

CAMPAIGN SPENDING COMMISSION

STATE OF HAWAII

In Re the Matter of) CA 07-07
)
Justin Avery and)
Justin Avery Candidate Committee,)
)
Respondent.)
_____)

CONCILIATION AGREEMENT

On or around August 2006, Barbara U. Wong, Executive Director for the Campaign Spending Commission ("Commission"), initiated an investigation of the Justin Avery Candidate Committee ("Respondent"). The investigation was initiated pursuant to the express authority of section 11-193(a)(7), Hawaii Revised Statutes ("HRS"), for a determination of whether the Hawaii campaign spending laws had been violated and a complaint would be submitted to the Commission.

NOW, THEREFORE, Respondent and the Commission, having entered into conciliation and pursuant to section 11-216(g), HRS, do hereby agree as follows:

- I. That the Commission has jurisdiction over Respondent and the subject matter of this administrative action.
- II. That this Conciliation Agreement ("Agreement") and upon complete performance of the conditions stated herein has the effect of remedial or corrective action taken by Respondent pursuant to section 11-216(g), HRS.
- III. That Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

- IV. That Respondent waives the right to be heard at a public hearing conducted under chapter 91, HRS, pursuant to section 11-228(b), HRS.
- V. That Respondent having voluntarily and fully cooperated with this investigation desires to resolve any potential litigation by entering into this Agreement with the Commission on his own volition and with full knowledge and understanding.
- VI. That parties agree to the pertinent facts as follows:
 1. On or around August 2006, Barbara U. Wong, Executive Director for the Commission, initiated an investigation of the Respondent.
 2. The Committee is a candidate committee registered with the Commission.
 3. Section 2-14.1-7 Hawaii Administrative Rules ("HAR"), provides in relevant part:
 - (a) Monetary contributions to a candidate, committee, or party shall be promptly deposited in a financial institution and no later than seven days after the contribution has been received by a candidate or any individual authorized to receive contributions on behalf of the candidate, committee, or party.
 - (b) Monetary contributions shall be deposited into a depository account and not commingled with any other money that will not be solely used to influence the nomination or election of a candidate or the outcome of any question or issue which may appear on a ballot.

4. Respondent held a garage sale to raise funds for his campaign on or about June 3, 2006 at his former residence, 1856 Kinoole Street, Hilo, Hawaii. Respondent's then treasurer, Heng, counted the money raised after the event and stated that it was about 400 and something dollars.
5. The Respondent's Candidate Committee Organizational report listed a Bank of Hawaii account, account number 0004-4xxxxx (redacted for identity theft safety purposes) which was opened on May 23, 2006. Between June 3, 2006 and July 27, 2006, there were no deposits made into the candidate committee bank account as listed on its Organizational report, in violation of section 2-14.1-7 (a) HAR.
6. Respondent held a "meet the candidate" type event to raise funds for his campaign on or about August 25, 2006, at Ka Huina Art Gallery, on Kilauea Avenue in Hilo, Hawaii. Music was provided by the Hilo Cry Babies, and food and refreshments were provided.
7. Section 11-207 HRS provides in pertinent part as follows:
 - (d) For the purposes of this subpart, an expenditure shall be deemed to be made or incurred when the services are rendered or the product is delivered. Services rendered or products delivered for use during a reporting period covered by this subpart shall be deemed delivered or rendered during the period or periods of use; provided that these expenditures shall

be reasonably allocated between periods in accordance with the time the services or products are actually used.

8. Respondent's candidate committee bank account as listed on its Organizational report did not reflect an expenditure for the Hilo Cry Babies, nor for the food and refreshments on or about August 25, 2006.
9. Respondent did not knowingly, intentionally, or recklessly violate sections 2-14.1-7 (a) HAR and 11-207 HRS.

VII. Settlement Terms

1. As final settlement of the matter and issues in Conciliation Agreement #07-07, Respondent understands and agrees to an assessment of Two Hundred Dollars (\$200) pursuant to section 11-228, HRS.
2. Terms of payment of the assessment shall be by Order of the Commission.
3. Respondent agrees to comply with Hawaii laws on contributions and expenditures.

VIII. The Commission upon its own motion or a written request of anyone filing a complaint under section 11-216, HRS, may review compliance with the Agreement. If the Commission believes that the Agreement has been violated, it may institute administrative proceedings or a civil action in the Circuit Court of the First Circuit pursuant to section 11-228(c), HRS.

- IX. This Agreement shall become effective as of the date that all parties have signed and the Commission has approved the entire Agreement.
- X. This Agreement constitutes the entire agreement between the Commission and Respondent on the matters raised herein, and no other statement, promise, or agreement, either in writing or oral, not contained in this Agreement made by either party or by agents of either party shall be enforceable.
- XI. This Agreement, unless violated, shall be a complete bar to any further action by the Commission with respect to the violations at issue in this matter and any and all other matters covered by this Agreement.

FOR THE COMMISSION:

Barbara Wong, Executive Director

Date: _____

FOR THE RESPONDENT:

Justin Avery Candidate Committee

Print Name

Its: _____

Date: _____

Justin Avery

Date: _____