

CAMPAIGN SPENDING COMMISSION

STATE OF HAWAII

In Re the Matter of	)	CA 10-01
	)	
John Henry Felix	)	
	)	
Felix For City Council	)	
	)	
Respondents	)	
_____	)	

CONCILIATION AGREEMENT

In or about April 2009, Barbara U. Wong, Executive Director for the Campaign Spending Commission ("Commission"), initiated an investigation of John Henry Felix ("Felix") and Felix for City Council ("Committee") (together "Respondents"). The investigation was initiated pursuant to §11-193(a)(7), Hawaii Revised Statutes ("HRS"), to determine whether the Hawaii campaign spending laws had been violated and a complaint would be submitted to the Commission.

NOW, THEREFORE, Respondents and the Commission enter into this Conciliation Agreement ("Agreement") pursuant to §11-216(g), HRS, on the terms and conditions set forth below:

- I. The Commission has jurisdiction over Respondents and the subject matter of this administrative action.
- II. Respondents consulted with and are represented by Warren Price, Esq., of Price Okamoto Himeno & Lum, Ocean View Center, 707 Richards Street, Suite 728, Honolulu, Hawaii 96813.

- III. Insofar as Felix provided an explanation of loans by William C. McCorriston (“McCorriston”) and Lawrence K. W. Tseu (“Tseu”), the Respondents waive his/its right to notice of the violations of the Hawaii campaign spending law.
- IV. Respondents waive the opportunity to explain or otherwise respond to a notice of violations in a Commission meeting conducted pursuant to chapter 92, HRS.
- V. The Commission has made a preliminary determination that probable cause exists that Respondents committed violations of the Hawaii campaign spending law.
- VI. Respondents have requested a contested case hearing by the Commission, pursuant to chapter 91, HRS and hereby waive the contested case hearing.
- VII. Pursuant to §§91-9(d) and 11-228(b), HRS, the parties hereby agree to modify the proceedings and informally dispose of this matter in accordance with the terms and conditions of this Agreement.
- VIII. This Agreement, upon complete performance of the terms and conditions stated herein, has the effect of remedial or corrective action taken by Respondents pursuant to §11-216(g), HRS.
- IX. Respondents, having voluntarily cooperated with this investigation, desire to resolve any further administrative proceedings and potential litigation by entering into this Agreement with the Commission on his/its own volition without any coercion or duress and with full knowledge and understanding.
- X. The parties agree to the pertinent facts as follows:
  1. Respondent Felix was a candidate in the 2009 special election for the office of Honolulu City Council District 3 to succeed Councilmember

Barbara Marshall who died on February 22, 2009 after being elected to office on November 4, 2008. Felix was defeated in the special election on April 23, 2009.

2. Felix filed nomination papers on March 2, 2009. There were only 51 days between March 2, 2009 and April 23, 2009 (the date of the special election) to raise funds and campaign for the office of Honolulu City Council District 3.
3. The special election was conducted by mail. Ballots were sent out on April 1 and had to be received by the Honolulu City Clerk no later than 6 p.m. on April 23, 2009. Absentee walk-in voting at City Hall was allowed from April 6 through April 21.
4. Respondent Committee is the candidate committee for Felix. The Committee's initial Chairperson was William Kekoa McClellan ("McClellan") and the Committee's initial Treasurer was Roy M. Yonaoshi ("Yonaoshi"), as indicated by their respective signatures on the "Application for Electronic Filing Password Candidate Committee" form, dated March 2, 2009 and received by the Commission on March 4, 2009.
5. The Committee registered with the Commission by electronically filing its Organizational Report on March 6, 2009. Upon registration, Respondents were required to file periodic reports that disclose true and accurate information, including contributions, loans, and expenditures of the Committee.

6. On April 22, 2009, the Commission received a second “Application for Electronic Filing Password Candidate Committee” form. Felix signed this form as the Candidate and Chairperson (replacing McClellan as the Chairperson). William E. Paupe (“Paupe”) signed this form accepting appointment as the Treasurer (replacing Yonaoshi as the Treasurer).
7. On April 22, 2009, the Commission received a letter from McClellan, the Committee’s initial Chairperson, stating that he was resigning as the Committee’s Chairperson.
8. The Special Election for Council District 3 was held on April 23, 2009.
9. Respondents accepted loans from: (1) William C. McCorrison (“McCorrison”) aggregating \$65,000 and (2) Lawrence K. W. Tseu (“Tseu”) aggregating \$100,000.
  - a. McCorrison wrote a \$20,000 check, dated February 18, 2009, to Felix. This check was deposited on February 20, 2009 into a Central Pacific Bank account no. 6000298527, with account name “John Henry Felix for John Henry Felix Rev Trust dtd 3-18-91 (“Felix CPB Account 1”).
  - b. Respondents reported receiving a \$4,000 contribution from McCorrison on March 9, 2009. This is the maximum contribution that a person could make to a candidate in the 2009 special election

for the office of Honolulu City Council District 3, pursuant to HRS §11-204.

- c. Tseu wrote a \$50,000 check, dated March 16, 2009, payable to “Dr. John Henry Felix” with a notation “Loan.” This check was deposited on March 16, 2009 into Felix CPB Account 1.
- d. McCorrison wrote a \$25,000 check, dated April 2, 2009, payable to Felix with a notation “LOAN.” This check was deposited on April 2, 2009 into Felix CPB Account 1.
- e. McCorrison wrote a \$10,000 check, dated April 8, 2009, payable to Felix with a notation “LOAN.” This check was deposited on April 9, 2009 into Felix CPB Account 1.
- f. McCorrison wrote a \$10,000 check, dated April 13, 2009, payable to Felix with a notation “My hero.” This check was deposited on April 13, 2009 into Felix CPB Account 1.
- g. Tseu wrote a \$50,000 check, dated April 13, 2009, payable to Felix with a notation “campaign contribution.” This check was deposited on April 13, 2009 into Felix CPB Account 1.
- h. Felix CPB Account 1’s beginning balance as of January 31, 2009 was \$2,860.85. The monthly deposits, checks paid, and interest for Felix CPB Account 1 through April 30, 2009 indicate that Felix would not have been able to make the \$115,000 in loans to his CPB Campaign Account without the loans from McCorrison and

Tseu. Felix CPB Account 1's balance on April 30, 2009 was \$3,106.66.

10. Seven Felix checks drawn on Felix CPB Account 1 aggregating \$115,000 were deposited into the "Felix for City Council" Central Pacific Bank account no. 4000362170 ("CPB Campaign Account").
  - a. Felix wrote a \$10,000 check, dated March 19, 2009, with a notation "Loan," which was drawn on Felix CPB Account 1. This check was deposited on March 19, 2009 into the CPB Campaign Account.
  - b. Felix wrote a \$20,000 check (dated March 29, 2009) with a notation "Loan," which was drawn on Felix CPB Account 1. This check was deposited on March 30, 2009 into the CPB Campaign Account.
  - c. Felix wrote a \$30,000 check (dated April 3, 2009) with a notation "Loan to campaign," which was drawn on Felix CPB Account 1. This check was deposited on April 2, 2009 into the CPB Campaign Account.
  - d. Felix wrote a \$10,000 check (dated April 8, 2009) with a notation "Loan," which was drawn on Felix CPB Account 1. The check was deposited on April 8, 2009 into the CPB Campaign Account.

- e. Felix wrote a \$10,000 check (dated April 10, 2009) with a notation “Loan,” which was drawn on Felix CPB Account 1. The check was deposited on April 10, 2009 into the CPB Campaign Account.
- f. Felix wrote a \$20,000 check (dated April 14, 2009) with a notation “Loan,” which was drawn on Felix CPB Account 1. The check was deposited on April 14, 2009 into the CPB Campaign Account.
- g. Felix wrote a \$15,000 check (dated April 15, 2009), which was drawn on Felix CPB Account 1. The check was deposited on April 15, 2009 into the CPB Campaign Account.

11. Felix and the Committee’s Preliminary Special Election report and Final Special Election report disclosed 7 loans from Felix aggregating \$115,000 as follows:

Loan	Date of Loan	Loan Amount	Loan document filing date	Report that Felix Loan reported in
1	3/19/09	\$ 10,000	4/15/09	Preliminary Special Election
2	3/30/09	\$ 20,000	4/15/09	Preliminary Special Election
3	4/2/09	\$ 30,000	4/15/09	Preliminary Special Election
4	4/8/09	\$ 10,000	4/15/09	Preliminary Special Election
5	4/10/09	\$ 10,000	4/15/09	Final Special Election
6	4/14/09	\$ 20,000	4/15/09	Final Special Election
7	4/15/09	\$ 15,000	4/21/09	Final Special Election
		<u>\$115,000</u>		

12. Respondents filed the Final Special Election Period report on May 4, 2009 disclosing the following:

- \$175,655.01 in expenditures;
- \$115,000 in loans from Felix; and
- \$61,731 in contributions.

13. Table summarizing: (1) the McCorriston and Tseu loans accepted by Respondents; (2) the Felix check payable to Maureen Sapienza; (3) seven deposits made to the campaign account; (4) McCorriston \$4,000 contribution to Respondents; (5) campaign reports filed by Respondents reporting that seven loans were accepted by Felix; and (6) Funds provided by Felix to Tseu and McCorriston

12/3/08 News article regarding Councilmember Barbara Marshall's battle with cancer and rumors of retirement

Date	McCorriston	Tseu	Felix	Felix CPB Account 1	CPB Campaign Account	CFS reporting
2/18/2009	Writes \$20,000 check to Felix		\$20,000 check deposited into Felix CPB Account 1 on 2/20/2009			
<b>2/22/2009</b>	<b>Councilmember Barbara Marshall passes away.</b>					
2/23/2009			Felix writes check on Felix CPB Account 1 for \$19,200 to Maureen Sapienza with notation "319 D Kaelepulu" to move from District 4 into District 3			
3/6/2009						Felix registers with Commission
3/9/2009	Contributes \$4,000 to the Committee				\$4,000 deposit	
3/16/2009		Writes \$50,000 check with notation "Loan" to Felix	\$50,000 check deposited into Felix CPB Account 1 on 3/16/2009			
3/19/2009			Felix writes \$10,000 check with the notation "Loan" drawn on CPB Account 1		\$10,000 deposit	Felix and Committee report Loan # 1 (\$10,000) from Felix
3/29/2009			Felix writes \$20,000 check with notation "Loan" drawn on CPB Account 1		\$20,000 deposit	Felix and Committee report Loan #2 (\$20,000) from Felix
<u>4/2/2009</u>	Writes \$25,000 check to Felix with notation "LOAN"		\$25,000 check deposited into Felix CPB Account 1 on 4/2/2009			
4/2/2009			Felix writes \$30,000 check with the notation "Loan to campaign" drawn on CPB Account 1		\$30,000 deposit	Felix and Committee report Loan #3 (\$30,000) from Felix
4/8/2009	Writes \$10,000 check with notation "Loan" to Felix			Felix deposits this check on 4/9/2009		
4/8/2009			Felix writes \$10,000 check with the notation "Loan" drawn on CPB Account 1		\$10,000 deposit	Felix and Committee report Loan #4 (\$10,000) from Felix
4/10/2009			Felix writes \$10,000 check with the notation "loan" drawn on CPB Account 1		\$10,000 deposit	Felix and Committee report Loan #5 (\$10,000 from Felix)
4/13/2009	Writes \$10,000			This check is		

Date	McCorriston	Tseu	Felix	Felix CPB Account 1	CPB Campaign Account	CFS reporting
4/13/2009	check with notation "My hero" to Felix			deposited on 4/13/2009		
		Tseu writes \$50,000 check with notation "campaign contribution" to Felix		This check in deposited on 4/13/09		
4/14/2009			Felix writes \$20,000 check with the notation "Loan" drawn on CPB Account 1		\$20,000 deposit	Felix and Committee report Loan #6 (\$20,000) from Felix
4/15/2009			Felix writes \$15,000 check with no notation drawn on CPB Account 1		\$15,000 deposit	Felix and Committee report Loan #7 (\$15,000) from Felix
4/22/2009						McClellan resigns as Chair. Yonaoshi replaced as Treasurer by William Paupe.
<b>Summary</b>	<b>McCorriston loans \$65,000 and contributes \$4,000</b>	<b>Tseu loans \$100,000</b>				<b>Felix and Committee report \$115,000 aggregate loans from Felix in reports filed on 4/9/09 and 5/4/09</b>
<b>Subsequent actions by Felix</b>						
4/24/2009				\$10,021.92 check (#2175), dated 4-24-09, signed by Felix from a Felix account at the Bank of Hawaii's main office to McCorriston with notation "Repayment of Loan 4/809"		
5/13/2009				\$50,000 check (#2178), dated 5-13-09, signed by Felix from a Felix account at the Bank of Hawaii's main office to Tseu		
5/26/2009				Felix Letter No. 1 and Felix Letter No. 2 delivered to Commission		

14. An article in the Honolulu Advertiser, dated December 3, 2008, stated that Councilmember Barbara Marshall who represents City Council District 3, continues to battle colon cancer and has fought cancer twice before, and does so amidst rumors of pending retirement. Another article in the Honolulu Advertiser, dated January 2, 2009, stated Councilmember

Marshall appeared in a wheel chair at the swearing-in ceremony for the City Council and left before speeches began.

15. Felix asked McCorrison for a \$20,000 loan for the purpose of moving to the Bluestone located on Kaelepulu Drive in Lanikai, which is in City Council District 3. Felix lived at 5253 Kalaniana'ole Highway in Aina Haina, which is located in City Council District 4.
  - a. On February 20, 2009, the \$20,000 McCorrison check, dated February 18, 2009, was deposited in Felix CPB Account 1.
  - b. On February 22, 2009, Councilmember Barbara Marshall passed away in Orange County, California, creating a vacancy for the City Council District 3 seat.
  - c. On February 23, 2009, Felix provided a \$19,200 check drawn from Felix CPB Account 1 to Maureen Sapienza, with a notation "319 D Kaelepulu," for 6 months rent at the Bluestone, 319D Kaelepulu, which is located in City Council District 3.
16. "To be eligible for election or appointment to the council, a person must be a duly qualified elector of the council district from which the person seeks to be elected." Rev. Charter of Honolulu, Section 3-104. An "elector" is "[o]ne who is qualified to vote; a voter." Black's Law Dictionary 537 (7<sup>th</sup> ed. 1999)

17. A “candidate” is subject to the provisions of the Hawaii campaign finance law in HRS chapter 11, subpart B. A “candidate” is defined in relevant part as follows:

‘Candidate’ means an individual who seeks nomination for election, or seeks election, to office. Until an individual terminates the individual’s candidacy with the commission, an individual is a candidate if the individual does any of the following:

- (1) Files nomination papers for an office for oneself with the county clerk’s office or with the chief election officer’s office, whichever is applicable;
- (2) Receives contributions in an aggregate amount of more than \$100 or makes or incurs expenditures of more than \$100 to bring about the individual’s nomination for election, or to bring about the individual’s election to office. HRS §11-191.

18. HRS §11-205.6 provides in pertinent part as follows:

(a) Any loan to a candidate or candidate’s committee in excess of \$100 shall be documented and disclosed as to lender, including the lender’s name, address, employer, and occupation and purpose of the loan in the subsequent report to the commission. A copy of the executed loan document shall accompany the report. The document shall contain the terms of the loan, including the interest and repayment schedule. Failure to document the loan or to disclose the loan to the commission shall cause the loan to be treated as a campaign contribution, subject to all relevant provisions of this chapter. (Emphasis added.)

(b) A candidate or candidate’s committee may receive and accept loans in an aggregate amount not to exceed \$10,000 during an election period, provided that if the \$10,000 limit is reached, the candidate or candidate’s committee shall be prohibited from receiving or accepting any other loans until the \$10,000 is repaid in full by the candidate or candidate’s committee.

19. The election period for the District 3 Special Election was November 5, 2008 to April 23, 2009.
20. Felix was a candidate for Honolulu City Council District 3 on or before February 20, 2009 by accepting a \$20,000 loan from McCorriston and

expending \$19,200 of the loan on February 23, 2009 in order to move from District 4 into District 3, in anticipation of an imminent vacancy to occur in Honolulu City Council District 3. The \$20,000 loan was accepted by Felix, and then deposited on February 20, 2009 into Felix CPB Account 1 in violation of HRS §11-205.6 (b).

21. On March 2, 2009, Felix filed nomination papers with the Honolulu City Clerk's Office for the Honolulu City Council District 3 seat.
22. On March 16, 2009, Felix accepted a \$50,000 check from Tseu and deposited the check into Felix CPB Account 1. The check had a notation "loan."
23. Two letters signed by Felix were hand delivered to the Commission on May 26, 2009. Felix listed the subject matter of one letter as "Monies Received as Repayment of A Pre-Existing Obligation" ("Felix Letter No. 1"). He listed the subject matter of the other letter as "Campaign Reports" ("Felix Letter No. 2").
24. In Felix Letter No. 1, Felix wrote that in 2004, Felix made a \$100,000 donation to Harris Manchester College on Tseu's behalf, when Tseu was having cash flow problems, and that Tseu was to repay him within five years, which was evidenced by a contemporaneous writing dated May 16, 2004."

25. The copy of the check to (unreadable) Oxford was dated January 1, 2004. Harris Manchester College is a college within the University of Oxford.
26. Felix further states in Felix Letter No. 1 that he asked Tseu to repay half the 2004 loan for \$100,000 in March, 2009 and Tseu agreed and gave Felix a check dated March 16, 2009 for \$50,000.
27. Attached to Felix Letter No. 1 as Exhibit D, is a letter from Dr. Ralph Waller, Principal of Harris Manchester College, dated April 28, 2009, in which Dr. Waller states it is his understanding that Felix's donation of \$100,000 in 2004 was to be attributed to Tseu and that the donation will count towards Tseu's membership on the Chancellor's Court.
28. Felix accepted a \$50,000 loan, dated March 16, 2009, from Tseu and deposited the check into Felix CPB Account 1 in violation of HRS §11-205.6 (b). The check had a notation "loan."
29. Felix accepted a \$25,000 check, dated April 2, 2009, from McCorrison and deposited the check into Felix CPB Account 1 on April 2, 2009. The check, numbered 351, had a notation "LOAN."
30. Felix failed to mention this \$25,000 check from McCorrison in Felix Letter No. 2.
31. Felix accepted a \$25,000 loan from McCorrison and deposited the check into Felix CPB Account 1 on April 2, 2009 in violation of HRS §11-205.6 (b).

32. Felix accepted a \$10,000 check, dated April 8, 2009 from McCorrison and deposited the check into Felix CPB Account 1 on April 9, 2009. The check, numbered 352, had a notation "Loan."
33. Felix accepted a \$10,000 loan from McCorrison and deposited the check into Felix CPB Account 1 on April 9, 2009 in violation of HRS §11-205.6 (b).
34. Felix accepted a \$10,000 check, dated April 13, 2009 from McCorrison and deposited the check into Felix CPB Account 1 on April 13, 2009. The check, numbered 354, had a notation "My hero."
35. Through April 13, 2009, Felix accepted loans from McCorrison for Felix's campaign by depositing in Felix CPB Account 1 McCorrison's checks aggregating \$65,000 as follows:
  - a. \$20,000 check dated February 18, 2009 and deposited on February 20, 2009;
  - b. \$25,000 check dated April 2, 2009 and deposited on April 2, 2009;
  - c. \$10,000 check dated April 8, 2009 and deposited on April 9, 2009;
  - d. \$10,000 check dated April 13, 2009 and deposited on April 13, 2009.
36. Felix accepted a \$10,000 loan from McCorrison and deposited the check on April 13, 2009 in violation of HRS §11-205.6 (b).
37. In April 2009, Felix allegedly asked Tseu to repay the \$50,000 balance of a \$100,000 advance Felix allegedly made for Tseu to Harris Manchester College in London in May, 2004 when Tseu was having alleged temporary cash flow problems.

38. Felix accepted a \$50,000 check, dated April 13, 2009 from Tseu and deposited the check into Felix CPB Account 1 on April 13, 2009. The check had a notation "campaign contribution." Felix wrote in Felix Letter No. 1, "It is my understanding that the notation 'campaign contribution' on the check referred to Tseu's awareness that the funds would be used for my campaign."
39. Felix accepted a \$50,000 loan from Tseu and deposited the check into Felix CPB Account 1 on April 13, 2009 in violation of HRS §11-205.6 (b).
40. Between March 19, 2009 and April 15, 2009, Felix wrote seven checks aggregating \$115,000 that were drawn on Felix CPB Account 1. Those seven checks were deposited into the CPB Campaign Account.
41. HRS §11-195 provides in pertinent part as follows:
  - (a) All reports required to be filed under this subpart by a candidate's committee shall be certified by the candidate and treasurer. Reports required to be filed under this subpart by a noncandidate committee shall be certified by the chairperson and treasurer.
  - (b) All reports required under this subpart shall be electronically filed on the commission's electronic filing system.
  - (c) All reports required to be filed under this subpart shall at all times be available to the general public.... HRS §11-195 (a), (b), (c)

Further, HRS §11-212 provides in relevant part as follows:

- (a)(1) The candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file a preliminary report.  
Preliminary reports shall be filed on the following dates:
  - (A) July thirty-first of the year of the primary election;
  - (B) Ten calendar days prior to each primary and initial special election;and

- (C) Ten calendar days prior to a special or general election.
- (2) Each report shall be certified pursuant to section 11-195 . . . .

- 42. In the Preliminary Special Election report filed on April 9, 2009, covering the reporting period January 1 through April 8, 2009, Respondents falsely reported Felix as the lender of four loans aggregating \$70,000, rather than McCorriston as the lender of two loans aggregating \$45,000; and Tseu as the lender of one \$50,000 in violation of HRS §§11-195 and 11-212.
- 43. HRS §11-213 provides in pertinent part as follows:

General, special general, special election or election period. Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a final election period report with the commission on forms provided by the commission on the thirtieth calendar day after a general, special general, or special election. The final election period report shall be certified pursuant to section 11-195, shall report all items prescribed in subsection (a) or (b) for noncandidate committees, and shall be current through the day of the general election. A candidate who is unsuccessful in a primary or special primary election shall file a final election period report.
- 44. In the Final Special Election Period report filed on May 4, 2009, covering the reporting period April 9 through April 23, 2009, Respondents falsely reported Felix as the lender of three loans aggregating \$45,000, rather than McCorriston as the lender of two loans aggregating \$20,000 and Tseu as the lender of one loan of \$50,000 in violation of HRS §§11-195 and 11-213(d).
- 45. Respondents did not knowingly, intentionally, or recklessly violate HRS §§11-205.6, 11-195, 11-212, and 11-213.

XI. Settlement Terms

1. As final settlement of the matter and issues in this Agreement #10-01, Respondents agree to an assessment of \$50,000 pursuant to §11-228 (a)(2), HRS.
2. Terms of payment of the assessment shall be by Order of the Commission.
3. Respondents agree to comply with Hawaii laws on contributions and expenditures.
4. It is understood that by voluntarily entering into this Agreement, Respondents intend to remedy or correct the alleged violations, but this Agreement shall not be construed as, and does not constitute, an admission of liability or wrongdoing by Respondents.

XII. The Commission upon its own motion or a written request of anyone filing a complaint under §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 §11-228(c), HRS.

XIII. This Agreement shall become effective as of the date that all parties have signed and the Commission has approved the Agreement.

XIV. This Agreement constitutes the entire agreement between the Commission and Respondents on the matters raised herein, and no other statement, promise, or

agreement, either in writing or oral, not contained in this Agreement made by any party or by agents of any party shall be enforceable.

XV. This Agreement, unless violated, is a complete and final settlement with Respondents with respect to the alleged violations that are the subject of the Agreement.

**FOR THE COMMISSION:**

Barbara Wong, Executive Director

\_\_\_\_\_

Date: \_\_\_\_\_

**FOR THE RESPONDENT:**

John Henry Felix

\_\_\_\_\_

Date: \_\_\_\_\_

**FOR THE RESPONDENT:**

Felix for City Council

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_