

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CARLOS I. URESTI,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31608183

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on January 30, 2018, to consider sworn complaint SC-31608183. A quorum of the Commission was present. The Commission determined that there is credible evidence of a violation of section 572.023(b)(9) 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. Allegations

The complaint alleged that the respondent did not disclose on his personal financial statement (PFS) covering calendar year 2014: 1) a payment of a 3% commission on an investment made in FWL-DC, LLC (FWL-DC) as a source of occupational income; 2) a 10% ownership interest in FWL-DC; and 3) a \$40,000 loan from FourWinds Logistics or FWLL, LLC (FourWinds) as a liability of his law firm.

III. Facts Supported by Credible Evidence

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

1. The respondent is the current State Senator for District 19, and was a state senator at all times relevant to this complaint.
2. The respondent filed the PFS covering calendar year 2014 on April 29, 2015. The respondent disclosed the following relevant information on his PFS:
 - his consulting company, Turning Point Strategies, LLC (Turning Point), on Part 1 (Sources of Occupational Income);
 - The Uresti Law Firm, P.C., on Part 11 (Assets and Liabilities of Business Associations) in which the respondent held an interest of 50% or more in the law firm and he disclosed some liabilities of the law firm;

- his position as a manager for FWL-DC on Part 12 (Boards and Executive Positions); and
- his ownership of 100 to 499 shares of FourWinds on Part 2 (Stock).

The respondent did not disclose:

- any commission received for an investment in FourWinds;
- any ownership interest in FWL-DC; or
- any obligation owed to FourWinds.

Disclosure of Occupational Income

3. On June 2, 2014, the respondent sent an email to an officer of FourWinds outlining the terms of an agreement to pay the respondent a commission on investments made in FourWinds. The terms were as follows:

- FourWinds would pay a one-time fee of 3% to an investment broker per investor that invested in FourWinds;
- FourWinds would pay 10% of every Joint-Venture Agreement (JVA) for a first time investment;
- FourWinds would pay 20% of each JVA for any subsequently increased investment; and
- FourWinds would grant a 1% ownership interest to the respondent.

In response to the complaint, the respondent swore that the 3% commission was paid to Turning Point.

Disclosure of Liabilities of a Business Association

4. On June 24, 2014, the respondent, in his capacity as the majority owner of The Uresti Law Firm, P.C., signed a promissory note for \$40,000 payable to an officer of FourWinds. In return, FourWinds issued a check for \$40,000 payable to The Uresti Law Firm, P.C. In an interview with a reporter for the *San Antonio Express-News*, the respondent stated that the money was an advance for future commissions and payment for legal work on behalf of FourWinds. However, in response to the complaint, the respondent swore that the note was a liability of his law firm. On April 19, 2016, the bankruptcy trustee for FourWinds sued both the respondent and his law firm for repayment of the \$40,000. The parties settled the suit for \$30,000. On August 24, 2016, prior to the filing of the complaint, the respondent corrected his PFS to add the \$40,000 debt as a liability of his law firm on Part 11B (Liabilities of Business Associations).

Disclosure of Beneficial Interest in a Business Entity

5. According to a news article published in the *San Antonio Express-News* on August 20, 2016, the respondent stated in an interview that he received a 10% ownership interest in FWL-DC. A subsequent article published on September 1, 2016, reported that the respondent corrected his previous statement: "I did not have a 10% interest in FWL-DC. That was my mistake." In response to the complaint, the respondent swore that he did not retain any ownership interest in FWL-DC. A signed Memorandum of Understanding (a non-binding letter of intent communicating preliminary negotiations between parties prior to entering into a contract) sets out ownership of FWL-DC as 60% FourWinds and 40% an individual investor.

IV. Findings and Conclusions of Law

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

Disclosure of Occupational Income

1. A financial statement must include an account of the financial activity of the individual required by this subchapter to file a financial statement and an account of the financial activity of the individual's spouse and dependent children if the individual had actual control over that activity for the preceding calendar year. GOV'T CODE § 572.023(a). The account of financial activity consists of a list of all sources of occupational income, identified by employer, or if self-employed, by the nature of the occupation, including identification of a person or other organization from which the individual or a business in which the individual has a substantial interest received a fee as a retainer for a claim on future services in case of need, as distinguished from a fee for services on a matter specified at the time of contracting for or receiving the fee, if professional or occupational services are not actually performed during the reporting period equal to or in excess of the amount of the retainer, and the category of the amount of the fee. *Id.* § 572.023(b)(1).
2. Credible evidence indicates that the 3% commission was paid to the respondent through Turning Point. The respondent identified Turning Point as a source of occupational income on his PFS. Therefore, there is credible evidence of no violation of section 572.023(b)(1) of the Government Code.

Disclosure of Liabilities of a Business Association

3. 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. GOV'T CODE § 572.023(b)(9).

4. The respondent signed a promissory note for \$40,000 payable to an officer of FourWinds. FourWinds issued a check for \$40,000 to the respondent's law firm. The respondent owned at least 50% of the law firm and was its sole director during calendar year 2014. Thus, there is credible evidence that the promissory note was a liability of the law firm and was required to be disclosed. The respondent did not disclose the promissory note as a liability of the law firm on his PFS as originally filed. Therefore, there is credible evidence of a violation of section 572.023(b)(9) of the Government Code.

Disclosure of Beneficial Interest in a Business Entity

5. 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).
6. Ownership of FWL-DC was divided between FourWinds and another individual investor. The respondent disclosed on his PFS an ownership interest in FourWinds. The respondent was a manager for FWL-DC but did not hold an ownership interest in FWL-DC. Therefore, there is credible evidence of no violation of section 572.023(b)(6) 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 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. The respondent agrees to comply with this requirement of the law.

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 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 violation described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$500 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-31608183.

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

Carlos I. Uresti, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director