

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CHARCOAL GRILL, INC.,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-3150246

ORDER **and** **AGREED RESOLUTION**

I. Recitals

The Texas Ethics Commission (Commission) met on October 5, 2015, to consider sworn complaint SC-3150246. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 253.003 and 253.094 of the Election Code, and section 571.1242 of the Government Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission proposed this resolution to the respondent.

II. Allegation

The complaint alleged that the respondent made a prohibited political contribution to a candidate or officeholder.

III. Facts Supported by Credible Evidence

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

1. The respondent is a domestic for-profit corporation based in Eagle Pass, Texas.

Corporate Political Contribution to a Candidate or Officeholder

2. The contribution at issue was from “Charcoal Grill, Inc.” for \$100, and was accepted by a candidate or officeholder on July 31, 2013. The contribution was disclosed on the candidate or officeholder’s January 2014 semiannual report. The contributor’s address was disclosed as “455 S. Bibb St., Eagle Pass, TX 78852.”

3. Texas Secretary of State (SOS) records show that Charcoal Grill, Inc. is a domestic for-profit corporation. The address of the corporation's registered agent is 455 South Bibb Drive, Eagle Pass, TX 78852.

Did Not Respond to a Notice of Sworn Complaint

4. Sworn complaint SC-3150246 was filed on February 2, 2015. The Commission sent a notice of the sworn complaint to the respondent by certified mail, return receipt requested, on February 6, 2015, to: 709 N. Ceylon Street, Eagle Pass, Texas 78852, the address registered with the SOS's office for the corporation. According to the United States Postal Service (USPS) records, the notice of this complaint was delivered to the last known address on file with the SOS's office for the corporation on February 9, 2015. The notice informed the respondent that the alleged violation in the sworn complaint was a Category Two violation, and that a response was required not later than 25 business days from the date the notice was received and that failure to respond constituted a separate violation for which a separate civil penalty may be assessed. USPS records show that "an individual" signed for the notice letter. Based on the delivery date of the notice, the respondent was required to respond to the sworn complaint by March 18, 2015.

On April 26, 2015, Commission staff spoke with the respondent's registered agent, who stated that she did not receive the notice of the sworn complaint. Commission staff resent the notice of the sworn complaint to the respondent, in care of the registered agent, by certified mail, return receipt requested, on April 28, 2015, to: 709 N. Ceylon Street, Eagle Pass, Texas 78852, the address registered with the SOS's office for the corporation. According to the USPS records, the notice of this complaint was delivered to the last known address on file with the SOS's office for the corporation on April 30, 2015. The notice informed the respondent that the alleged violation in the sworn complaint was a Category Two violation, and that a response was required not later than 25 business days from the date the notice was received and that failure to respond constituted a separate violation for which a separate civil penalty may be assessed. Based on the delivery date of the notice, the respondent was required to respond to the sworn complaint by June 5, 2015. The Commission did not receive a response from the respondent.

IV. Findings and Conclusions of Law

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

1. A person may not knowingly make a political contribution in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(a).

2. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, of the Election Code. *Id.* § 253.094(a). Subchapter D does not authorize a corporation to make a political contribution to a candidate or officeholder.
3. 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.
4. Credible evidence indicates that the respondent, a for-profit corporation, made a prohibited political contribution to a candidate or officeholder. Therefore, there is credible evidence of a violation of sections 253.003 and 253.094 of the Election Code.

Did Not Respond to a Notice of Sworn Complaint

5. If the alleged violation in a sworn complaint 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. GOV'T CODE § 571.1242(a)(1). A respondent's failure to timely respond to a sworn complaint as required by subsection (a)(1) or (b)(1) is a Category One violation. *Id.* § 571.1242(c).
6. The response required by section 571.1242 of the Government Code must be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent. Ethics Commission Rules § 12.52(a). If a respondent does not submit a response within the time period prescribed by section 571.1242 of the Government Code, the Commission may issue an order imposing a civil penalty for failure to file a response. *Id.* § 12.52(b)
7. The respondent received notice of this complaint on April 30, 2015. The respondent was required to respond to the sworn complaint by June 5, 2015. The Commission did not receive a response from the respondent. Therefore, there is credible evidence of a violation of section 571.1242(c) of the Government 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 or 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 this sworn complaint.

2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that: 1) a person may not knowingly make a political contribution in violation of chapter 253 of the Election Code; and 2) a corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, of the Election Code.

The respondent also acknowledges that a respondent must respond to a notice of a sworn complaint that contains a Category Two violation within 25 business days of receiving the notice of the sworn complaint, and failure to respond to a notice of a sworn complaint within the time required is a separate Category One violation.

The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the Commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the Commission.

VII. Sanction

After considering the nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$1,100 civil penalty.

VIII. Order

The Commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-3150246.

AGREED to by the respondent on this _____ day of _____, 20____.

Charcoal Grill, Inc., Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director