

**STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND ETHICS COMMISSION**

In re: Luis Aponte

Complaint No. NF 2005-3

DECISION AND ORDER

Pursuant to the Rhode Island Code of Ethics, R.I.G.L. § 36-14-1 et seq. and Regulation 1015 enacted thereto, the Rhode Island Ethics Commission (the "Commission") held an adjudicative hearing in open session on the above matter on May 17, 2005. Thereafter the Commission immediately began deliberations. A stenographer was present during all open sessions of the adjudicative proceedings. The following Commissioners were present for the taking of all testimony and participated in the deliberations and in this Decision and Order: James Lynch, Sr., Chair; Patricia M. Moran, Vice Chair; George E. Weavill, Jr., Secretary; Frederick K. Butler, Barbara R. Binder, Richard E. Kirby, James V. Murray, Ross Cheit.

Dianne L. Leyden, Attorney at Law, and staff prosecutor for the Ethics Commission prosecuted the case. Respondent Luis Aponte was not present. Kathleen Managhan attended all proceedings as legal counsel to the Commission.

BACKGROUND AND TRAVEL OF CASE

Luis Aponte (Respondent) has continuously served as an elected member of the Providence City Council since November 1998. With specific reference to the subject Complaint, Respondent was re-elected to the Providence City Council in November 2002. At all time hereto relevant Respondent was a municipal elected official subject to the financial disclosure requirements set forth in Rhode Island General Laws § 36-14-16.

According to mailing lists maintained by the Commission, on or before March 19, 2004 the Commission staff mailed a financial disclosure statement form for the 2003 calendar year,

(hereinafter the 2003 Statement) to the Respondent at his residence located at 208 Washington Avenue, Providence, Rhode Island 02905. (hereinafter – “Washington Avenue”) Mailing lists for purposes of the filing of financial disclosure statements are compiled each year by the Ethics Commission from information provided by municipal clerks and various state agencies. The Providence City Clerk properly included the Respondent’s name in the list of those required to file a 2003 financial statement given his position as an elected member of the Providence City Council.

Both the files stored at Commission headquarters and corresponding computer records maintained by the Commission reflect that the Respondent did not file with the Commission a 2003 statement by the last Friday in April as required by R.I.G.L. § 36-14-16. On July 8, 2004, the Commission staff mailed notice to the Respondent that it had not received his 2003 Statement. The reminder notice, which also was mailed to the Respondent’s Washington Avenue home (as he so designated on his 2002 Statement) was not returned to the Commission by the U.S. Postal Service as undeliverable. Respondent did not file his 2003 Statement in response to the reminder notice.

The instant Complaint was filed on January 14, 2005. The Commission staff mailed Notification of Receipt of Complaint to the Respondent via certified mail return receipt requested at the Washington Avenue address. On February 7, 2005 the U.S. Postal Service returned said Complaint materials to the Commission as “unclaimed.” On the same date the Commission staff forwarded the “unclaimed” complaint materials to the Respondent via regular U.S. Mail (postage pre-paid) at the Washington Avenue address. The U.S. Postal Service did not return the materials to the Commission as undeliverable.

Commission records evince that the Respondent is cognizant of the statutory requirement to file an annual disclosure statement. On December 14, 1998, the Respondent filed a 1997 statement with the Commission as required due to his candidacy for office on the Providence City Council. Thereafter he filed his annual statement for each year through and including 2002.

After a probable cause hearing on March 8, 2005, the Commission, pursuant to R.I.G.L. § 36-14-12(c)(4) and Commission Regulation 1006, entered an Order and Finding of Probable Cause which provided:

There exists Probable Cause that by failing to file his Financial Disclosure Statement for calendar year 2003, the Respondent, a Providence City Council member, violated R.I.G.L. § 36-14-16.

SUMMARY OF ADJUDICATIVE PROCEEDINGS

On May 17, 2005 the prosecution provided testimony from *Michelle Lee, Anthony Lupinacci, Peter Mancini and Stephen Cross*. As previously stated Respondent was not present for any part of the proceeding.

OUTLINE OF TESTIMONY AND EVIDENCE

On May 17, 2005, after opening statements by the prosecutor, the Commission heard the testimony of *Michelle Lee*. Ms. Lee, being sworn, testified that she has worked for the Ethics Commission as an administrative officer for approximately nine years. Amongst her responsibilities is maintenance of the financial disclosure data base and updating it as needed. She testified that in 2004 financial disclosure statements were due as of the last Friday of April. She maintains records of who has filed their statements. The Commission maintains a data base of names, addresses and positions of all individuals required by the Code of Ethics to complete such financial disclosure forms as well as dates of filing. As to municipal employees, lists are

annually sent to municipal clerks for updating. As to the present Complaint, the Commission's list of Providence municipal officials subject to the financial disclosure laws was sent to the Providence City Clerk to certify any necessary amendments. Updated information was then provided to Anthony Lupinacci to generate a master mailing list. Envelopes with financial disclosure forms carry the return address of the Ethics Commission.

Ms. Lee further testified that the Ethics Commission subscribes to an address correction service and that she personally maintains the return address list for the Commission. She testified that although Respondent had previously filed financial statements, he did not file his 2003 Statement, information which she derived from a review of the Commission data base. Prosecution then offered the following document as *Prosecution 1 Full*: Respondent's 2002 financial statement, which reflected a residential address of 208 Washington Avenue, Providence, Rhode Island. A Non-filing Reminder Notice was sent to Respondent using a mailing label from the data base with the aforesaid address. Ms. Lee testified that such reminder letters were sent to non-filers the first week of July, 2004 and that such a reminder letter was sent to Respondent at his Washington Avenue address and was not returned as undeliverable.

Prosecution then offered the following document as *Prosecution 2 Full*: Rhode Island Ethics Commission Reminder Notice for 2003 Financial Statement.

In response to inquiry from Commissioner Weavill, Ms. Lee testified that Respondent's 2002 statement was filed in October of 2003.

Anthony Lupinacci, being sworn, testified that he had been employed by the State of Rhode Island Department of Administration Library Technical Support Services for twelve years. Amongst his responsibilities are managing the Commission's data bases, including the financial disclosure mailing lists, which function he has performed for the past ten years. Mr

Lupinacci explained how he maintains the master mailing lists, updated by data which he receives from the Ethics Commission data base list. Through Mr Lupinacci the prosecution offered ***Prosecution 3 Full***: an excerpt from the Rhode Island Ethics Commission Master Mailing List for 2003 financial statements - - constituting a list of all individuals required to file such statements - - which excerpt contained Respondent's name and his address of 208 Washington Avenue, Providence, Rhode Island. Mr Lupinacci testified that the excerpt constituted a fair and accurate representation of the original list which was prepared by him in the ordinary course of business. Respondent's name on said list meant that he was mailed a financial statement for 2003, to be filled out in the year 2004.

Mr Lupinacci also testified that, pursuant to information provided to him by the Ethics Commission, he prepared a mailing list of non-filers of financial statements in 2004. Offered as ***Prosecution 4 Full*** through Mr Lupinacci's testimony was an excerpt from the Rhode Island Ethics Commission Master Mailing List of individuals sent reminder notices on or about July 8, 2004 for failure to file 2003 financial statements. This excerpt also reflected the name of Respondent and the address 208 Washington Avenue, Providence, Rhode Island. Mr Lupinacci also testified this excerpt to be a fair and accurate representation of the reminder list prepared by him and testified that if Respondent's name were on the list he would be sent a reminder.

In response to an inquiry from Commissioner Weavill, Mr Lupinacci testified his understanding that any reminder notices which were not received by the addressee would be returned to the Ethics Commission.

Peter Mancini, being sworn, testified that he has been an investigator for the Ethics Commission for approximately three and one-half years. He also testified that he filed Complaint number NF 2005-3 in January of 2005. Prior to filing said Complaint he had checked

the master mailing list and the data base for the Ethics Commission as well as Respondent's folder at the Ethics Commission and found that Respondent had not filed a 2003 financial statement. Mr Mancini also testified that he checked Respondent's 2002 statement, noted the address of 208 Washington Avenue, Providence, Rhode Island, noted that the address was the same in the Commission's data base and that the same address had been used for mailing the 2003 financial statement form to Respondent in March of 2004. He also noted that the reminder notice sent to Respondent at the same address had not been returned by the Post Office. Mr Mancini testified that he attempted to contact Respondent using his home telephone number and cell telephone number, left messages at both telephone numbers, but did not receive a response.

In response to an inquiry from Commissioner Kirby, Mr Mancini noted that Respondent's identification did not appear either in his cell phone response or his answering machine at the home telephone number which Mr Mancini used.

In response to an inquiry from Commissioner Weavill, Mr Mancini testified that Respondent had filed financial disclosure statements in earlier years late.

In response to an inquiry from Commissioner Binder, Mr Mancini testified that he had made no personal attempts, beyond the attempted telephone contacts previously testified to, to contact Respondent.

In response to an additional inquiry from Commissioner Kirby, Mr Mancini testified that Respondent's prior address in his 2002 statement was 208 Washington Avenue, Providence, Rhode Island.

Stephen Cross, being sworn, testified that he has been an investigator for the Ethics Commission for nine years, that Respondent had been a member of the Providence City Council

in years 2003 and 2004, and that Respondent was knowledgeable concerning the Non-filing Complaint filed against him.

Mr Cross testified that he met with Respondent two times concerning the non-filing of his 2003 Statement. On the first occasion, which occurred on February 17, 2005, Mr Cross went to the Providence City Hall to speak with Respondent prior to a Council meeting. In a short discussion Mr Cross spoke with Respondent about the non-filing, provided him with a copy of the Complaint, advised him of the March 8, 2005 probable cause hearing and also discussed a possible fine schedule. Mr Cross further testified that Respondent indicated that he: "wanted to clear up" this matter and that he would come to the Commission offices the following day. However, Respondent did not appear at the Commission offices the following day nor did he call. Mr Cross indicated that both Respondent's 2002 financial statement and information provided to him by Respondent reflected a mailing address of 208 Washington Avenue, Providence, Rhode Island.

The second communication which Mr Cross had with Respondent was a cell phone conversation on April 4, 2005 concerning settlement of the outstanding Complaint. At that time Respondent advised Mr Cross that he would be: "in within the hour" to resolve the matter, that he did in fact appear at Commission offices on that date and met with Mr Cross and investigator Mike Douglas. Respondent indicated that he was: "there to settle the Complaint," and filled out both 2003 and 2004 financial statement forms. At that time Mr Cross indicated that the Commission would impose the lowest non-filing fine of \$750.00, and provided a settlement consent form for Respondent to sign. However he did not sign. Respondent indicated that he needed to go out to his car for his checkbook, left Commission's offices and did not return. Mr

Cross further testified that the 2003 and 2004 statements which Respondent finally filed contained the address of 208 Washington Avenue, Providence, Rhode Island.

In response to an inquiry from Commissioner Kirby, Mr Cross testified that there were no later calls from Respondent, that he had previously filed his statements for years 1998 through 2001 at the same time on October 31, 2002, and that he knew of no medical or mental problem of which Respondent could be suffering.

In response to an inquiry from Commissioner Butler, Mr Cross testified that in contacting Respondent at his cell phone he used the same cell phone number as had Mr Mancini.

In response to an inquiry from Commissioner Lynch, Mr Cross testified that he did advise Respondent of the parameters of the \$750.00 fine and that if the matter went to hearing the fine would be greater. Mr Cross also testified that the 2003 statement which Respondent ultimately filed listed him as being an active member of the Providence City Council.

DISCUSSION

After hearing and after consideration of all the evidence presented the Commission concludes that Respondent did not file a financial disclosure statement for year 2003 as required by R.I.G.L. § 36-14-16. The Commission finds that by failing to file said financial disclosure statement pursuant to statute, Respondent Louis Aponte knowingly and willfully violated the Code of Ethics R.I.G.L. § 36-14-16.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Louis Aponte served as a member of the Providence City Council in the State of Rhode Island for years 1998 through the present time.

2. Pursuant to Rhode Island General Laws § 36-14-16 all elected and appointed state and municipal official are required to file yearly financial disclosure statements with the Commission by the last Friday in April.

3. Respondent Louis Aponte had previously filed such financial statements for the years 1997 through 2002, while he was serving as a member of the Providence City Council.

4. Respondent Louis Aponte timely received the financial disclosure form for the year 2003.

5. At all times pertinent hereto the Commission followed a routine practice and procedure for filing financial disclosure statements and for inputing information from the financial disclosure statements into a computer data base. That routine involved maintaining master mailing lists of individuals to whom the financial disclosure statements were sent, lists of non-filers and lists of individuals to whom reminder letters had been sent.

6. As of the time of the filing of the instant Complaint, Respondent Louis Aponte's financial disclosure folder contained Respondent's financial disclosure statements for years 1997 through 2002. At that time neither the Commission archives records, nor Respondent's financial disclosure folder contained Respondent's financial disclosure statement for year 2003.

7. At the time of the filing of the instant Complaint the Commission's computer data base contained information that Respondent Louis Aponte did not file a financial disclosure statement for year 2003.

8. Prior to the filing of the instant Complaint and even subsequent to the probable cause hearing with regard to this Complaint, Louis Aponte conceded to a Commissioner investigator that he did not file financial disclosure forms with the Commission for year 2003, although he admitted having received a form to fill out and return.

9. Based upon the conduct and facts as described the Commission finds that Respondent, as a member of the Providence City Council, violated R.I.G.L. § 36-14-16 by failing to file a financial disclosure statement for 2003 in accordance with said statute.

PENALTY

As to Complaint number NF 2005-3, the Commission hereby assesses a penalty of \$7,500.00.

VOTE

1. The voting on the aforesaid Findings of Fact and Conclusions of Law was unanimous.
2. The vote on the penalty was unanimous.

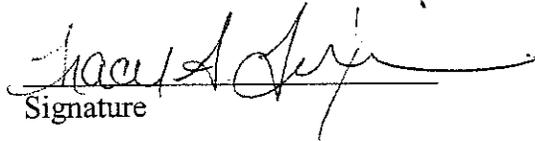

James Lynch, Chair

June 14, 2005

PURSUANT TO THE PROVISIONS OF R.I.G.L. § 42-35-15 ANY PERSON WHO IS AGGRIEVED BY THIS DECISION AND ORDER IS ENTITLED TO JUDICIAL REVIEW. PROCEEDINGS FOR SUCH REVIEW ARE INSTITUTED BY FILING A COMPLAINT IN THE SUPERIOR COURT FOR PROVIDENCE COUNTY WITHIN THIRTY DAYS AFTER MAILING NOTICE OF THIS DECISION AND ORDER BY THE ETHICS COMMISSION. A COPY OF THE COMPLAINT MUST BE SERVED UPON THE ETHICS COMMISSION WITHIN TEN DAYS AFTER IT IS FILED IN COURT, PROVIDED HOWEVER THAT THE TIME FOR SERVICE OF THE COMPLAINT MAY BE EXTENDED BY ORDER OF THE COURT FOR GOOD CAUSE.

CERTIFICATE OF SERVICE

I, Tracy A. Teixeira, hereby certify that on the 17th day of June, 2005, I mailed (postage prepaid) a copy of the within document to Luis Aponte, 208 Washington Avenue, Providence, RI 02905.


Signature