

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 13-0090 B

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

WILLIAM LANTIGUA, and
ANA SOTO, as she is Treasurer of the
Lantigua Committee,

Defendants.



VERIFIED COMPLAINT

1. The Commonwealth brings this action to compel William Lantigua, who is the Mayor of Lawrence, Massachusetts, and Ana Soto (the Treasurer of the Lantigua Committee), to file the Committee's 2011 year-end campaign finance report with the state Office of Campaign and Political Finance (OCPF), as required by G.L. c. 55, § 18. The Commonwealth also seeks an order compelling Lantigua personally to pay the civil late-filing penalty imposed by G.L. c. 55, § 3, which has now reached the statutory maximum of \$5,000.

PARTIES

2. The plaintiff Commonwealth of Massachusetts is a sovereign state, represented by the Attorney General, who has her principal place of business at One Ashburton Place, Boston, Massachusetts 02108.

3. The defendant William Lantigua is the Mayor of Lawrence, Massachusetts, with a last known residential address of 86A Boxford Street, Lawrence. He is sued in his individual

capacity only.

4. The defendant Ana Soto is Treasurer of the Lantigua Committee, a candidate committee organized under G.L. c. 55, § 5, for the purpose of raising and spending money in support of the candidacy of William Lantigua. Her last known residential address is 6 Barnard Road, Lawrence, Massachusetts.

JURISDICTION AND VENUE

5. This Court has jurisdiction under G.L. c. 55, § 30, to compel the filing of campaign finance reports. This court has jurisdiction under G.L. c. 56, § 59, to enforce the provisions of G.L. chapters 50 to 56 inclusive, including G.L. c. 55, through equitable or mandamus relief.

6. Venue is proper under G.L. c. 223, § 5, because the Commonwealth is the plaintiff.

STATUTORY BACKGROUND

7. Under G.L. c. 55, § 18, Lantigua and Soto are required to file periodic reports of the Lantigua Committee's contributions and expenditures with the Director of the state Office of Campaign and Political Finance (OCPF). Candidate committees are defined under G.L. c. 55, § 1, as a type of political committee, and G.L. c. 55, § 18 specifically requires as follows:

Each candidate and each treasurer of a political committee shall . . . file with the director reports of contributions received and expenditures made. A candidate and a committee organized on behalf of candidates seeking public office at a municipal election shall file such reports with the director, if the candidate is seeking the office of mayor in a municipality with a total population, as determined by the most recent federal decennial census, of between 40,000 and 100,000 persons, if the candidate or the candidate's committee, during the election cycle, can reasonably expect to raise or spend more than \$5,000[.]

As further alleged infra, the Lantigua Committee meets these requirements for filing with OCPF.

8. For municipal candidate committees such as the Lantigua Committee, the reports

required by section 18 are required to be filed, inter alia, by “the twentieth day of January in the following year complete as to the thirty-first day of December of the prior year[.]” See G.L. c. 55, § 18, paras. (b), (e). Therefore, a report of campaign finance activity for the year ending December 31, 2011, would have been due by January 20, 2012.

9. Under G.L. c. 55, § 3, if a candidate or committee fails to timely file a report, the Director, after giving notice to the responsible person(s), is required to notify the Attorney General, who “if satisfied that there is cause, [] shall in the name of the commonwealth institute appropriate civil proceedings[.]”

10. Further, under G.L. c. 55, § 3, the Director is required to assess a civil penalty of \$25 per day, up to a maximum of \$5,000, for any late filing of a report. Specifically:

The director shall assess a civil penalty for any report, statement or affidavit required to be filed with him . . . pursuant to the provisions of this chapter which is filed later than the prescribed date. Said civil penalty shall be in the amount of \$25 per day; provided, however, that the maximum penalty the director may assess shall be no greater than \$5,000 for any one report, statement or affidavit which is filed later than the prescribed date.

Any such penalty must be paid out of the candidate’s personal funds, rather than the committee’s funds. See G.L. c. 55, § 3 (“In the case of failure to file by a candidate or a candidate’s committee, the civil penalty shall be assessed against the candidate”); 970 CMR 2.05(4)(a)(2) (OCPF regulation prohibiting use of political committee funds to pay amounts that acknowledge violations of law).

FACTUAL ALLEGATIONS

11. Lantigua was a successful candidate for Mayor of Lawrence in 2009, and since that time has maintained the existence of the Lantigua Committee. The Committee has continued to raise and expend money to further Lantigua’s political future, including Lantigua’s announced intention to run for re-election at the November 2013 city election.

12. The City of Lawrence has a total population, as determined by the most recent federal decennial census, of between 40,000 and 100,000 persons. The most recent report that the Lantigua Committee filed with OCPF is the 2010 year-end report, showing \$38,615.00 in receipts and \$21,753.97 in expenditures in 2010, with an ending balance of \$35,083.03.

13. The Lantigua Committee therefore meets the criteria of G.L. c. 55, § 18, for filing its campaign finance reports with the Director of OCPF: (a) “the candidate is seeking the office of mayor in a municipality with a total population, as determined by the most recent federal decennial census, of between 40,000 and 100,000 persons;” and (b) “the candidate or the candidate’s committee, during the election cycle, can reasonably expect to raise or spend more than \$5,000[.]”

14. On December 29, 2011, the Director notified Lantigua and committee treasurer Soto of their obligation to file the Lantigua Committee’s 2011 year-end report with the Director by January 20, 2012.

15. Lantigua and Soto failed to file the Lantigua Committee’s 2011 year-end report by the January 20, 2012 deadline.

16. On April 23, 2012, the Director of OCPF notified Lantigua and Soto by letter that they had failed to file the required 2011 year-end report; that failure to do so within 10 days would result in referral of the matter to the Attorney General; that Lantigua, as candidate, personally had been assessed, and owed, a civil penalty of \$25 per day (then totaling \$2,350) due to the failure to file; and that by law the daily penalty would continue to be assessed, up to a maximum of \$5,000, until the report was filed.

17. Lantigua and Soto did not file the 2011 year-end report and did not otherwise respond to the Director of OCPF.

18. In accordance with G.L. c. 55, § 3, the Director referred the matter to the Attorney

General, who reviewed the matter and consulted with OCPF. The General Counsel of OCPF subsequently contacted counsel for Lantigua by telephone and urged him to advise Lantigua to file the report. Lantigua's counsel stated that he would convey that message to Lantigua.

19. As of the date of this complaint, Lantigua and Soto have not filed the 2011 year-end report with the Director, and Lantigua's \$25-per-day penalty has now increased to the \$5,000 statutory maximum.

LEGAL CLAIMS

COUNT I: FAILURE TO FILE REQUIRED REPORT

20. Paragraphs 1-19 are incorporated as if fully set forth herein.

21. Lantigua and Soto have violated and continue to violate G.L. c. 55, § 18, by failing to file the Lantigua Committee's 2011 year-end report.

22. This Court should order Lantigua and Soto to file the report immediately.

COUNT II: FAILURE TO PAY CIVIL PENALTY

23. Paragraphs 1-22 are incorporated as if fully set forth herein.

24. Lantigua has failed to pay the \$5,000 civil penalty that was assessed by the Director as required by G.L. c. 55, § 3.

25. This Court should order Lantigua to immediately pay the \$5,000 to the Director, for deposit in the Commonwealth's General Fund, and should require that Lantigua make such payment out of personal rather than Lantigua Committee funds.

PRAYERS FOR RELIEF

WHEREFORE, the Commonwealth respectfully request that this Court:

1. order Lantigua and Soto to immediately file the Lantigua Committee's 2011 year-end report;

2. order Lantigua to immediately pay the \$5,000 civil penalty to the Director, out of personal rather than Lantigua Committee funds; and
3. grant such other and further relief as may be appropriate.

COMMONWEALTH OF
MASSACHUSETTS

By its attorney,

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January 9, 2013

VERIFICATION

I, Gregory H. Birne, Esq., General Counsel for the Office of Campaign and Political Finance (OCPF), state under the penalties of perjury that based on my personal knowledge and my review of OCPF records, the factual allegations in this complaint are true.



Gregory H. Birne, Esq.

January 9, 2013