

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
ANTONIO YZAGUIRRE JR.,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-220442

## 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-220442 filed against Antonio Yzaguirre Jr., Respondent. The commission met again on October 11, 2002, to consider Sworn Complaint SC-220442. 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 253.003, 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 respondent was a candidate for Cameron County Clerk who accepted contributions from certain business entities.
2. The respondent is currently Cameron County Clerk.
3. The complainant submitted copies of the respondent's campaign finance reports disclosing political contributions from a number of businesses. The reports disclose the following contributions:

April 7, 1999	\$100	"Lugo Ins. Agy."
April 27, 1999	\$100	"The Vermillion"
April 28, 1999	\$100	"Luke Fruia"
May 18, 1999	\$100	"Sameer of South Tex."
May 26, 1999	\$100	"Cold Breeze Inc."

June 2, 1999	\$100	"Global Stone"
June 3, 1999	\$100	"Lopez Supermarkets"
June 9, 1999	\$100	"Linda Torres Cake Shop"

4. Records of the Secretary of State's Corporations Division show incorporated businesses that have the same or similar names and addresses as the businesses listed above, with the exception of "Lugo Ins. Agy."
5. An assumed name certificate on file with the Cameron County Clerk does not show that Lugo Insurance Agency or an entity using an abbreviation for that name is incorporated.
6. The Secretary of State's records show both a "Global Stone" which is incorporated, and a "Global Stone LC," which is a limited liability company. The complainant used the name "Global Store" in the complaint.
7. The respondent acknowledges a contribution from "Global Stone," and submitted a copy of a contribution check from "Global Stone LC."
8. In response to the complaint, the respondent submitted an affidavit in which he swears to the following:

The majority of these contributions were to put a golf tournament together and to pay for expenses and the prizes that were given out to the different players. All contributions mentioned were for business advertisements placed on the golf tournament. I know very well that candidates should not accept contributions by any corporation. I have never accepted any contributions from any corporations and if I have received any they would be returned to the individuals.

A lot of individuals were involved in putting the golf tournament together; helping collect monies which included checks. The majority of these checks were given to me for deposit and several were deposited by individuals that helped me out in the golf tournament; who were not knowledgeable about not accepting corporation check contributions. I was not aware about these corporation contributions that were given to us during the golf tournament. If I had known they would have been returned. Copies of some of the contribution checks collected for the golf tournament were kept and I would like to emphasize that five (5) out of eight (8) contributions received do not show any corporation information on the letterhead of the check itself. Only three (3) of the eight (8) checks enclosed do show they are corporations on their letterhead. These are three (3) checks that I must have not been aware of; and an oversight on my part of not knowing these checks were deposited by other individuals; and until now I have been made aware that they were

from corporation businesses. These records were kept in a safe place and until now, I have noticed that they were from corporate businesses.

9. The sworn response included copies of checks from the following entities:

"Lugo Insurance Agency"  
"The Vermillion Restaurant"  
"Luke Fruia Motors"  
"Sameer of South Texas"  
"Cold Breeze, Inc."  
"Global Stone, LC"  
"Lopez Supermarkets, Inc. #4"  
"Linda's Cake Specialty Shop, Inc."

#### **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 Corporation Act may not legally make political contributions to a candidate or officeholder. An insurance company is deemed to be a corporation for purposes of the prohibition. Section 253.093, Election Code.
2. A candidate may not knowingly accept a political contribution that the candidate knows was made in violation of Chapter 253, Election Code. Section 253.003(b), Election Code.
3. The fact that the respondent swears that he knows that candidates should not accept contributions from corporations and that he would return a contribution if he found it to be from a corporation indicates that the respondent knew that corporate contributions were illegal.
4. As described in the following paragraphs, a determination was made as to whether the entities that made the contributions were corporations.
5. The name of a corporation is required to include the word "corporation," "company," or "incorporated," or must include an abbreviation of one of those words. Article 2.05, Business Corporation Act. However, a corporation may transact business under an assumed name by filing an assumed name certificate. *Id.* The assumed name is not required to include the word "corporation," "company," or "incorporated," or any abbreviation of one of those words. *Id.*
6. The respondent submitted copies of the contribution checks that he received that are the subject of this complaint, some of which indicate they are from corporations and some of which do not.

**Contribution from Global Stone**

7. Secretary of State records show "Global Stone LC" to be a limited liability company. There is also a "Global Stone" that is an incorporated entity.
8. The respondent's campaign finance report discloses the contribution as coming from "Global Stone."
9. The copy of the contribution check that the respondent submitted is from "Global Stone LC."
10. Both entities have the same person listed as "management."
11. The Secretary of State's records do not show that Global Stone LC is a corporation, nor do the records indicate that Global Stone LC has any corporate owners or partners.
12. The respondent swears he "was not aware about these corporation contributions that were given to us during the golf tournament. If I had known they would have been returned."
13. The face of the contribution check does not show the contributor to be a corporation, and there is no evidence to show that the respondent knew that the contribution check was from a corporation at the time he accepted it. Therefore, there is credible evidence that the respondent did not violate Section 253.003, Election Code, with respect to the contribution from Global Stone LC.

**Contribution from "Lugo Insurance Agency"**

14. Lugo Insurance Agency is not incorporated according to the Secretary of State's records.
15. Although they may not be incorporated under the Business Corporations Act, insurance companies are statutorily deemed to be incorporated for the purpose of the prohibition against corporate political contributions to candidates. Section 253.093, Election Code.
16. An insurance company is required to be chartered by the Texas Department of Insurance and only an insurance company may issue policies. On the other hand, insurance agents may only write policies for an insurance company but they are not considered the issuer.
17. The licensing provisions for agents are in Article 21.07 of the Insurance Code, which provides a definition of insurance company and agent in Section 1A. Under that law, agents are exactly what their name implies – they are agents of the insurance company but are not considered the insurance company.
18. Insurance agents are not covered by the term “insurance company.”
19. Lugo Insurance Agency is not included in the list of insurance companies that is found on the web site of the Texas Department of Insurance.

20. The facts indicate that Lugo Insurance Agency is not an insurance company and thus is not prohibited from making a political contribution to a candidate or officeholder. Therefore, there is credible evidence that the respondent did not violate Section 253.003, Election Code, with respect to the contribution from Lugo Insurance agency.

### **Contributions from corporations**

21. As evidenced by the respondent's campaign finance report and copies of the contribution checks submitted by the respondent, the respondent accepted contributions from the following entities that Secretary of State records show were corporations at the time of the contributions:

"The Vermillion Restaurant"  
"Luke Fruia Motors"  
"Sameer of South Texas"  
"Cold Breeze, Inc."  
"Lopez Supermarkets, Inc."  
"Linda's Cake Specialty Shop, Inc."

22. The faces of the following contribution checks do not explicitly show that the checks came from corporations:

"Luke Fruia Motors"  
"The Vermillion Restaurant"  
"Sameer of South Texas"

23. The respondent swears he "was not aware about these corporation contributions that were given to us during the golf tournament. If I had known they would have been returned."
24. The actual checks do not indicate that they are from corporations, and there is no evidence to show that the respondent knew that these three contributions were from corporations at the time he accepted them. Therefore, there is credible evidence that the respondent did not violate Section 253.003, Election Code, with respect to the contribution checks received from Luke Fruia Motors, The Vermillion Restaurant, and Sameer of South Texas.
25. The respondent also accepted the following contribution checks, the faces of which clearly indicate they are from corporations and which are incorporated according to the Secretary of State's records:

"Cold Breeze, Inc.," made payable to "Tony Izaguirre Jr."  
"Lopez Supermarkets, Inc.," made payable to "Tony Yzaguirre Jr."  
"Linda's Cake Specialty Shop, Inc.," made payable to "Tony Yzaguirre"

26. The respondent swears that "[t]hese are three (3) checks that I must not have been aware of; and an oversight on my part of not knowing these checks were deposited by other individuals; and until now I have been made aware that they were from corporate businesses."
27. The contribution checks that indicated that they were from corporations were made payable to the respondent individually.
28. The respondent knew that corporate contributions were illegal, the checks are from corporations, the faces of the checks show them to be from corporations, and the checks are made payable to the respondent individually. Therefore, there is credible evidence that the respondent violated Section 253.003, Election Code, by accepting those contributions.

### **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 may not knowingly accept a political contribution that the candidate knows was made in violation of Chapter 253, Election Code. Section 253.003(b), Election Code. The respondent acknowledges that a corporation may not make a political contribution to a candidate for elected office. 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 violation described under Section IV, Paragraph 28, 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 a violation that the commission has determined is neither technical nor *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 violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, 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 \$300 civil penalty for the violation described under Section IV, Paragraph 28.

**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-220442;
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 \$300 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than November 8, 2002; and
4. that the executive director shall promptly refer SC-220442 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-220442 as proposed in this ORDER and AGREED RESOLUTION.

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

\_\_\_\_\_  
 Antonio Yzaguirre, Jr., Respondent

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

Texas Ethics Commission

By: \_\_\_\_\_  
 Tom Harrison, Executive Director