



San Francisco Ethics Commission

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July 1, 2022

To: Members of the Ethics Commission

From: Patrick Ford, Director of Enforcement

Subject: **AGENDA ITEM 6: Proposed Stipulation, Decision and Order: *In the Matter of Darryl Honda* (SFEC Complaint No. 2021-026).**

Summary

This memorandum provides information regarding the Proposed Stipulation appearing in this agenda item and what the Commission may do next regarding this Proposed Stipulation.

Action Requested

That the Commission approve the Proposed Stipulation by majority vote. Alternatively, it may provide guidance to Commission Staff regarding the Proposed Stipulation.

Regulatory Background

Pursuant to the Commission's Enforcement Regulations, the Executive Director may enter negotiations with a respondent at any time to resolve the factual and legal allegations in a complaint by way of a stipulated order (i.e. a negotiated settlement). Enf. Reg. § 12(A). The Regulations require that the stipulated order set forth the pertinent facts and may include an agreement as to anything that could be ordered by the Commission under its authority pursuant to Charter section C3.699-13. *Id.*

Immediately after the Executive Director enters a stipulated order with a respondent, the Executive Director must inform the Commission of the proposed stipulation. Enf. Reg. § 12(E). Thereafter, any member of the Commission may request that the stipulated order be agendized as a regular calendar item for discussion by the full panel of the Commission during its next meeting. *Id.* If no member of the Commission requests that a stipulation be agendized as a regular calendar item, it is agendized as a consent calendar item.

Here, the stipulation was signed by the respondent shortly before the agenda materials for this Commission meeting were finalized, so the item appears as a regular agenda item in case any Commissioner wishes to discuss it. The Commission may therefore discuss this item, and it may either approve the Proposed Stipulation by majority vote or provide guidance to Commission Staff regarding the Proposed Stipulation. Enf. Reg. § 12(F).

Members of the public may comment on the Proposed Stipulation.

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Executive Director

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7 BEFORE THE SAN FRANCISCO
8 ETHICS COMMISSION

9 In the Matter of) SFEC Complaint No. 2021-026
10 DARRYL HONDA,)
11)
12 Respondent.) **STIPULATION, DECISION**
13) **AND ORDER**
14)
15)
16)

17 THE PARTIES STIPULATE AS FOLLOWS:

- 18 1. This Stipulation, Decision, and Order (Stipulation) is made and entered into by and
19 between Darryl Honda(Respondent) and the San Francisco Ethics Commission (the Commission).
- 20 2. Respondent and the Commission agree to settle and resolve all factual and legal issues
21 in this matter and to reach a final disposition without an administrative hearing. Upon approval of this
22 Stipulation and full performance of the terms outlined in this Stipulation, the Commission will take no
23 future action against Respondent, and this Stipulation shall constitute the complete resolution of all
24 claims by the Commission against Respondent related to the violations of law described in Exhibit A.
25 Respondent understands and knowingly and voluntarily waives all rights to judicial review of this
26 Stipulation and any action taken by the Commission or its staff on this matter.
27

3. Respondent acknowledges responsibility for and agrees to pay an administrative penalty in the amount of \$22,200 for four counts in violation of San Francisco Campaign & Governmental Conduct Code (SF C&GCC) section 3.1-102(a) as set forth in Exhibit A. Respondent agrees that \$22,200 is a reasonable administrative penalty.

4. Within ten business days of the Commission’s approval of this Stipulation, Respondent shall either pay the penalty through the City’s online payment portal or otherwise deliver to the following address the sum of \$22,200 in the form of a check or money order made payable to the “City and County of San Francisco”:

San Francisco Ethics Commission
Attn: Enforcement & Legal Affairs Division
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

5. If Respondent fails to comply with the terms of this Stipulation, then the Commission may reopen this matter and prosecute Respondent under Section C3.699-13 of the San Francisco Charter for any available relief.

6. Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission's Enforcement Regulations with respect to this matter. These include, but are not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondent's expense, to confront and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

7. Respondent understands and acknowledges that this Stipulation is not binding on any other government agency with the authority to enforce the San Francisco Campaign & Governmental Conduct Code section 1.100 *et seq.*, and does not preclude the Commission or its staff from cooperating with or assisting any other government agency in its prosecution of Respondent for any allegations set forth in Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.

8. This Stipulation is subject to the Commission's approval. In the event the Commission declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 9, which shall survive.

9. In the event the Commission rejects this Stipulation, and further administrative proceedings before the Commission are necessary, Respondent agrees that the Stipulation and all references to it are inadmissible. Respondent moreover agrees not to challenge, dispute, or object to the participation of any member of the Commission or its staff in any necessary administrative proceeding for reasons stemming from his or her prior consideration of this Stipulation.

10. This Stipulation, along with the attached Exhibit A, reflects the entire agreement between the parties hereto and supersedes any and all prior negotiations, understandings, and agreements with respect to the transactions contemplated herein. This Stipulation may not be amended orally. Any amendment or modification to this Stipulation must be in writing duly executed by all parties and approved by the Commission at a regular or special meeting.

11. This Stipulation shall be construed under, and interpreted in accordance with, the laws of the State of California. If any provision of the Stipulation is found to be unenforceable, the remaining provisions shall remain valid and enforceable.

12. The parties hereto may sign different copies of this Stipulation, which will be deemed to have the same effect as though all parties had signed the same document.

Dated: 07-01-2022 | 16:54:33 PDT

DocuSigned by:

LeeAnn Pelham

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LEEANN PELHAM, EXECUTIVE DIRECTOR
SAN FRANCISCO ETHICS COMMISSION

Dated: 7/1/2022

DARRYL HONDA

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of "Darryl Honda, SFEC Complaint No. 2021-026," including the attached Exhibit A, is hereby accepted as the final Decision and Order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: _____

YVONNE LEE, CHAIRPERSON
SAN FRANCISCO ETHICS COMMISSION

Exhibit A

I. Introduction

Respondent Darryl Honda assumed office as a Member of the Board of Appeals in December 2012 and served in that capacity until May 2022 when he resigned from the Board. The Board of Appeals hears and decides appeals involving the granting, denial, suspension, or revocation of permits, licenses, and other use entitlements by various City commissions and departments. As a member of the Board of Appeals, Honda must disclose on a Statement of Economic Interests (Form 700) filed annually with the Ethics Commission income (including gifts) from any source, interests in real property, investments, and all business positions in which he is a director, officer, partner, trustee, employee, or holds any position of management. SF C&GCC §§ 3.1-102(a), 3.1-103(a), 3.1-107. At all times relevant to this matter, Honda worked as a realtor in an independent-contractor capacity for Corcoran Global Living, formerly known as Zephyr Real Estate, where he earned commission income. While Respondent filed annual Form 700s for the periods covering calendar years 2017 through 2020, Respondent failed to properly report on his Form 700s multiple sources of commission income of \$10,000 or more during that time in violation of San Francisco Campaign and Governmental Conduct Code (SF C&GCC) section 3.1-102(a).

II. Applicable Law

Form 700 Requirement

SF C&GCC section 3.1-102(a)(1) requires City officers and many City employees to file a Form 700 Statement of Economic Interests. Such officials must file within 30 days of assuming or leaving office and must also file annually by April 1st to report financial interests during the previous calendar year. SF C&GCC section 3.1-102(a); 2 CCR 18730.

Members of the Board of Appeals must file the Form 700 with the Commission and are designated as Category I filers, meaning that they must “disclose income (including gifts) from any source, interests in real property, investments, and all business positions in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management.” SF C&GCC §§ 3.1-103(a)(1), 3.1-107, 3.1-130.

Commission Income

Under state law (which is incorporated by reference through C&GC Code section 3.1-101), *income* is defined as “a payment received, including, but not limited to, any salary, wage, advance, dividend, interest, rent, [or] proceeds from any sale...” received from a source that is located in or doing business in the jurisdiction. Cal. Gov. Code section 82030. *Commission income* is considered income that must be reported on the Form 700. 2 CCR 18728.5. *Commission income* is defined as “gross payments received by a public official as a result of services rendered as a broker, agent, or other salesperson for a specific sale or similar transaction.” *Id* at 18700.1(c)(1). For a real estate agent, a source of income for any particular sale or transaction includes: “(i) [t]he broker and brokerage business entity under whose auspices the agent works; (ii) [t]he person the agent represents in the transaction; and (iii) [a]ny person

who receives a finder's or other referral fee for referring a party to the transaction to the broker, or who makes a referral pursuant to a contract with the broker." *Id.* at 18700.1(c)(2)(C). If a Form 700 filer receives \$500 or more of commission income during a calendar year, the filer must report the total amount of commission income received. *Id.* at 18728.5(b)(1). Additionally, the name of each source of commission income must be reported if the source provided commission income of \$10,000 or more. *Id.* at 18728.5(b)(2).

III. Summary of Material Facts

As mentioned above, Respondent Honda assumed office as a Member of the Board of Appeals in 2012 and served until his resignation in 2022. As a member of the Board, Honda was required to file a Form 700 disclosing personal economic interests.

Additionally, Honda is a licensed real estate agent working at Corcoran Global Living, formerly known as Zephyr Real Estate and regularly represents parties in real estate transactions in San Francisco. As part of this work, Honda receives commission income from clients in real estate transactions.

Each year from 2018 to 2021, Honda filed Annual Form 700s (covering calendar years 2017-2020). On each of these Form 700s, Respondent reported a commission income of over \$100,000 from Zephyr Real Estate. On none of these Form 700s did Respondent report the name of any source of commission income of \$10,000 or more other than Zephyr Real Estate.

After being contacted by Commission investigators, Honda amended his Form 700s for calendar years 2017 through 2020 to disclose the names of sources from which he received commission income of \$10,000 or more. In total, Honda identified 37 sources of commission income of \$10,000 or more: 13 for calendar year 2017, 10 for calendar year 2018, 11 for calendar year 2019, and three for calendar year 2020.

For the 37 sources of commission income identified on Honda's amended forms, Investigators found no evidence that any had matters pending at the Board of Appeals during the relevant time periods.

IV. Conclusions of Law

For each of the Form 700s he filed for calendar years 2017 to 2020, Honda failed to disclose each source of commission income of \$10,000 or more, as is required by law.

Based on Honda's failure to properly report on his Form 700s each source of commission income from which he received \$10,000 or more, he acknowledges responsibility for the following violations of the City's financial disclosure laws.

Counts 1 through 4:
Failure to disclose reportable sources of income on Annual Statements of Economic Interest (Form 700)

Count 1: On a Form 700 Honda filed timely for calendar year 2017, he failed to report each source of commission income from which he received \$10,000 or more, in violation of SF C&GCC section 3.1-102(a).

Count 2: On a Form 700 Honda filed timely for calendar year 2018, he failed to report each source of commission income from which he received \$10,000 or more, in violation of SF C&GCC section 3.1-102(a).

Count 3: On a Form 700 Honda filed timely for calendar year 2019, he failed to report each source of commission income from which he received \$10,000 or more, in violation of SF C&GCC section 3.1-102(a).

Count 4: On a Form 700 Honda filed timely for calendar year 2020, he failed to report each source of commission income from which he received \$10,000 or more, in violation of SF C&GCC section 3.1-102(a).

V. Penalty Assessment

This matter consists of four counts of failure to timely and accurately disclose reportable financial interests in violation of the annual disclosure requirements prescribed by local and state law.

The San Francisco Charter authorizes the Commission to assess a monetary penalty to the general fund of the City of up to \$5,000 for each violation or three times the amount which the respondent failed to properly report. SF Charter § C3.699-13(c). In this instance, therefore, the maximum potential amount under the Commission's administrative enforcement authority would be \$1,110,000 (37 sources of \$10,000 multiplied by 3). Pursuant to its Enforcement Regulations, when determining penalties the Ethics Commission may consider any of the relevant circumstances surrounding the case, including but not limited to: (1) the severity of the violation; (2) the presence or absence of any intention to conceal, deceive, or mislead; (3) whether the violation was willful; (4) whether the violation was an isolated incident or part of a pattern; (5) whether the respondent has a prior record of violations of law; (6) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations; and (7) the respondent's ability to pay. Ethics Commission Enforcement Regulations § 9(D).

Honda's failure to publicly disclose his reportable sources of commission income for calendar years 2017-20 prevented the effective monitoring of his financial interests and the identification of when those interests might conflict with his government actions. It is the purpose and intent of the law that City officers and employees disclose their personal financial interests in order to protect public confidence in governmental processes. Failure to disclose reportable financial interests as the law requires deprives the public full knowledge about instances in which City officers or employees are prohibited from using their official position to influence a governmental decision.

In this instance, because Honda failed to disclose the full extent of his reportable financial interests while serving on the Board of Appeals, he deprived the public of important information and jeopardized the public's trust in fair and unbiased decision making by the City. This conduct persisted for multiple years, resulting in a pattern of failing to comply with relevant laws regarding the disclosure of financial interests. The scope of the violations is significant as well. In total, 37 separate sources of income were not timely disclosed.

In mitigation, Honda cooperated with Staff's investigation, does not have a history of prior enforcement matters with the Commission, and, as a result of the investigation, filed amendments to his Form 700s for the calendar years 2017 through 2020 to properly report the sources of commission income of \$10,000 or more that he received.

The maximum financial penalty in this matter is \$1,110,000 because Respondent failed to properly report 37 sources of commission income of \$10,000 or more on his Form 700s and the Charter authorizes the Commission to assess three times the amount which the respondent failed to properly report. SF Charter § C3.699-13(c). However, given that Honda did report on these statements that he received a commission income of over \$100,000 from Zephyr Real Estate, Staff find that the maximum penalty in this matter is not warranted. In balancing the totality of factors described above, considering prior analogous enforcement cases resolved by the Ethics Commission, and to promote a future deterrent effect, Staff proposes \$600 in penalties for each of the 37 sources of commission income from which Respondent received \$10,000 or more and failed to report properly. Therefore, Staff proposes penalties for the violations of City law as follows: Count 1 - \$7,800 (13 x \$600), Count 2 - \$6,000 (10 x \$600), Count 3 - \$6,600 (11 x \$600), and Count 4 - \$1,800 (3 x \$600). This \$22,200 total penalty is consistent with the penalty amount that the Commission's streamlined enforcement program would impose for a violation of this type (\$500 per reportable source), and the parties agree that it is warranted based on the facts in this matter.