

CAUSE NO. D-1-GN-09-003310

AMY'S ICE CREAMS, INC.	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
TEXAS ETHICS COMMISSION	§	353 rd JUDICIAL DISTRICT
<i>Defendant.</i>		

**AGREED FINAL JUDGMENT BETWEEN AMY'S ICE CREAMS, INC.
AND THE TEXAS ETHICS COMMISSION**

On this day, came on to be heard the above styled and numbered cause.

The Texas Ethics Commission ("Commission") entered a "Final Order" against Plaintiff, Amy's Ice Creams, Inc., ("Amy's Ice Creams") on August 13, 2009.

Plaintiff appealed the Order by filing this action against the Commission, pursuant to the Administrative Procedure Act, Tex. Gov't Code § 2001.001 *et seq.*, ("APA"); Tex. Gov't Code § 571.061; Tex. Elec. Code § 253.094(a); the Texas Constitution, Article 1, §§ 13 and 19; and other applicable law.

The Parties (as defined below) and the attorneys of record have made their appearance, and waived a trial by jury. The Parties have informed the court that they have reached a compromise and settlement of the above styled and numbered cause. The Parties have requested of the court its approval.

The Court finds that the joint request should be and hereby is GRANTED.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

I. PARTIES

A. Amy's Ice Creams, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas. Its principal address is at 3500 Guadalupe Street, Austin, TX 78705. It also operates under the assumed name of "Amy's Ice Creams." The

Registered Agent for Amy's Ice Creams is Amelia E. Simmons, with an address of 2109 Northland Drive, Austin, TX 78756.

B. Defendant is the State of Texas Ethics Commission, acting by and through the Attorney General. The Commission's office is located at 201 East 14th Street; 10th Floor, Austin, TX 78701. The Texas Ethics Commission has statewide jurisdiction.

II. JURISDICTION

A. This is an action under the APA and Texas Government Code relating to a decision of the Commission. The Plaintiff seeks judicial review of a decision of the Commission pursuant to the APA, the Government Code, and other applicable constitutional and statutory law. As such, jurisdiction and venue is established in a district court of Travis County, Texas.

B. The Court finds that pursuant to Tex. Gov't Code § 2001.173, and Tex. Elec. Code § 571.133, it has subject matter jurisdiction and may exercise personal jurisdiction over the Parties.

III. DEFINITIONS

As used herein and for purposes of this Judgment only:

A. "Amy's Ice Creams" means, collectively, Amy's Ice Creams, Inc., and Amy's Ice Creams.

B. "Investigation" means the Commission's inquiry into whether Amy's Ice Creams provided, as alleged, corporate assets constituting political contributions to a candidate, Ms. Amelia E. Simmons.

C. "Lawsuit" means the civil action by Amy's Ice Creams against the Commission that was filed in the District Court of Travis County, Cause No. D-1-GN-09-003310.

D. "Administrative Order" means the "Final Order" dated August 13, 2009, entered by the Commission against Amy's Ice Creams.

E. "Party" or "Parties" means the parties to this Judgment and includes the Commission and Amy's Ice Creams.

F. "Person" means any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, limited liability company, association, or any other legal entity.

G. "Released Claims" means all claims, demands, actions, suits, causes of action, remedies, damages, and liabilities, of any nature, arising out of the transactions or occurrences at issue in the Investigation, Administrative Order, or the Lawsuit.

IV. BACKGROUND

A. The Commission's Administrative Order, issued on August 13, 2009, addressed ethics complaint numbers SC-270562 and SC-2706135. The Commission's Administrative Order contained findings that, *intra alia*, the Plaintiff made political contributions in violation of state law to Amelia E. Simmons in support of her campaign for Westlake Hills City Council in an election held on May, 12 2007.

B. Pursuant to TEX. GOV'T CODE ANN., Chapters 571 and 2001, Plaintiff appealed the Administrative Order by filing the Lawsuit on September 25, 2009. Plaintiff alleges that the decision of the Commission prejudiced the Plaintiff because the findings, conclusions; and decision of the Commission were not supported by applicable law. Defendant filed an Answer on October 26, 2009, and herein again denies the allegations in the Plaintiff's Original Petition.

V. STIPULATIONS

The Parties hereby stipulate to the following:

A. Plaintiff and Defendant understand and agree to the terms of this Judgment and waive their rights to appeal its validity.

B. This Judgment represents a compromise and settlement of all matters placed in issue by Plaintiff and Defendant in the Investigation, Administrative Order and the Lawsuit.

C. The occurrence of any violations by either Party are in dispute and the entry of this Judgment shall not constitute an admission by Plaintiff or Defendant with respect to any matter of fact or law in the "Final Order" referred to above.

D. This Judgment complies with all statutory, jurisdictional, and procedural requirements necessary for entry and enforcement.

E. This Judgment shall be effective immediately upon signing by the Court ("Effective Date").

F. For purposes of interpreting, applying and enforcing this Judgment, the definitions set forth in Tex. Elec. Code §§ 251.001 *et seq.* and 253.001 *et seq.* are deemed applicable.

VI. TERMS

IT IS ORDERED that:

A. Plaintiff agrees, where applicable, to comply with the requirements of the Texas Election Code.

B. By agreeing to, and by virtue of the entry of this Judgment, all related Claims of both of the parties are released, resolved, and discharged; provided, however, that nothing herein

shall be deemed to release claims accruing after entry of this Judgment. This Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

C. Defendant will cause to be placed in its official records of this matter relating to its Administrative Order a copy of this Judgment. In any communication relating to the Administrative Order, the Defendant will state that final disposition of such was made by this Judgment.

VII. MISCELLANEOUS

A. *Cost Reimbursement.* Except as otherwise provided; the parties shall each bear their own attorney's fees, expenses and costs incurred in connection with this matter.

Amy's Ice Creams voluntarily agrees that it will deliver within three days of the Effective Date of this judgment a cashier's check or money order in the amount of \$500.00 payable to the State of Texas to the Commission. The Commission shall remit such to the Comptroller of Texas for deposit in the General Revenue Fund of Texas.

B. *Legal Exposure and Effect.* This Judgment is not intended to and does not give any legal rights or remedies of any nature to any third party. Nothing in this Judgment shall prevent Amy's Ice Creams from taking any action that is otherwise permitted by law. The Parties each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have against any third party.

C. *Notices.* All notices required by this Judgment shall be sent by certified or registered mail, return receipt requested, postage prepaid or by hand delivery to:

As to the Commission:

Texas Ethics Commission
Attn: Ian Steusloff, Assistant General Counsel
201 East 14th Street, 10th Floor
Austin, TX 78701
Telephone: (512) 463-5800
Fax: (512) 463-5777

With a copy to

Texas Office of The Attorney General
Tommy Prud'homme, Chief, Antitrust Division
P.O. Box 12548
300 W. 15th Street, 7th Floor
Austin, TX 78701
Telephone: (512) 936-1697
Fax: (512) 320-0975

As to Amy's Ice Creams:

Amy Simmons
Amy's Ice Creams, Inc.
2109 Northland Dr.
Austin, TX 78756

With a copy to:

Ace Pickens
Brown McCarroll LLP
111 Congress Ave., Suite 1400
Austin, TX 78701-4093
Telephone: (512) 479-9709
Fax: (512) 479-1101

D. *Governing Law.* This Judgment shall be governed by and interpreted according to the laws of the State of Texas, excluding its conflict of laws provisions.

E. *Modification.* If a Party believes that modification of this Judgment would be in the public interest, that Party shall give notice to the other and the Parties shall attempt to agree on a modification. If the Parties agree on a modification, they shall jointly petition the Court to

modify the Judgment, and such modification shall be granted unless the Court determines that the modification is contrary to the public interest. Nothing herein prohibits a party from petitioning this court for a modification in the absence of agreement of the other party. Likewise, nothing herein prohibits a Party from opposing such a petition for modification.

F. *No Admission or Finding of Liability.* The Parties jointly acknowledge that this Judgment does not constitute evidence of an admission, or concession of any fault, liability, wrongdoing, fact or amount; of damages or an admission that the other Party has valid claims or defenses.


G. *Drafting.* The Parties have jointly negotiated and drafted this Judgment and when interpreting this Judgment, neither should be considered to be the primary author. The fact that the Parties may have discussed and included or excluded additional terms in prior drafts of this Judgment which are or are not contained herein is of no moment and shall be given no weight in interpreting this Judgment.

H. *Representations And Warranties.* The parties represent and warrant to each other as of the date of this Judgment the following: (a) each Party has all requisite capacity, power and authority to execute, deliver and perform its obligations under this Judgment; (b) this Judgment constitutes a legal, valid and binding obligation, and is enforceable in accordance with its terms; and (c) each Party is the sole and lawful owner of all rights, title, and interests in the claims that are released by it pursuant to this Judgment and has not assigned, transferred, or conveyed, in whole or in part, any of its rights, title or interests in said claims to any person or entity.

THE UNDERSIGNED PARTIES agree to the entry of this Judgment.

The Court is of the opinion that said compromise and settlement should be in all things approved.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that the compromise and settlement is in all things approved.



JUDGE PRESIDING
Dated: Nov. 14, 2012

AGREED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

DAVID C. MATTAX
Deputy Attorney General for Defense Litigation

DAVID A. TALBOT, JR.
Chief, Administrative Law Division



BRYAN D. SNODDY
State Bar No. 24046879
Assistant Attorney General
Administrative Law Division
OFFICE OF THE ATTORNEY GENERAL OF TEXAS
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Tel: (512) 436-1410
Fax: (512) 457-4619

ATTORNEYS FOR THE STATE OF TEXAS ETHICS COMMISSION



ACE PICKENS
BROWN MCCARROLL, L.L.P.
State Bar No. 15972000
111 Congress Ave., Suite 1400
Austin, TX 78701-4093
Telephone: (512) 479-9709
Fax: (512) 479-1101

ATTORNEYS FOR AMY'S ICE CREAMS, INC.

4692809.1
55494.1