Code § 3-703(1)(l); Board Rule 1-04(c), (e).

The Campaign accepted three contributions totaling \$375 from corporations. It refunded one contribution promptly and the other two after the deadline.

The Board assessed a penalty of \$550 for these violations.

7. Accepting a contribution from an unregistered political committee \$750

Campaigns may not accept a contribution from a political committee unless the committee is registered with the CFB within ten days of receipt of the contribution. *See* Admin. Code §§ 3-703(k), 3-707; Board Rule 1-04(d).

The Campaign accepted and did not return a \$500 contribution from Friends of Silver, an unregistered political committee.

The Board assessed a penalty of \$750 for this violation.

8. Failing to accurately report specific transactions \$40

Campaigns are required to accurately report every contribution, loan, receipt, and disbursement. *See* Admin. Code §§ 3-703(6); Board Rule 3-03. The Campaign did not properly report or provide documentation for two receipts totaling \$800.

The Board assessed a penalty of \$40 for these violations.

9. Exceeding the expenditure limit \$30,912

Candidates who participate in the Campaign Finance Program must abide by limits on the amount of money they spend on their campaigns. *See* Admin. Code §§ 3-703(1)(i), 3-706, 3-711(2)(a); Board Rules 1-08(d), (l). The expenditure limit for candidates running for City Council in the 2009 general election was \$161,000. *See* Admin. Code § 3-706(1)(a).



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The Campaign exceeded the primary election expenditure limit by \$30,912.74 (19.2%). In recognition of the significant difficulties faced by the Campaign, the Board affirmed Judge Casey's recommendation to base the penalty on the amount of the overage, rather than using the multiplier normally applied pursuant to the Penalty Guidelines.

The Board assessed a penalty of \$30,912 for this violation.

10. Maintaining a petty cash fund greater than \$500 \$230

Campaigns are prohibited from maintaining more than \$500 in a petty cash fund. *See* Board Rule 4-01(e)(2). The Campaign issued a \$2,800 check made out to "cash" from its bank account, which constitutes a petty cash fund exceeding \$500.

The Board assessed a penalty of \$230 for this violation.

11. Failing to respond timely to a request for post-election audit documentation \$200

Every campaign is required to maintain records, such as copies of checks, bills, and other documentation, that enable CFB staff to verify the contributions and expenditures reported in the campaign's disclosure statements. *See* Admin. Code §§ 3-703(1)(d), (g); Board Rule 4-01. Campaigns are required to furnish such records to CFB staff upon request. *See* Admin. Code § 3-703(1)(d), (g). Every campaign is subject to a post-election audit by the CFB, for which they must furnish certain records, regardless of whether the campaign received public funds. *See* Admin. Code §§ 3-703(11), (12), 3-710(1), 3-719(1)(b); Board Rule 4-05(a).

CFB staff notified the Campaign that the Campaign's initial response to the post-election documentation request was inadequate and requested additional documentation. The Campaign submitted additional documentation four days after the deadline.

The Board assessed a penalty of \$200 for this violation.

12. Failing to respond to the Draft Audit Report \$2,796

Campaigns are required to respond to the Draft Audit Report ("DAR") by the due date. *See* Admin. Code §§ 3-703(1)(d), (g), (11), 3-708(5), 3-710(1), 3-711(1); Board Rules 1-09(a), 4-01, 4-05. Failing to respond to the DAR imposes significant burdens on CFB staff and frustrates the purpose of the Act's disclosure requirements. The Campaign did not respond to the DAR.

The Board assessed a penalty of \$2,796 for this violation.