

NEW JERSEY ELECTION LAW
ENFORCEMENT COMMISSION,

Complainant,

v.

JOSEPH DIVINCENZO,
Candidate for County Executive,
Essex County,

and

JORGE MARTINEZ,
Treasurer,

Respondents.

CONSENT ORDER

AND

FINAL DECISION

ELEC Docket Nos.:

C-8 0700 01 01-G2010

C-8 0700 01 01-P2014

The New Jersey Election Law Enforcement Commission (Commission) having brought a Complaint on September 25, 2013 against Joseph DiVincenzo and Jorge Martinez (Respondents) for failure to report expenditure information and impermissible personal use of campaign funds in the 2010 general election and the 2014 primary election, as required by the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 *et seq.* (Campaign Act) and Commission Regulations, N.J.A.C. 19:25-1 *et seq.*;

And Respondents having filed an Answer with affirmative defenses in response to the Complaint;

And the Complaint issued by the Commission and described above being incorporated by reference in this Consent Order and Final Decision;

And Respondents representing that by entering into this Consent Order and Final Decision, they neither admit nor deny that the violations alleged in the Complaint constitute violations of the Campaign Act;

And Respondents representing that the expenditures contained in Counts Two, Four, Six, Eight, Ten, Eleven and Thirteen were made with the good faith belief that such expenditures were permissible under the Campaign Act;

And, notwithstanding Respondents' representation, the Commission finding the expenditures contained in Counts Two, Four, Six, Eight, Ten, Eleven and Thirteen to be impermissible, pursuant to N.J.S.A. 19:44A-11.2, N.J.A.C. 19:25-6.5 and 19:25-6.7, with the exception of those expenditures described below that the Commission finds to be permissible;

And Respondents being represented in this matter by Angelo J. Genova, Esq. of Genova Burns LLC, consenting to the form and substance of this Consent Order and Final Decision;

And the Commission adopting the Proposed Findings of Fact and Proposed Conclusions of Law as set forth in the Complaint, and as modified below, as the Findings of Fact and Conclusions of Law in its Final Decision in this matter;

And the Commission finding on Count One that Respondents filed amended 29-day preelection reports for the 2010 general election on November 16, 2017 and November 20, 2017, reporting expenditure information for 169 credit card transactions, totaling \$15,418.29 (2,600 and 2,604 days late);

And the Commission finding on Count Two that the two expenditures of \$326.75 each, described in paragraph 7, subparagraphs a. and b. were permissible office holding expenses used to purchase airfare for staff members to attend a conference; the Commission therefore dismisses the allegations in Count Two, paragraph 7, subparagraphs a. and b.;

And the Commission further finding on Count Two that Respondent Candidate reimbursed the campaign depository for the following expenditures, totaling \$1,049.69:

1. Paragraph 3, subparagraphs a., b. and c., totaling \$830.19,
2. Paragraph 5, totaling \$97.25, and
3. Paragraph 7, subparagraphs c. and d., totaling \$122.25;

And the Commission finding on Count Three that Respondents filed amended 11-day preelection reports for the 2010 general election on November 16, 2017 and November 20, 2017, reporting expenditure information for 68 credit card transactions, totaling \$9,315.51 (2,582 and 2,586 days late);

And the Commission finding on Count Four that Respondent Candidate reimbursed the campaign depository for the expenditures in Paragraph 3 subparagraphs a. and e., totaling \$147.25;

And the Commission finding on Count Five that Respondents filed amended 20-day postelection reports for the 2010 general election on November 16, 2017 and November 20, 2017, reporting expenditure information for 52 credit card transactions, totaling \$7,465.14 (2,551 and 2,555 days late);

And the Commission finding on Count Six that Respondent Candidate reimbursed the campaign depository for the expenditures in Paragraph 3, subparagraphs a. and b., totaling \$242.25;

And the Commission finding on Count Seven that Respondents filed amended 2011 first quarterly reports for the 2014 primary election on November 16, 2017 and November 20, 2017, reporting expenditure information for 175 credit card transactions, totaling \$25,227.85 (2,407 and 2,411 days late);

And the Commission finding on Count Eight that Respondent Candidate reimbursed the campaign depository for the following expenditures, totaling \$439.00:

1. Paragraph 3, subparagraphs a. and b., totaling \$122.25,
2. Paragraph 5, subparagraphs a. and b., totaling \$122.25,
3. Paragraph 7, totaling \$97.25, and
4. Paragraph 9, subparagraph a, totaling \$97.25;

And the Commission finding on Count Nine that Respondents filed amended 2011 second quarterly reports for the 2014 primary election on November 16, 2017 and November 20, 2017, reporting expenditure information for 137 credit card transactions, totaling \$13,815.78 (2,316 and 2,320 days late);

And the Commission finding on Count Ten that the expenditures totaling \$734.40 described in paragraph 5, subparagraphs b. and c. were permissible office holding expenses used to purchase airfare for staff members to attend a conference; and the Commission further finding on Count Ten that the \$792.00 expenditure described in paragraph 5, subparagraph a. was a permissible office holding expense used to purchase tickets to the 2011 NCAA Regional Basketball Tournament held in Newark, NJ, an event Respondent Candidate attended to represent Essex County which was hosting the national tournament for the first time; the Commission therefore dismisses the allegations in Count Ten, paragraph 5, subparagraphs a., b. and c.

And the Commission further finding on Count Ten that Respondent Candidate reimbursed the campaign depository for the following expenditures, totaling \$687.75:

1. Paragraph 3, totaling \$97.25,
2. Paragraph 5, subparagraphs d. and e., totaling \$493.25, and
3. Paragraph 7, totaling \$97.25;

And the Commission finding on Count Eleven that the expenditures totaling \$325.00, described in paragraph 4, subparagraphs a., b. and c. were permissible office holding expenses used to purchase airfare for staff members to attend a conference; the Commission therefore dismisses the allegations in Count Eleven, paragraph 4, subparagraphs a., b. and c.

And the Commission further finding on Count Eleven that Respondent Candidate reimbursed the campaign depository for the \$75.00 expenditure in Paragraph 6.

And the Commission finding on Count Twelve that Respondents filed an amended 2011 third quarterly report for the 2014 primary election on November 20, 2017, reporting expenditure information for one credit card transaction of \$106.22 (2,226 days late);

And the Commission having considered penalty factors as required by N.J.A.C. 19:25-17.3B and N.J.A.C. 19:25-17.3C, including penalties imposed in prior cases for similar offenses;

The Commission, pursuant to N.J.S.A. 19:44A-22 and N.J.A.C. 19:25-17.1 et seq., Reprimands Respondents and imposes a joint penalty of \$25,558.25, as follows:

1. For late reporting of expenditure information for 602 credit card transactions, totaling \$71,348.79, the Commission imposes a penalty of \$7,134.87 (Counts 1, 3, 5, 7, 9 and 12);
2. For impermissible use of campaign funds for 21 expenditures, totaling \$2,640.94, which expenditures have been reimbursed by Respondent Candidate, the Commission imposes a penalty of \$1,320.47 (Counts 2, 4, 6, 8, 10 and 11); and
3. For impermissible use of campaign funds for 22 expenditures, totaling \$11,401.94, which expenditures have not been reimbursed, the Commission imposes a penalty of \$17,102.91 (Counts 2, 4, 8, 11 and 13).

And the Commission having received payment in the amount of \$20,446.60 on November 20, 2017, prior to Final Decision action, the Commission hereby reduces the joint penalty of \$25,558.25 to \$20,446.60, pursuant to N.J.A.C. 19:25-17.3C(e).

Respondents hereby enter into this Consent Order, which if authorized and executed by the Commission, will be the Final Decision in this case.

CONSENT TO SETTLE:

on behalf of

Joseph DiVincenzo and Jorge Martinez

The undersigned hereby consents to the form and substance of the Findings of Fact, Conclusions of Law and penalty set forth in this Consent Order, and therefore to entry of this Consent Order as the Final Decision in ELEC v. Joseph DiVincenzo and Jorge Martinez, C-8 0700 01 01-G2010 and C-8 0700 01 01-P2014. However, should the Commission decline to adopt and execute this Consent Order, Respondents retain their right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and payment in the amount of \$20,446.60 will be refunded.

DATED: _____

BY _____

Angelo J. Genova, Esq.
Genova Burns LLC

CONSENT OF COMMISSION'S PROSECUTION STAFF:

The Commission having received payment of \$20,446.60, in ELEC v. Joseph DiVincenzo and Jorge Martinez, C-8 0700 01 01-G2010 and C-8 0700 01 01-P2014 as set forth in this Consent Order, the undersigned hereby consents to the submission of this Consent Order to the Commission for the Commission's Final Decision consideration. In the event that the Commission does not adopt and execute this Consent Order as its Final Decision, I hereby acknowledge that Respondents retain their right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the payment in the amount of \$20,446.60 will be refunded.

NEW JERSEY ELECTION LAW
ENFORCEMENT COMMISSION

DATED: _____

BY: _____

Amanda S. Haines, Esq.
Deputy Legal Director

COMMISSION'S FINAL DECISION:

The New Jersey Election Law Enforcement Commission, by a vote of 3-0 at its meeting of November 21, 2017, consented to and adopted the Findings of Fact, Conclusions of Law and total \$25,558.25 joint penalty set forth in this Consent Order as its Final Decision in ELEC v. Joseph DiVincenzo and Jorge Martinez, C-8 0700 01 01-G2010 and C-8 0700 01 01-P2014, and acknowledges the receipt of the reduced penalty amount of \$20,446.60. No further payment or reimbursement is required.

NEW JERSEY ELECTION LAW
ENFORCEMENT COMMISSION

Date of Mailing: November 29, 2017

BY: _____ /s/

Eric H. Jaso
Chairman