



STATE ETHICS COMMISSION

TIM EICHENBERG,

Complainant,

v.

LAURA MONTOYA,

Respondent.

No. 2022-06

ORDER

This appeal comes before the State Ethics Commission under NMSA 1978, Section 10-16G-12(E) (2019). The State Ethics Commission, having carefully reviewed and thoroughly considered the Hearing Officer's September 29, 2023 Findings of Fact and Conclusions of Law (Doc. 55), the parties' notices of appeal and cross appeal, and the parties' briefs (Docs. 56, 58-59, 62-63, 65-66); having reviewed the whole record in this matter (Doc. 64); and having heard the parties' oral arguments on December 15, 2023, hereby concludes that the Hearing Officer's Findings of Fact and Conclusions of Law are supported by substantial evidence, are not arbitrary or capricious, and are not otherwise inconsistent with law. Accordingly, the Hearing Officer's September 29, 2023 Order is **AFFIRMED**.

SO ISSUED this 18th day of December, 2023.

HON. WILLIAM F. LANG, Chair
JEFFREY L. BAKER, Commissioner
HON. CELIA CASTILLO, Commissioner
HON. DR. TERRY MCMILLAN, Commissioner
RONALD SOLIMON, Commissioner

DR. JUDY VILLANUEVA, Commissioner

STUART M. BLUESTONE, Commissioner, concurring in part and dissenting in part.

I concur with the Commission's decision to affirm the Hearing Officer's imposition of a civil penalty in the amount of \$1,000 for the Respondent's two violations of the Campaign Reporting Act. With respect to the Commission's affirmance of the Hearing Officer's decision not to impose forfeiture, however, I respectfully dissent.

I would have reversed the Hearing Officer's determination regarding forfeiture. In his Order, the Hearing Officer declined "to order forfeiture of the \$10,000 because there is little evidence of bad faith on the part of the Respondent or of public harm." Hearing Officer's Findings of Fact and Conclusions of Law, at 19 (Sept. 29, 2023) (Doc. 55).

I would have remanded the matter to the Hearing Officer on that issue to determine whether forfeiture of some or all of the \$10,000 unlawful contribution amount received should be ordered after weighing the following factors to determine the appropriate penalty amount: (1) the good or bad faith of the Respondent; (2) the injury to the public; (3) the Respondent's ability to pay; (4) the necessity of vindicating the authority of the State Ethics Commission; and (5) the desire to eliminate the benefit derived from the violation. *See Fed. Election Comm'n v. Furgatch*, 869 F.2d 1256, 1258 (9th Cir. 1989) (citing *United States v. Danube Carpet Mills, Inc.*, 737 F.2d 988, 993 (11th Cir. 1984)).

Also, I would have recommended that upon remand the Hearing Officer be instructed to find that the Commission concludes based on a review of the whole record of this matter: (1) that in light of the finding that critical elements of the Respondent's testimony in this matter were found to be "not credible" and that Respondent did not admit the violations alleged or seek to resolve the matter by taking corrective action, there has been no proof offered that Respondent's conduct in this matter constitutes good faith; (2) that since the Campaign Reporting Act's

disclosure requirements serve the critical purpose of providing citizens with important information necessary to determine the true source of financial support for a candidate, the violations of law that the Hearing Officer concluded occurred in this matter establish that the public and the public interest in fair election campaigns and the purposes of the Campaign Reporting Act have been injured by the Respondent's conduct in this matter; (3) that a civil penalty that includes forfeiture of at least some if not all of the unlawful campaign contribution \$10,000 amount received is necessary to vindicate the State Ethics Commission's authority to ensure full and fair compliance with New Mexico's important campaign reporting laws; and (4) in order to eliminate the benefit derived by the Respondent from receipt and use of the unlawful campaign contribution \$10,000 amount it is necessary for the Respondent to pay as forfeiture to an appropriate State account at least some if not all of the \$10,000 amount unlawfully received. In making this final determination, I would have directed the Hearing Officer to consider whether, consistent with Section 1-19-34.7(G), which provides that contributions in excess of the proper campaign contribution amounts allowed shall be deposited into the public election fund to provide public financing for certain offices, the forfeiture amount that the Hearing Officer may determine is appropriate in this matter upon remand should be directed to the public election fund.