

TEXAS ETHICS COMMISSION

IN THE MATTER OF

VALLEYWIDE PHARMACY AND
DME, INC.,

RESPONDENT

§
§
§
§
§
§
§

BEFORE THE

TEXAS ETHICS COMMISSION

SC-32210385

FINAL ORDER

I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on February 15, 2023, to consider sworn complaint SC-32210385. A quorum of the Commission was present. The respondent received legally sufficient notice of the hearing but did not appear at the hearing. The Commission proceeded with the hearing in the respondent's absence and found credible evidence of violations of Sections 253.003 and 253.094 of the Election Code, and Section 571.1242 of the Government Code. The Commission voted to issue this final order.

II. Allegations

Sworn complaint SC-32210385 was filed on October 18, 2022. The sworn complaint alleged that, as a domestic for-profit corporation, the respondent made two prohibited political contributions to a candidate or officeholder, in violation of Sections 253.003 and 253.094 of the Election Code. Specifically, the complaint alleged that the respondent made the following two political contributions to Cameron County Clerk candidate/officeholder Sylvia Garza-Perez: (1) \$2,500 on September 17, 2021, and (2) \$1,200 on April 22, 2022.

The Commission also considered whether the respondent failed to respond to the complaint, in violation of Section 571.1242 of the Government Code.

III. Findings of Fact and Conclusions of Law

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

1. Texas Secretary of State (SOS) records show the respondent is a domestic for-profit corporation located in Brownsville, Texas.

Making Prohibited Political Contributions

2. The two political contributions at issue were disclosed in Sylvia Garza-Perez's campaign finance reports as follows:
 - \$2,500 from Valleywide Ph. & DME, on September 17, 2021
 - \$1,200 from Valleywide Pharmacy, on April 22, 2022
3. During the period at issue, Sylvia Garza-Perez was the Cameron County Clerk and was a candidate for re-election in the 2022 election cycle. She was opposed in both the March 1, 2022 primary election and the November 8, 2022 general election and was successfully re-elected.
4. A sworn complaint was also filed against Sylvia Garza-Perez for accepting the two corporate contributions at issue. *In re Garza-Perez* (SC-32209319) (2022). In that sworn complaint, the Commission found credible evidence of violations and imposed a \$1,250 civil penalty. In response to the sworn complaint, Sylvia Garza-Perez provided a copy of the check for one of the contributions at issue from the respondent, and also evidence showing that she returned both of the contributions to the respondent.
5. A person may not knowingly make a political contribution in violation of Chapter 253, Election Code. Tex. Elec. Code § 253.003(a).
6. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, Chapter 253, Election Code. *Id.* § 253.094(a). Subchapter D does not authorize a corporation to make a political contribution to a candidate or officeholder.
7. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. *Id.* § 253.091.
8. "Political contribution" means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
9. "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3).

10. Credible evidence shows that the respondent, a domestic for-profit corporation, made two political contributions to a candidate or officeholder. Therefore, there is credible evidence of violations of Sections 253.003 and 253.094 of the Election Code.

Failure to Respond to Sworn Complaint

11. Sworn complaint SC-32210385 was filed on October 18, 2022. That same day, Commission staff called the business and spoke with a person who identified herself as the general manager of the business. Commission staff notified the individual of the complaint. On October 20, 2022, Commission staff contacted the registered agent for the business, Abayomi A. George, and notified him of the complaint. The registered agent confirmed the address information that was provided on the complaint form and also provided an updated email address.
12. On October 25, 2022, the Commission accepted jurisdiction over the complaint and sent notice of the complaint by certified mail, return receipt requested, to the registered agent of the corporation at the address listed on SOS filings, which is the same address that was verified over the telephone by the registered agent, 680 Paredes Line Road, Suite B, Brownsville, Texas 78521-2482. United States Postal Service (USPS) records show the notice of complaint was delivered on October 27, 2022. The notice letter designated the allegations as Category Two violations and notified the respondent that, by law, it was required to respond to the allegations not later than 25 business days after the notice was received, and that failure to respond constituted a separate violation for which a separate civil penalty could be assessed. Based on the delivery date of the notice letter, the respondent was required to respond to the complaint by December 5, 2022.
13. On December 6, 2022, Commission staff called and spoke with the registered agent to confirm if he had received the notice letter and to check on the status of the response. The registered agent stated that he would check with his assistant to see if she received the notice letter and if she had submitted the response. The registered agent stated that he would call back. The registered agent never called back, and further phone calls made by Commission staff went straight to voicemail.
14. If the alleged violation is a Category Two violation, the respondent must respond to the notice required by Section 571.123(b) not later than the 25th business day after the date the respondent receives the notice under Section 571.123(b). Tex. Gov't Code § 571.1242(b). A respondent's failure to timely respond is a Category One violation. *Id.* § 571.1242(c).
15. The response must include any challenge the respondent seeks to raise to the Commission's exercise of jurisdiction. In addition, the respondent may: (1) acknowledge the occurrence or commission of a violation; (2) deny the allegations contained in the complaint and provide evidence supporting the denial; or (3) agree to enter into an assurance of voluntary

compliance or other agreed order, which may include an agreement to immediately cease and desist. *Id.* § 571.1242(d).

16. The respondent received legally sufficient notice of the complaint and was required to submit a written response by December 5, 2022. The respondent did not submit a response to the complaint, despite receiving multiple notices from the Commission. Therefore, there is credible evidence of a violation of Section 571.1242 of the Government Code.

IV. Default Judgment

1. The preliminary review hearing was held in person and by video teleconference on February 15, 2023, at the State Capitol Extension, Room E1.014, in Austin, Texas. The respondent failed to appear at the hearing, either in person or remotely.
2. A notice required to be sent to a respondent under Chapter 571 of the Government Code shall be sent to the address provided by the complainant or to the address most recently provided by the respondent. 1 Tex. Admin. Code § 12.21(b).
3. After the initial written notice regarding the filing of a sworn complaint has been sent to a respondent by registered or certified mail, restricted delivery, return receipt requested, the Commission may send the respondent any additional notices regarding the complaint by regular mail unless the respondent has notified the Commission to send all notices regarding the complaint by registered or certified mail, restricted delivery, return receipt requested. Tex. Gov't Code § 571.032.
4. If a respondent fails to appear at a hearing, the Commission may proceed in the respondent's absence and may find credible evidence of the violations alleged in the complaint and may issue a final order imposing a civil penalty. 1 Tex. Admin. Code § 12.23.
5. On December 30, 2022, the Commission sent a notice of the February 15, 2023 preliminary review hearing to the respondent and the registered agent by USPS delivery confirmation to all three current addresses that are on file with the SOS for the corporation and its registered agent. USPS records confirm the three notices were delivered on January 2, 2023, and January 3, 2023. The notices stated that the hearing would be held on February 15, 2023 at 1:45 p.m., in the State Capitol Extension, Room E1.014, Austin, Texas 78701. The notices further stated that the respondent could participate in the hearing either by appearing physically or by video teleconference. The notices cautioned that if the respondent failed to appear at the hearing, then the allegations may be deemed admitted as true and the relief sought may be granted by default.

6. On January 11, 2023, the Commission sent a second notice of hearing to the respondent and the registered agent by USPS delivery confirmation. This notice also stated the date, time, and place of the hearing, and that the allegations may be deemed admitted as true and the relief sought may be granted by default if the respondent failed to appear. USPS records confirm the second notices were delivered on January 13, 2023.
7. The Commission finds that the respondent received legally sufficient notice of the sworn complaint and the February 15, 2023 preliminary review hearing in this case. The Commission proceeded in the respondent's absence and issued this final order in accordance with Section 12.23 of the Ethics Commission Rules. By failing to appear at the preliminary review hearing, the respondent forfeited his right to further proceedings before the Commission in this matter. This final order is a final and complete resolution of this complaint before the Commission, except for the issue of collection of the civil penalty.
8. The Commission finds credible evidence of violations of Sections 253.003 and 253.094 of the Election Code, and Section 571.1242 of the Government Code.

IV. Sanction

1. The Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for violation of a law administered and enforced by the Commission. Tex. Gov't Code § 571.173.
2. The Commission shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations, and 5) any other matters that justice may require. *Id.* § 571.177.
3. A political contribution made in violation of Sections 253.003 and 253.094 of the Election Code is a felony of the third degree. Tex. Elec. Code § 253.003(e). Therefore, the violations at issue are serious. The Commission also considers the respondent's lack of good faith in failing to respond to the complaint and failing to participate in the preliminary review hearing.

4. Therefore, the Commission orders that the respondent pay to the Commission, within 30 days of the date of this order, a civil penalty in the amount of \$12,400. If the respondent does not pay the \$12,400 civil penalty within 30 days of the date of this order, then the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

Order Date: _____

FOR THE COMMISSION

J.R. Johnson
Executive Director
Texas Ethics Commission