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Judge Rejects Two Campaign Finance Rules; News
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MODIFYING an order issued by the New York City Campaign Finance Board requiring a City Council candidate to return more than $18,000 in public funds for a 2003 campaign, a Supreme Court justice has found two of the board's rules unenforceable.

One of the rules required the return of public funds used to repay campaign advances. The other held both the candidate, Michael Mossa, and his treasurer personally responsible for any public funds found not to qualify as a proper campaign expenditure.

Justice Jane Solomon of Manhattan found both rules to be beyond the Campaign Finance Board's le-gislative authority in Mossa v. New York City Campaign Finance Board, 117559/05.

Kate Schachern, a spokeswoman for the board, said the ruling will be appealed. Advances are not eligible for reimbursement because "they do not meet the standard for a verifiable paper trail," she said. Throughout its history, the board has held candidates "personally liable for obligations owed by their campaigns to New York City taxpayers," she said.

The ruling barring the recoupment of advances would reduce Mr. Mossa's campaign committee's repayment obligation from $18,750 to between $7,000 and $13,000, said his lawyer, Laurence D. Laufer of Genova, Burns & Vernoia.

Mr. Mossa' campaign committee has closed its books and no longer has any funds available, Mr. Laufer said. Mr. Mossa, a Republican, made an unsuccessful run for a Council seat covering southern Queens and the Rockaways.

Even though Justice Solomon's ruling bars Mr. Mossa from being held personally liable for a portion of the funds, he would have to pay any outstanding liability before he could form a new committee that would be eligible to receive public funds for a future campaign.

Advances are not among the eight categories of expenditures set forth in the New York City Administrative Code §3-704(2) that are explicitly barred by the campaign finance law, Justice Solomon noted. But, nonetheless, the finance board issued a rule, 52 Rules of the City of New York (RCNY) §1-08(g)(2), which expressly bars the use of public funds for the "reimbursement for advances."

There is nothing in the Administrative Code provision that suggests that the eight listed categories are "merely illustrative" or "open to augmentation," Justice Solomon wrote.

With the City Council having "a demonstrated awareness" of the role advances play in campaigns, Justice Solomon wrote, its barring of expenditures for advances "cannot be said to be in harmony with the legislative will."

Similarly, with respect to the personal liability of candidates, Justice Solomon concluded that the board's rule, 52 RCNY §1-02, is out of sync with its governing statute.

The statute sets four categories for which the board may recover funds it deems were improperly spent. Two of the categories expressly provide that the candidate shall be held personally liable in the event the board finds a violation, but the other two categories--which include the issue in Mr. Mossa's case-- contain no reference to personal liability.

The board's rule, she wrote, expanded the definition of who could be held liable to include the candidate, his treasurer and any other agent.

"It is axiomatic," she wrote, in concluding that "an administrative regulation that contravenes a statute cannot be given effect."

The question of whether the Campaign Finance Board can hold a candidate or his treasurer personally liable for non-qualifying campaign expenditures is pending before the Appellate Division in a pair of cases that expressed different views.

In New York City Campaign Finance Board v. Perez , 402214/03, Civil Court Judge Diane Lebedeff ruled against personal liability, while in New York City Campaign Finance Board v. Ortiz , 402015/03, Justice Shirley Kornreich, in dicta, approved of personal liability.

The finance board was represented by its associate counsel, Tara Malloy.

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