

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CHARLES HEIMSATH,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3160386

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on May 17, 2017, to consider sworn complaint SC-3160386. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of section 572.023 of the Government Code, a law 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 the respondent did not disclose in personal financial statements (PFS) filed in 2014 and 2015 information related to two business entities in which the respondent held an interest.

III. Facts Supported by Credible Evidence

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

Disclosure of Information Related to Business Entities

1. The respondent is a current Director of the Central Texas Regional Mobility Authority (CTRMA). The respondent was a Director of CTRMA at all times relevant to the complaint. The respondent filed with the Commission his 2014 PFS covering calendar year 2013 on July 1, 2014, and his 2015 PFS covering calendar year 2014 on April 27, 2015.
2. The complaint alleged that the respondent did not disclose information related to two business entities—901 Big River, LLC (Big River) and CKH West, LLC (CKH) on his 2014 and 2015 PFS covering calendar years 2013 and 2014 as required by section 572.023 of the Government Code. Specifically, the complaint alleged that the respondent did not:
 - 1) disclose his beneficial interest in Big River; 2) disclose his beneficial interest in CKH; 3) disclose his membership in a board of directors and executive positions in Big River; and

4) disclose his membership in a board of directors and executive positions in CKH. Although not specifically alleged, the evidence indicates that the respondent was also required to disclose a property owned by CKH as an asset of the business under part 11A (used to disclose assets of business associations).

Big River

3. In response to the complaint, the respondent swore that he and his spouse owned a minority interest in Big River during calendar years 2013 and 2014. Records on file with the Commission show that the respondent did not disclose Big River on part 7B (used to disclose beneficial interests in business entities) of his 2014 and 2015 PFS. The respondent further swore that he inadvertently omitted this business entity from his 2014 and 2015 PFS because he did not realize he was required to disclose his minority interest in the business entity.
4. The respondent also swore that he and his spouse were minority members of Big River in 2013 and 2014 and did not serve in an executive capacity. The respondent swore that he did not have any other beneficial interests in real property and business entities or hold any board or executive positions in Big River during calendar years 2013 and 2014 that were not disclosed in his 2014 and 2015 PFS.
5. Texas Secretary of State (SOS) records show the respondent was a director of Big River on July 23, 2014. Big River's Certificate of Formation on file with the SOS lists the respondent as a governing member. Big River's 2012, 2013, and 2014 Texas Franchise Tax Public Information Reports (Franchise Tax Reports) on file with the SOS indicate the respondent was a member, director, and manager of Big River during the periods at issue.

CKH

6. In response to the complaint, the respondent swore that he and his spouse jointly owned CKH during calendar years 2013 and 2014. The respondent swore that CKH's only asset was real property located at 1102 West Avenue, Austin, Texas (1102 West Avenue). Records on file with the Commission show that the respondent disclosed in part 7A (used to disclose interests in real property) of his 2014 and 2015 PFS the property located at 1102 West Avenue, and listed CKH as the "person retaining an interest" in the property. The respondent did not disclose his beneficial interest in CKH on part 7B of his 2014 and 2015 PFS.
7. The respondent swore that he and his spouse were the only members of CKH in 2013 and 2014. The respondent swore that he did not have any other beneficial interests in real property and business entities or hold any board or executive positions in CKH during calendar years 2013 and 2014 that were not disclosed in his 2014 and 2015 PFS.
8. SOS records show the respondent was a governing person for CKH on October 29, 2015. CKH's Certificate of Formation on file with the SOS lists the respondent and his spouse as the only two managers with governing authority. CKH's 2014 and 2015 Franchise Tax

Reports on file with the SOS indicate that the respondent was an officer, director and/or manager of CKH with a title of "member."

IV. Findings and Conclusions of Law

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

Disclosure of Information Related to Business Entities

1. The account of financial activity consists of identification by description of all beneficial interests in real property and business entities held or acquired, and if sold, the category of the amount of the net gain or loss realized from the sale. GOV'T CODE § 572.023(b)(6).
2. The account of financial activity consists of identification by description and the category of the amount of all assets and liabilities of a corporation, firm, partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association in which 50 percent or more of the outstanding ownership was held, acquired, or sold. *Id.* § 572.023(b)(9).
3. The account of financial activity consists of a list of all boards of directors of which the individual is a member and executive positions that the individual holds in corporations, firms, partnerships, limited partnerships, limited liability partnerships, professional corporations, professional associations, joint ventures, or other business associations or proprietorships, stating the name of each corporation, firm, partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association or proprietorship and the position held. *Id.* § 572.023(b)(10).
4. "Business entity" means any entity recognized by law through which business for profit is conducted, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust. *Id.* § 572.002(2).
5. A membership interest in a limited liability company is personal property. TEX. BUS. ORGS. CODE § 101.106. The governing authority of a limited liability company consists of the managers of the company, if the company's certificate of formation states that the company will have one or more managers. *Id.* § 101.251. The governing authority of a limited liability company shall manage the business and affairs of the company as provided by the company agreement and this title and the provisions of Title 1 applicable to a limited liability company to the extent that the company agreement does not provide for the management of the company. *Id.* § 101.252.

Big River

6. The respondent held a beneficial interest in Big River because he owned a minority interest in the business entity during the 2013 and 2014 calendar years. The respondent was therefore required to disclose his beneficial interest in Big River on part 7B of his 2014 and 2015 PFS. The respondent did not disclose Big River on part 7B of his 2014 and 2015 PFS. Therefore, there is credible evidence of violations of section 572.023(b)(6) of the Government Code.
7. The respondent was a member, director, and manager of Big River during the 2013 and 2014 calendar years. The respondent was therefore required to include a list of all boards of directors of which he was a member and executive positions that he held in Big River on part 12 (used to disclose memberships on a board of directors and executive positions) of his 2014 and 2015 PFS. The respondent did not disclose his membership on the board of directors and his executive positions in Big River on his 2014 and 2015 PFS. Therefore, there is credible evidence of violations of section 572.023(b)(10) of the Government Code.

CKH

8. The respondent held a beneficial interest in CKH because he jointly owned the business entity with his spouse during the 2013 and 2014 calendar years. The respondent was therefore required to disclose his beneficial interest in CKH on part 7B of his 2014 and 2015 PFS. The respondent did not disclose CKH on part 7B of his 2014 and 2015 PFS. Therefore, there is credible evidence of violations of section 572.023(b)(6) of the Government Code.
9. Since the respondent and his spouse were joint owners of CKH, the respondent owned 50 percent or more of CKH during the 2013 and 2014 calendar years. CKH held the real property located at 1102 West Avenue as a business asset during the 2013 and 2014 calendar years. The respondent was therefore required to disclose the real property located at 1102 West Avenue as CKH's business asset on part 11A of his 2014 and 2015 PFS. The respondent did not identify the real property located at 1102 West Avenue as CKH's business asset on part 11A of his 2014 and 2015 PFS. However, the respondent identified the real property located at 1102 West Avenue on part 7A of his 2014 and 2015 PFS and indicated CKH as the "person retaining an interest" in the property. Although the respondent did not properly disclose CKH's business asset located at 1102 West Avenue on part 11A, the information was readily apparent on part 7A in both his 2014 and 2015 PFS, and in context the omission did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of section 572.023(b)(9) of the Government Code.
10. As one of two governing managers, the respondent had governing authority to manage the business affairs of CKH during the 2013 and 2014 calendar year. The respondent was therefore required to include a list of all boards of directors of which he was a member and executive positions that he held in CKH on part 12 of his 2014 and 2015 PFS. The

respondent did not disclose his membership on the board of directors and his executive positions in CKH on his 2014 and 2015 PFS. Therefore, there is credible evidence of violations of section 572.023(b)(10) 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 on a personal financial statement, the account of financial activity must include: 1) identification by description of all beneficial interests in real property and business entities held or acquired, and if sold, the category of the amount of the net gain or loss realized from the sale; 2) identification by description and the category of the amount of all assets and liabilities of a corporation, firm, partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association in which 50 percent or more of the outstanding ownership was held, acquired, or sold; and 3) a list of all boards of directors of which the individual is a member and executive positions that the individual holds in corporations, firms, partnerships, limited partnerships, limited liability partnerships, professional corporations, professional associations, joint ventures, or other business associations or proprietorships, stating the name of each corporation, firm, partnership, limited partnership, limited liability partnership, professional corporation, professional association, joint venture, or other business association or proprietorship and the position held.

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

VI. Confidentiality

This order and agreed resolution describes certain 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 \$300 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-3160386.

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

Charles Heimsath, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director