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VIA EMAIL: phil.stutzman@pdc.wa.gov AND U.S. MAIL

Philip E. Stutzman
Director of Compliance
Public Disclosure Commission
711 Capitol Way Rm. 206
P.O. Box 40908
Olympia, WA 98504-0908

RE: PDC Complaint No. T15-110

Dear Stutzman:

My firm and I represent Sound View Strategies and its principals Kelly Evans and Tracy Newman. We are writing in response to your letter dated April 9, 2015 to which you attached an anonymous complaint alleging that my clients may have violated RCW 42.17A, the State's campaign disclosure and contribution law.

As we understand the essence of the complaint, there are concerns that (1) the contract entered into between Sound View and Moneytree Inc., dated on or about January 14, 2015, may have violated RCW 42.17A.655(f), which provides that a party registered as a lobbyist shall not "enter into any agreement, arrangement, or understanding in which any portion of his or her compensation is or will be contingent upon his or her success in influencing legislation;" and (2) that Sound View did not timely file its Form L-1 with the PDC. Sound View strongly believes it has done nothing wrong or in violation of Chapter 42. Its arrangement with Moneytree was not in violation of the statute and all of its filings have been timely.

The contract at issue which was attached to the complaint contained two relevant provisions. These include Paragraph 2, Term of the Agreement, which provided in full:

> 2. Term of the Agreement. This Agreement shall take effect on January 1, 2015 and shall expire on the earlier of either: (a) the end of the last month of the 2015 Washington State legislative session, including any special sessions, or (b) the date of enactment of an installment loan bill (collectively the "Term"). Either party may terminate this Agreement upon 30 days written notice to the other.

The second relevant provision is Paragraph 3, Lobbyist Fee, which provided in full:

> 3. Lobbyist Fee. "The Lobbyist shall be paid a fee for the above enumerated services. The Lobbyist's fee shall be $8,000 per month ("Monthly Fee") for each month during the Term of the Agreement. In the event the legislation at issue becomes law by the 53rd day of the 105-day regular session, the Lobbyist shall be paid a wrap-up fee of $15,000 in addition to any Monthly Fee. The Monthly Fee shall be paid at the end of each month covered by this Agreement. The Monthly Fee shall cover all expenses of the Lobbyist incurred for work on behalf of the Company.

As we understand it, the concern revolves around the fact that the lobbyist would be paid a wrap-up fee of $15,000 in addition to any Monthly Fee if the legislation at issue became law by the 53rd day of the 105-day regular session.

Essentially, this was not a contingent fee agreement but rather this was a mitigation provision designed at lessening the impact of a reduction in the Monthly Fee payments if the legislation was passed early. The reality is that Sound View would have been paid more (and is being paid more) for the failure of the legislation's passage within the 53rd day of the session.

The contract at issue is governed by application of Washington State law, particularly relating to contract interpretation. "The primary objective in contract interpretation is to ascertain a mutual intent of the parties at the time they executed a contract." *International Marine Underwriters v. ABCD Marine LLC,* 179 Wn.2d 274, 282 (2013). The contract is viewed as a whole, interpretating particular language in the context of other contract provisions. *Weyerhaeuser Co. v. Commercial Union Ins. Co.,* 142, 654, 669-70 (2000). To assist in the determining the meaning of contact language, Washington State applies the "context ruling" adopted in *Berg v. Hudesman,* 115 Wn.2d 657, 666-69 (990). This rule allows examination of the context surround a contract's execution, including a consideration of extrinsic evidence to help understand the parties' intent. *Hearst Communications, Inc. v. The Seattle Times Co.,* 154 Wn.2d 493, 502 (2005).

These principles of contract interpretation make it very clear that paragraph 3 relating to a fee cannot be read in a vacuum but must be read in a context of the entire contract, particularly the application of paragraph 2 relating to the Term of the agreement, and as impacted by the parties' mutual intent.

As has been explained to you previously, it was the primary intent of the parties that Sound View be paid about $30,000 at a minimum for lobbying and other services. The term of the agreement makes this clear. The agreement indicates that the term begins on January 1, 2015 and expires on the earlier of either the end of the last month of the legislative session (including any special session) or the date of the enactment of the installment loan bill. This understanding was collectively called the "Term." It was anticipated that there would be at least a four month regular session which would mean

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that, under paragraph 3, Lobbyist Fee, Sound View would be paid $8,000 per month for a total of $32,000. The parties also anticipated that, as is typical, that a special session (or two) would also occur and the total fee would be higher than the $32,000.

Paragraph 2, Term of the Agreement, indicated that the duration of the contract was also tied to an earlier date of enactment of the installment loan bill. Obviously, if the installment loan bill was enacted in the second month of the session (for example, before the 53rd day of the regular session), a fee of only two months or $16,000 would be paid to the Sound View. That was not what the parties intended and that was not what they bargained for between each other. They intended that the compensation be in the neighborhood of not less than $30,000. Paragraph 3 relating to the fee, indicates that Sound View would be paid a "wrap-up fee" of $15,000 in addition to any monthly fee if the legislation at issue became law by the 53rd day of the 105-day regular session. This would ensure that if the monthly fee was only paid for a total of $16,000, there would be an additional $15,000 paid for a total of $31,000 which would mitigate the loss of income due an earlier enactment of the legislation. This is what the parties intended and this is what they provided for in the contract.

The "wrap-up fee" was a mitigation provision to ensure that the level of compensation was essentially in the neighborhood of $30,000. The parties did not want a penalty applied in the event Sound View contributed to an early success. That was the intent and operation of this arrangement. Essentially, there was no contingent fee which depended on whether the legislation was passed or not. The contingency related solely to timing, not compensation overall. Sound View was either going to receive at least $32,000 for services during the entire session or, assuming the bill was passed in the second month of the session, it would be entitled to the wrap-up fee of an additional $15,000, plus the $16,000 it would have been paid by that point. It is difficult to imagine a scenario in which Sound View would not have received at least $30,000.

All this becomes particularly obvious when the parties' intent in forming this contract is viewed in total. Sound View was hired more for strategic advice and insight and help with messaging than for lobbying. This contract covered much more than simply lobbying. It is to be remembered that Moneytree had a lobbyist separate from Sound View. That this contract had many purposes is also shown by the fact that utilization of Sound View as a lobbyist in this endeavor was not significant early on because the threshold of four days of lobbying requiring registration had not been reached when the filing of Form L-1 was made on March 5, 2015. Frankly, the registration would not have been made at that point except for publication of *The Seattle Times* article which was attached to the Complaint. We want to emphasize that there is absolutely no evidence anywhere, including in the Complaint, which indicates that Sound View crossed the threshold requiring filing before it did, in an abundance of caution, file its L-1 on March 5, 2015.

Contingent fees are fees that are paid if something is successful and are not paid if the endeavor is unsuccessful. That is why they are called contingent, which under its

ordinary definition, means payment for services dependent upon or contingent upon there being a recovery, award, or success in the matter. In this case, no matter what the ultimate success of the bill, pass or fail, Sound View anticipated receiving approximately $30,000 and Moneytree anticipated paying about $30,000 for the work under contract. Only if the amount of the wrap-up fee had been substantially larger than the amount that would be collected under the entire contract if it went to term (end of the special session) could there be the slightest suggestion of anything relating to a contingent situation. In fact, this situation was exactly the opposite where Sound View stood to make more money by not being successful, that is, by the legislation failing and Sound View being paid until the end of the special session (which everybody anticipated would occur).

As you can see, when you view the contract as a whole, which you are required to do under Washington law, and all the provisions are read in harmony, it is obvious this is a mitigation clause which ensured that Sound View would receive approximately $30,000 at a minimum for its work, lobbying and otherwise.

We trust that our analysis and explanation resolves these issues without further proceedings. Do remember the bill has not passed and Sound View will make more money now than it would have if the bill had passed within the 53rd day of the session. My clients and I stand ready to answer any questions or provide additional information.

Thanks very much for your consideration.

Very truly yours,

C. James Frush

CJF/kma
cc: Clients
Phil Lloyd