

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
GILBERTO HINOJOSA,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-220437

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on May 10, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220437 filed against Gilberto Hinojosa, Respondent. The commission met again on January 10, 2003, to consider Sworn Complaint SC-220437. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of a violation of Section 253.033, Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

### II. Allegations

The complainant alleges that the respondent accepted political contributions from corporations.

### III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The complainant submitted a copy of the report the respondent filed with the county filing authority for the January 15, 2002, filing deadline. The complaint cited 11 contributions from ten different contributors on the report and alleged that the contributors were corporations.
2. In his sworn response in regard to each of the allegations, the respondent states, "I have not ever knowingly accepted a political contribution from a corporation." He also states, "I routinely notify contributors that I cannot accept political contributions from corporations."

3. The report submitted by the complainant listed a \$500 contribution from “Gignac & Associates” on September 4, 2001.
4. There is no business entity named Gignac & Associates registered with the Secretary of State’s Corporations Division. There is also no business entity named Gignac & Associates with an assumed name certificate on file with the Cameron County Clerk.
5. The respondent submitted a sworn affidavit from Raymond Gignac, which states, “I am an architect and operate a business called Gignac and Associates, which is a sole proprietorship.” It also states, “On September 4, 2001 I made a contribution of five hundred dollars (\$500) to Mr. Hinojosa’s reelection campaign using a check drawn on my personal business account, named on the check as Gignac & Associates.”
6. The report submitted by the complainant listed a \$1,500 contribution from “Hinojosa Engineering” on October 9, 2001.
7. According to the Secretary of State’s Corporations Division, “Hinojosa Engineering, Inc.,” is a domestic business corporation that has been in existence since August 4, 1998. The corporate address in the Secretary of State’s records is the same as the address listed on the respondent’s report.
8. The respondent submitted an affidavit from his brother, Rick Hinojosa. In the affidavit Rick Hinojosa states, “This contribution was, in fact, made entirely from my own personal funds.” The affidavit also states, “This donation was made in cash, and with the understanding that it was a personal contribution.”
9. The respondent submitted an affidavit in which he states that the contribution was reported incorrectly. He submitted a copy of a corrected report that was filed with the county filing authority in February 2002, which discloses that the \$1,500 contribution was from “Wilfredo Ricardo Hinojosa” rather than from “Hinojosa Engineering.”
10. The report submitted by the complainant listed a \$500 contribution from “Noe Garza Engineering” on September 6, 2001.
11. According to the Secretary of State’s Corporations Division, “Noe Garza Engineers, Inc.,” is a domestic business corporation that has been in existence since April 29, 1986. The corporate address in the Secretary of State’s records is the same as the address listed on the respondent’s report.
12. Noe Garza submitted an affidavit in which he states, “Although I have attended events where Judge Hinojosa stated that he does not accept corporate contributions, I mistakenly used a check from my incorporated business to contribute to him.”

13. The respondent's wife submitted an affidavit in which she states that she had received and deposited a check from Noe Garza. She also states, "Although I am aware that my husband does not and can not accept contributions made from corporate funds, I did not notice that Mr. Garza's check had been drawn on a corporate account."
14. The respondent submitted an affidavit in which he states, "I never saw the check issued with this contribution nor discussed this contribution with anyone, and was unaware of its nature." He also states, "When I reviewed the Texas Ethics Commission form, there was no indication that this contribution was made with corporate funds, as the report contained only the phrase 'Noe Garza Engineers.'" The respondent did not submit a copy of the check. He also states that he returned the contribution.
15. The report submitted by the complainant listed a \$300 contribution from "McAllen Pest Control" on October 11, 2001.
16. According to the Secretary of State's Corporations Division, a domestic business corporation named "McAllen Pest Control, Inc.," voluntarily dissolved on November 5, 1984. There is no business entity named McAllen Pest Control with an assumed name certificate on file with the Cameron County Clerk.
17. The respondent submitted an affidavit from Isidro Guerrero, Jr., who states that he operates McAllen Pest Control and that it is a sole proprietorship, not a corporation.
18. The report submitted by the complainant listed a \$200 contribution from "Franke Investments" on September 28, 2001.
19. According to the Secretary of State's Corporations Division, there is no active corporation named Franke Investments. There is no business entity named Franke Investments with an assumed name certificate on file with the Cameron County Clerk.
20. The respondent submitted an affidavit from Dennis Franke, in which Mr. Frank states, "I own and operate Franke Investments, which is a partnership." He indicates that his brother is the other partner.
21. The report submitted by the complainant listed a \$1,000 contribution from "El Jardin Landscaping & Lawn Sprinklers" on October 11, 2001.
22. According to the Secretary of State's Corporations Division, there is no active corporation named El Jardin Landscaping & Lawn Sprinklers. There is no business entity named El Jardin Landscaping & Lawn Sprinklers on file with the Cameron County Clerk.
23. The report submitted by the complainant listed a \$100 contribution from "Rex Cleaners - Harlingen" on October 25, 2001.

24. According to the Secretary of State's Corporations Division, there is no active corporation named Rex Cleaners – Harlingen. The Cameron County Clerk's office provided a copy of an assumed name certificate for a sole proprietorship named "Rex Cleaners – Harlingen" that was filed on July 25, 2001.
25. The report submitted by the complainant listed a \$1,000 contribution from "Scott Campbell dba C&C Properties" on November 30, 2001, and a \$2,500 contribution from "Scott Campbell dba C&C Properties" on January 15, 2002.
26. According to the Secretary of State's Corporations Division, the contributor, Scot Campbell, is an officer or a registered agent for several business entities that are either incorporated or are partnerships with corporate partners. However, the Secretary of State's records show no corporation with the name C. & C. Properties associated with Mr. Campbell. In addition, the Cameron County Clerk's records disclose that Mr. Campbell has filed two assumed name certificates for two partnerships but none under the name of C. & C. Properties. An assumed name certificate for a partnership named "C & C Properties" is on file with the Cameron County Clerk, but Mr. Campbell is not listed as a partner.
27. The respondent submitted copies of both checks, which show that the contributions were written on the account of "SCOT CAMPBELL DBA C. & C. Properties."
28. The respondent submitted an affidavit from Mr. Campbell in which he states, "I am a real estate investor and operate a business known as C. & C. Properties, which is a sole proprietorship."
29. The report submitted by the complainant listed a \$100 contribution from "Bowie Properties Ltd" on January 10, 2002.
30. The Secretary of State's records show that Bowie Properties, Ltd., is an active domestic limited partnership that has a limited liability company, Vista MC, L.L.C., as a general partner. Secretary of State records do not show whether Vista MC, L.L.C., has any partners that are incorporated. Cameron county clerk records disclose that no assumed name certificate has been filed for Bowie Properties, Ltd.
31. The report submitted by the complainant listed a \$2,500 contribution from "Mata Villareal Garcia Design Group" on January 10, 2002.
32. According to the Secretary of State's Corporations Division, Mata Villareal Garcia Design Group is a domestic limited liability partnership. Secretary of State records do not show whether Mata Villareal Garcia Design Group has any partners that are incorporated. The Cameron County Clerk's office has no record of an assumed name certificate filed under the name of Mata Villareal Garcia Design Group.

33. The respondent submitted an affidavit from Fernando Mata in which Mr. Mata swears that he gave the respondent \$2,500 in cash from personal funds.
34. The respondent also submitted photocopies of 25 one-hundred-dollar bills.

#### **IV. Findings and Conclusions of Law**

The facts described in Section III support the following findings and conclusions of law:

1. Corporations organized under the Texas Business Corporations Act or the Texas Non-profit Corporations Act may not legally make political contributions. Subchapter D, Chapter 253, Election Code.
2. A candidate or officeholder may not knowingly accept a political contribution that the candidate or officeholder knows was made in violation of Chapter 253, Election Code. Section 253.003(b), Election Code. Thus, in order to find that the respondent violated Section 253.003(b) in regard to a particular contribution, the commission must find (1) that the contributor was a corporation; (2) that at the time the respondent accepted the contribution, the respondent knew that the contributor was a corporation; and (3) that at the time the respondent accepted the contribution, the respondent knew that corporate contributions were illegal.
3. The respondent's sworn statements show that the respondent knew that corporate contributions were illegal. As to each of the contributions, the remaining issues are whether the contributor was a corporation and, if so, whether, at the time the respondent accepted the contribution, the respondent knew that the contributor was a corporation.
4. The evidence shows that Gignac & Associates is not a corporation. Therefore, there is credible evidence that the respondent did not violate Section 253.003, Election Code, by accepting a contribution from Gignac & Associates.
5. The evidence is inconclusive as to whether the contribution from Hinojosa Engineering was from a corporation. Therefore, there is insufficient evidence that the respondent violated Section 253.003, Election Code, by accepting a contribution from Hinojosa Engineering.
6. A candidate or officeholder may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. Section 253.033, Election Code. The respondent submitted an affidavit from his brother in which the brother swears that he made a \$1,500 cash contribution in the name of Hinojosa Engineering. Therefore, there is credible evidence that the respondent violated Section 253.033, Election Code.

7. The evidence is insufficient to show that the respondent knew that the contribution from Noe Garza Engineering was from a corporation. Therefore, there is insufficient evidence that the respondent violated Section 253.003, Election Code, by accepting a contribution from Noe Garza Engineering.
8. The evidence shows that McAllen Pest Control is not a corporation. Therefore, there is credible evidence that the respondent did not violate Section 253.003, Election Code, by accepting a contribution from McAllen Pest Control.
9. The evidence shows that Franke Investments is not a corporation. Therefore, there is credible evidence that the respondent did not violate Section 253.003, Election Code, by accepting a contribution from Franke Investments.
10. There is no evidence showing that El Jardin Landscaping & Lawn Sprinklers is a corporation. Therefore, there is insufficient evidence that the respondent violated Section 253.003, Election Code, by accepting a contribution from El Jardin Landscaping & Lawn Sprinklers.
11. The evidence shows that Rex Cleaners - Harlingen is not a corporation. Therefore, there is credible evidence that the respondent did not violate Section 253.003, Election Code, by accepting a contribution from Rex Cleaners - Harlingen.
12. The evidence shows that the source of the contribution from Scot Campbell dba C&C Properties was not a corporation. Therefore, there is credible evidence that the respondent did not violate Section 255.003, Election Code, by accepting a contribution from "Scott Campbell dba C&C Properties."
13. The evidence shows Bowie Properties, Ltd., itself is not a corporation. There is no evidence to show that there are any corporate partners. Therefore, there is no evidence to show that the respondent violated Section 255.003, Election Code, by accepting a contribution from "Bowie Properties, Ltd."
14. There is some evidence that the contribution reported as from the Mata Villareal Garcia Design Group was from Fernando Mata personally. The evidence shows that Mata Villareal Garcia Design Group itself is a limited liability partnership, not a corporation. There is no evidence that any of the partners are corporations. Therefore, there is no evidence to show that the respondent violated Section 253.003, Election Code, by accepting the contribution listed on the respondent's report as a contribution from Mata Villareal Garcia Design Group.
15. The respondent submitted an affidavit from the contributor of the Mata Villareal Garcia Design Group contribution in which the contributor swears that he made a \$2,500 cash contribution. The respondent submitted photocopies of 25 one-hundred-dollar bills.

Therefore, there is credible evidence that the respondent violated Section 253.033, Election Code.

### **V. Representations and Agreement by Respondent**

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III and the commission's findings and conclusions of law described under Section IV, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that a candidate or officeholder may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. The respondent agrees to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraphs 6 and 15, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

### **VI. Confidentiality**

This ORDER and AGREED RESOLUTION describes violations that the commission has determined are not technical or *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Section 571.140, Government Code, and may be disclosed by members and staff of the commission.

### **VII. Sanction**

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a civil penalty of \$3,000 for the violations described under Section IV, Paragraphs 6 and 15.

**VIII. Order**

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-220437;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$3,000 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than February 7, 2003; and
4. that the executive director shall promptly refer SC-220437 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-220437 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Gilberto Hinojosa, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Karen Lundquist, Executive Director