

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into between the Board of Ethics of the City of Philadelphia (“Board”), on the one hand, and Thomas Nocella and Ernesto DeNofa, on the other. The Ethics Board, Nocella, and DeNofa are referred to jointly as “the Parties.” The Parties hereby stipulate and agree as follows:

RECITALS

- A. The Philadelphia Board of Ethics is an independent board that was established by Charter amendment, approved by voters, and installed on November 27, 2006. It is charged with providing ethics training for all city employees and enforcing city campaign finance, financial disclosure, and conflict of interest laws. The Board has the authority to render advice, investigate complaints, and issue fines.
- B. The Appreciation Fund (“Fund”) is a Political Action Committee (“PAC”) created in 2003 by Carol Ann Campbell.
- C. Ernesto DeNofa is and at all relevant times was the treasurer of the Appreciation Fund.
- D. Thomas Nocella, Esquire, was counsel to the Appreciation Fund and DeNofa from at least April 2007 through December 2008. Nocella is currently a judge on the Philadelphia Municipal Court.
- E. Whenever a treasurer of a political committee files a required report of political contribution receipts and expenditures pursuant to Article XVI of the Pennsylvania Election Code, Section 20-1006(1) of the City’s campaign finance law requires certain individuals, committees, and candidates to file the same information with the Board in an electronic format, as specified by the Ethics Board. The electronic filing must be accompanied by a written statement, signed by the person making the filing that subscribes and swears to the information set forth in the filing.
- F. The failure to file a required report with the Board constitutes a violation of the City’s campaign finance law. Section 20-1006(4) of the Philadelphia Code provides that: “The failure to file information as required by this Section . . . shall be deemed to be a violation of Chapter 20-600 (Standards of Conduct and Ethics) and subject to enforcement and the imposition of penalties under that Chapter.” These penalties are set out in Section 20-612 of the Philadelphia Code, which provides that “any person in violation of this Chapter shall be subject to a civil penalty of . . . fifteen hundred dollars (\$1,500) for each violation committed during calendar year 2007[.]”
- G. The Fund was required to file its Cycle 7 annual report of receipts and expenditures with the Board in an electronic format on January 31, 2007. The Fund failed to meet this deadline.

- H. The Board extended the deadline for electronic filing to February 15, 2007. The Fund failed to file by the extended deadline.
- I. By letter dated March 21, 2007, the Board requested that the Fund submit its Cycle 7 report as soon as possible, but no later than April 4, 2007.
- J. The Fund did not file its reports by April 4, 2007 and did not respond in any way to the Board's letter.
- K. On April 27, 2007, the Board filed a Petition in the Court of Common Pleas seeking an order to compel the Fund to comply with its obligation to electronically file its Cycle 7 report with the Ethics Board and requesting that the Court impose the statutory civil fine of \$1,500 per day for each day of continuing violations after April 4, 2007.
- L. The Fund did not respond to the April 27th Petition.
- M. On June 1, 2007, the Honorable Gary DiVito issued an uncontested Order granting the Board's request to compel the Fund to electronically file its Cycle 7 report and directing the Fund to pay the statutory penalty, totaling \$39,000 for the days between April 4, 2007 and April 30, 2007, when the Fund finally filed its report.
- N. By letter dated June 20, 2007, counsel for the Board requested that the Fund pay the civil penalty due to the Board, in accordance with the Court's June 1st Order. The Fund continued to ignore the Court's Order and did not respond to the Board's letter.
- O. On August 9, 2007, the Board filed a Petition for Contempt and to Enter Judgment against the Fund.
- P. On August 28, 2007, the Fund, represented by Nocella, filed an Answer to the Petition for Contempt and to Open Judgment and a Motion to Strike Judgment Entered by Default.
- Q. On September 21, 2007, Judge DiVito issued an Order granting the Board's Contempt Petition. Judge DiVito's Order directed the Fund to pay the Board the overdue civil penalty of \$39,000 within five business days. On October 1, 2007, Judge DiVito denied the Fund's Motion to Strike Default.
- R. On October 16, 2007, the Board hand-delivered to Nocella copies of the Court's September 21st and October 1st Orders under a cover letter advising Nocella that the Board would pursue strict enforcement of the Court's order.
- S. Nocella informed DeNofa about the Court's September 21st and October 1st Orders and explained that the Fund was required to pay the Ethics Board \$39,000. Among

other things, Nocella informed DeNofa that the Fund would be required to pay the \$39,000, to the extent of its assets, within 5 business days.

- T. In December 2007, Nocella accepted service of discovery requests by the Board in aid of execution on judgment, responses to which were due on January 11, 2008.
- U. From its inception in 2003 up until December 2007 the Fund had remained essentially dormant. However, knowing that Judge DiVito had ordered payment be made to the Board and that the Board was seeking satisfaction of that judgment, Nocella and DeNofa began in December 2007 making payments out of the Fund's bank account which at that time had a balance of \$16,440.
- First, after negotiating a reduction of the catering bill due from a different PAC, "Bob Brady for Mayor," Nocella arranged with DeNofa for the Fund pay \$13,550 payment to the catering company to satisfy that PAC's debt. Nocella then personally picked up the Fund's \$13,550 check to the catering company, dated December 7, 2007, and hand-delivered the check to an employee of the company at the company's office. When that check did not clear, Nocella informed the catering company that the Fund's bank would send a cashier's check; the bank took that action soon thereafter.
 - Next, after Nocella and DeNofa decided to have the Fund pay a \$390 debt owed by Representative Bob Brady to a signing company, Nocella drafted a cover letter for his signature under his letterhead, signed the letter, which was dated January 26, 2008, obtained the check, and personally mailed the check.
 - Finally, despite the fact that he was representing the Fund and DeNofa on a *pro bono* basis, Nocella proposed and DeNofa agreed for DeNofa to write Nocella a check from the Fund for \$2,500, dated March 17, 2008, and Nocella generated an invoice purporting to charge the Fund \$2,500 for "legal services."
- V. During the period that Nocella and DeNofa were arranging these three payments, Nocella represented to the Board that the Fund was "dormant" and had "no assets" and Nocella and DeNofa delayed production of discovery in response to the Board's discovery requests in aid of execution on judgment. As a result of these payments, by March 31, 2008, Nocella and DeNofa had essentially depleted the Fund's bank account, leaving a balance of only \$378.
- W. On March 11, 2009, having learned that DeNofa and Nocella had arranged payments to dispense the Fund's assets instead of paying the judgment owed to the Board, the Board filed a Petition for Contempt and To Enter Judgment Against Ernesto DeNofa and Thomas Nocella in the Court of Common Pleas.

- X. On September 9, 2009, Judge DiVito granted the Board's Petition and issued an Order that, among other things, held Ernesto DeNofa and Thomas Nocella in contempt of this Court's June 1, 2007 Order and September 21, 2007 Order, and directed them, jointly and severally, to pay the Board a civil penalty in the amount of \$39,000.00 within thirty (30) days from the docketing of this Order.
- Y. In response to Judge DiVito's Order of September 9, 2009, Nocella and Nocella filed Notices of Appeal and DeNofa filed a Petition for Reconsideration, all of which are currently pending.
- Z. The Parties desire to enter into this Agreement in order to avoid the burden and expense of further litigation and to resolve the financial penalties described herein.

AGREEMENT

The Parties agree as follows:


1. Within seven (7) days of the execution of the Agreement, Ernesto DeNofa and Thomas Nocella will pay a total of \$16,440 in satisfaction of Judge DiVito's Order of September 9, 2009 in *Philadelphia Board of Ethics v. Appreciation Fund, et al.*, Philadelphia Court of Common Pleas, April Term, 2007, No. 003419. Payment shall be made by a check made out to the City of Philadelphia delivered to J. Shane Creamer, Jr., Executive Director of the Board of Ethics.
2. Within three (3) days of making payment as described in paragraph 1, DeNofa and Nocella shall provide the Board with a written request that the Board file a Praecipe of Satisfaction of Judge DiVito's September 9, 2009 Order with the clerk of the Court of Common Pleas of Philadelphia County.
3. Within three (3) days of the receipt of the letter described in paragraph 2, the Board shall file a Praecipe to Satisfy Judgment against Ernesto DeNofa and Thomas Nocella in *Philadelphia Board of Ethics v. Appreciation Fund*.
4. In consideration of the above and in exchange for DeNofa and Nocella's compliance with all of the terms of the Agreement, the Board waives any further penalties or fines against DeNofa and Nocella related to this case under Chapters 20-1000 and 20-600 of the Philadelphia Code.
5. In consideration of the above, Nocella and DeNofa agree to dismiss with prejudice all appeals they have filed in this matter and to withdraw any pending petitions or motions, including DeNofa's Petition for Reconsideration.
6. The Parties agree that this Agreement does not satisfy the separate \$39,000 judgment against the Appreciation Fund, entered by Judge DiVito's Order of September 21, 2007, of which \$22,560 remains due and owing after accounting for the \$16,440 paid herein by DeNofa and Nocella. The September 21, 2007 judgment against the

Appreciation Fund will remain outstanding until it is satisfied by the Appreciation Fund.


- 7. The Parties will not to make any public statements that are inconsistent with the terms of the Agreement.
- 8. The Agreement contains the entire agreement between the Parties.
- 9. The Agreement shall become effective on execution by the Parties.

By the Board of Ethics of the City of Philadelphia:

Dated: Nov. 12, 2009


 Richard Glazer, Esquire
 Chair

Dated: Nov. 17, 2009


 J. Shane Creamer, Jr., Esquire
 Executive Director

For themselves:

Dated: Nov. __, 2009

Ernesto DeNofa

Dated: Nov 17, 2009


 Thomas Nocella, Esq.

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Dated: Nov. 17, 2009


Richard Glazer, Esquire
Chair

Dated: Nov. 17, 2009


J. Shane Creamer, Jr., Esquire
Executive Director

For themselves:

Dated: Nov. 16, 2009


Ernesto DeNofa

Dated: Nov. __, 2009

Thomas Nocella, Esq.