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MAY 25 2011

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-ESSEX COUNTY
DOCKET NO.:

C 131-11

NEW JERSEY ELECTION LAW
ENFORCEMENT COMMISSION,

Plaintiff,

v.

SHARPE JAMES, CHERYL JOHNSON, and
ELECTION FUND OF SHARPE JAMES,

Defendants.

Civil Action

COMPLAINT

Plaintiff New Jersey Election Law Enforcement Commission
("ELEC"), by way of Complaint alleges as follows:

NATURE OF THE ACTION

1. This is an action seeking, among other things, restitution and statutory penalties under the New Jersey Campaign Contributions and Expenditures Reporting Act, arising out of the Defendants' unlawful use of campaign contributions to fund personal criminal defense costs.

2. This action is necessary to protect public confidence in the democratic process.

PARTIES AND JURISDICTION

3. Plaintiff ELEC is an administrative agency of the State of New Jersey with offices located at 28 West State Street, Thirteenth Floor, Trenton, New Jersey.

4. ELEC is assigned the duty to enforce the provisions of the New Jersey Campaign Contributions and Expenditures Reporting Act (the "Act"), including the power to initiate a civil action in any court of competent jurisdiction. N.J.S.A. 19:44A-6b.

5. Defendant Sharpe James currently resides at 59 Wilbur Avenue, Newark, New Jersey.

6. Defendant James served as the mayor of the City of Newark from July 1, 1986 until July 1, 2006.

7. Defendant James was a "candidate," as that term is defined in N.J.S.A. 19:44A-3c, for the mayor of the City of Newark in the 2006 municipal election held on May 9, 2006, and therefore is subject to the requirements of the Act.

8. Defendant Cheryl Johnson currently resides at 195 Glenwood Avenue, East Orange, New Jersey.

9. Defendant Johnson was the treasurer for the candidate committee, Election Fund of Sharpe James, at all times relevant to this Complaint and was therefore subject to the requirements of the Act.

10. Defendant Election Fund of Sharpe James, also known as the election Fund of Sharpe James, Mayor and Citizens to Elect Sharpe James, Mayor (the "Election Fund"), is a candidate committee, as defined in N.J.S.A. 19:44A-9, with offices located at 59 Wilbur Avenue, Newark, New Jersey.

11. As a candidate committee, the Election Fund is subject to the requirements of the Act.

12. Defendant James established Defendant Election Fund on or about October 7, 2002 in anticipation of seeking re-election to the office of mayor, City of Newark, Essex County in 2006.

13. Defendant James designated two "campaign depository" accounts, which were utilized for the purpose of receiving contributions and making expenditures to aid or promote a candidate in an election or to support or oppose a public question. The first account is currently maintained at Wachovia Bank, 765 Broad Street, Newark, New Jersey. The second account was maintained at Merrill Lynch, One Gateway Center, 14th Floor, Suite 14000, Newark, New Jersey.

14. Defendant James closed the Merrill Lynch account in or about October of 2007.

15. As of April 15, 2011, the Election Fund maintained a balance of \$744,201.07. Therefore, the Defendant Election Fund, Defendant James as a candidate, and Defendant Johnson as treasurer remain subject to the requirements of the Act.

16. Venue is proper in Essex County pursuant to R. 4:3-2, because it is the county where the Defendants are located and the county in which the election campaign was conducted. Additionally, the campaign depository accounts of the Election Fund are or were located in Newark, New Jersey.

BACKGROUND

17. The Legislature declared that it is "in the public interest and to be the policy of the State to limit political contributions and to require the reporting of all contributions received and expenditures made to aid or promote the nomination, election or defeat of any candidate for public office" N.J.S.A. 19:44A-2.

18. The Act requires that any candidate for public office create a candidate committee to receive contributions and make expenditures. N.J.S.A. 19:44A-9.

19. The candidate is required to maintain a candidate committee and candidate depository for as long as the candidate receives contributions and makes expenditures. N.J.S.A. 19:44A-9.

20. A candidate committee's expenditures must be made through the treasurer. N.J.A.C. 19:25-6.4.

21. The Act requires all expenditures of a candidate committee to be reported to ELEC with a certification from the

candidate and treasurer as to the correctness of the report.
N.J.S.A. 19:44A-16(a).

22. A candidate, treasurer and the candidate committee are subject to the Act and regulations promulgated by ELEC under the Act, which include a prohibition on the use of the candidate committee's funds for personal use, and limit permissible uses of those funds to: paying campaign expenses; paying overhead and administrative expenses of the committee; contributions to charitable organizations; transmittal to other candidate or political committees; pro-rata repayment to contributors; and paying "the ordinary and necessary expenses of holding public office." N.J.S.A. 19:44A-11.2.

23. Section N of the 2006 edition of the Compliance Manual for Candidates, which is published by ELEC, specifically addressed the limited circumstances in which a candidate could use campaign contributions to fund legal fees and expenses:

Contributions received by a candidate or committee may be used for the reasonable fees and expenses of legal representation when the need for legal representation arises directly from, and is related to, the campaign for public office, or from the duties of holding public office. Legal fees and expenses incurred in connection with the candidate or officeholder's personal or business affairs may not be paid from contributions.

24. The candidate and the treasurer are fiduciaries of the candidate committee and have an obligation to exercise their

duties in good faith, free of corrupting influences and in a diligent and intelligent manner.

25. The candidate and the treasurer's control over the candidate committee funds creates a public trust and imposes an obligation that the candidate and treasurer exercise their duties in good faith, free of corrupting influences and in a diligent and intelligent manner.

FACTUAL ALLEGATIONS

A. Defendant Sharpe James Was Convicted Of Conspiring To Defraud The City Of Newark Of Money And Property.

26. On July 12, 2007, Defendant James was charged in a 33 count indictment by a federal grand jury, which alleged, among other things, that Defendant James committed fraud by conspiring to rig the sale of nine properties located in the City of Newark at steeply discounted prices to his former girlfriend, Tamika Riley, who, in turn, quickly resold the properties for hundreds of thousands of dollars in profit.

27. The district court bifurcated the trial, deciding to try the five counts relating to the above-referenced land deals first. These counts alleged violations of 18 U.S.C. §§ 371 (conspiracy), 666(a)(1)(A) (embezzlement), 1341 (fraud), and 1342 (fraud by wire) and 26 U.S.C. §§ 7201 (tax evasion) and 7206(1) (tax fraud).

28. On April 16, 2008, a federal jury convicted Defendant James on all five counts he faced.

29. On May 12, 2008, the United States Attorney's Office announced that it was dropping the remaining charges because of the expense of a second trial and the likelihood that federal sentencing guidelines would dictate that James would not receive additional prison time if found guilty.

30. On July 29, 2008, Defendant James was sentenced to twenty-seven months in federal prison.

B. Defendants Improperly Used Campaign Funds To Pay For Defendant James' Criminal Defense Costs.

31. Beginning on or about August 21, 2006, multiple media outlets reported that federal and state law enforcement authorities had initiated a criminal investigation into Defendant James.

32. By August 29, 2006, Defendant James was aware that he was the subject of criminal investigations initiated by the United States Attorney's Office for the District of New Jersey and the New Jersey Attorney General's Office.

33. On August 29, 2006, Defendant Johnson telephoned ELEC to inquire as to whether Defendant James could utilize campaign funds to pay for attorneys' fees. Ms. Johnson advised ELEC that Mr. James' mayoral campaign records had been subpoenaed and

asked if it was legal to utilize funds donated to the Election Fund to pay legal fees.

34. In response to her inquiry, Marcus Malmignati of ELEC referred Ms. Johnson to Section N on the Compliance Manual for Candidates.

35. On or about August 30, 2006, Defendant James retained Raymond M. Brown, a criminal defense attorney with the law firm of Greenbaum, Rowe, Smith and Davis LLP ("Greenbaum Rowe").

36. In his retainer letter to Defendant James, Mr. Brown confirmed that both the United States Attorney's Office and the Attorney General's Office had undertaken criminal investigations and that Greenbaum Rowe would represent Defendant James with respect to those investigations.

37. Pursuant to the retainer agreement, Defendants issued Election Fund check number 6712 made payable to Greenbaum Rowe in the amount of \$35,000.00, which represented an initial retainer fee.

38. On October 25, 2006, Defendant Johnson telephoned ELEC a second time on behalf of Defendant James' mayoral Election Fund. She stated that Defendant James would not be seeking re-election, but that the Election Fund maintains an open account and that account funds were being utilized to pay legal fees. Defendant Johnson inquired as to whether the account could

remain open until the legal investigation ended and the legal fees are paid.

39. In response to Defendant Johnson's inquiry, Danielle Hacker of ELEC asked Ms. Johnson for more information about the type of legal fees that were being paid.

40. During the October 25th conversation, Defendant Johnson told Ms. Hacker of ELEC in substance and in part that "[Defendant James] is under investigation pertaining to him being mayor. It is a federal and state investigation I guess for criminal charges."

41. Ms. Hacker of ELEC then advised Defendant Johnson that she would review the matter and call Ms. Johnson back.

42. The next day, October 26, 2006, Kimberly A. Key of ELEC called Defendant Johnson and instructed Defendant Johnson to request an advisory opinion from ELEC if Defendant James intended to use campaign funds to pay legal expenses. Ms. Key advised that ELEC would provide a response to any request for an advisory opinion within ten days.

C. Defendants Failed To Request An Advisory Opinion From ELEC And Continued To Improperly Fund Criminal Defense Costs Out Of The Election Fund.

43. Defendants, nor any of their representatives, ever requested an advisory opinion from ELEC regarding the use of the Defendant Election Fund to pay legal fees.

44. On June 6, 2007, Defendants issued Election Fund check number 6725 made payable to Greenbaum Rowe in the amount of \$16,814.14.

45. The June 6, 2007 \$16,814.14 payment to Greenbaum Rowe was a payment for legal fees related to the law firm's representation of Defendant James during the course of criminal investigations being conducted by the United States Attorney's office for the District of New Jersey and/or the New Jersey Attorney General's Office.

46. On June 20, 2007, Defendants issued Election Fund check number 6726 made payable to the trust account of Henry Furst, Esq. in the amount of \$5,000.00 for "professional services rendered in connection with [a] grand jury investigation."

47. On June 21, 2007, Defendants issued Election Fund check number 6727 made payable to Patricia Weston Rivera, Esq. in the amount of \$2,500.00, related to Ms. Rivera's legal representation of Defendant Johnson and/or Defendant James in connection with a federal grand jury investigation.

48. On August 20, 2007, subsequent to the federal indictment, Defendants issued Election Fund check number 6729 made payable to Greenbaum Rowe in the amount of \$34,689.94.

49. The August 20, 2007 \$34,689.94 payment to Greenbaum Rowe was for legal fees related to the law firm's representation

of Defendant James during the course of criminal investigations being conducted by the United States Attorney's office for the District of New Jersey and/or the New Jersey Attorney General's Office and/or for defending the criminal charges filed against Defendant James.

50. In total, the Defendants paid \$94,004.08 for legal fees out of the Election Fund in connection with a criminal investigation and/or charges brought against Defendant James.

51. ELEC initiated an investigation into the Defendants' personal use of campaign funds in January of 2008.

COUNT I

Violation of the New Jersey Campaign Contributions and Expenditures Act

52. Plaintiff incorporates by reference each and every allegation set forth in paragraphs 1 to 51 as if alleged in full herein.

53. Defendants James and Johnson were prohibited from using campaign contributions deposited into the Election Fund's depository account in a manner not permissible under the Act and/or regulations, including, N.J.S.A. 19:44A-11.2, N.J.A.C. 19:25-6.5, N.J.A.C. 19:25-6.7, and N.J.A.C. 19:25-6.10.

54. Defendants James and Johnson were prohibited from making or authorizing the making of an expenditure of contributions for a use that is not permissible under the Act

and/or regulations, including, N.J.S.A. 19:44A-11.2, N.J.A.C. 19:25-6.5, N.J.A.C. 19:25-6.7, and N.J.A.C. 19:25-6.10.

55. Defendants James and Johnson committed no less than five violations of the Act and regulations, including, N.J.S.A. 19:44A-11.2, N.J.A.C. 19:25-6.5, N.J.A.C. 19:25-6.7, and N.J.A.C. 19:25-6.10 by:

- a. Issuing Election Fund check number 6712 on August 30, 2006 to Greenbaum Rowe to pay legal fees or expenses relating to a criminal investigation regarding Defendant James in his personal capacity.
- b. Issuing Election Fund check number 6735 on June 6, 2007 to Greenbaum Rowe to pay legal fees or expenses relating to a criminal investigation regarding Defendant James in his personal capacity.
- c. Issuing Election Fund check number 6726 on June 20, 2007 to Henry Furst, Esq. to pay legal fees or expenses relating to a criminal investigation involving Defendant James and/or Defendant Johnson in his/her personal capacity.
- d. Issuing Election Fund check number 6727 on June 21, 2007 to Patricia Weston Rivera, Esq. to pay legal fees or expenses relating to a criminal investigation involving Defendant James and/or Defendant Johnson in his/her personal capacity.

e. Issuing Election Fund check number 6729 on August 20, 2007 to Greenbaum Rowe to pay legal fees or expenses relating to a criminal investigation regarding Defendant James in his personal capacity.

56. Defendants use of the Election Fund to pay legal fees and expenses related to criminal investigations against Defendant James in his personal capacity constituted an unlawful personal use of campaign funds by Defendant James and/or Defendant Johnson.

57. Plaintiff is entitled to the relief requested below for these violations of the Act.

COUNT II

Breach of Fiduciary Duty

58. Plaintiff incorporates by reference each and every allegation set forth in paragraphs 1 to 57 as if alleged in full herein.

59. Pursuant to the Act and common law, Defendants James and Johnson have fiduciary duties of care, loyalty and good faith to those who contributed to the Election Fund.

60. Contributions made to the Election Fund were made with the expectation that the contributions would be utilized to promote Defendant James' candidacy for mayor of the City of Newark.

61. Contributions made to the Election Fund were made with the expectation that the funds would be expended in a manner consistent with the Act. N.J.S.A. 19:44A-11.2

62. Contributions made to the Election Fund were not made with the expectation that the contributions would be used for Defendant James' personal benefit.

63. Defendants had a fiduciary duty to assure that the contributions made to the Election Fund were not utilized for a personal use of the candidate or any person associated with the candidate.

64. Defendants breached their fiduciary duty to contributors to the Election Fund by making or authorizing to be made five separate payments to attorneys for a personal use.

65. Plaintiff is entitled to the relief requested below for Defendants' multiple breaches of fiduciary duty.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiff respectfully requests that the Court enter judgment against the Defendants as follows:

(A) Finding that each payment made to an attorney as payment for the legal defense of Defendant Sharpe James and/or Defendant Cheryl Johnson constituted a violation of the New Jersey Campaign Contributions and Expenditures Act;

(B) Finding that each payment made to an attorney as payment for the legal defense of Defendant Sharpe James and/or Defendant Cheryl Johnson constituted a breach of Defendants' fiduciary duty;

(C) Permanently enjoining Defendants from making any additional expenditures from the Election Fund in violation of the New Jersey Campaign and Contributions Expenditures Reporting Act;

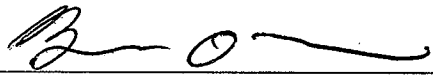
(D) Directing Defendants Sharpe James and Cheryl Johnson to return to the Election Fund the \$94,004.08 paid to attorneys for the personal benefit of Defendants James and/or Johnson;

(E) Assessing the maximum statutory civil penalties against Defendants, jointly and severally, for each separate violation of the Act in accordance with N.J.S.A. 19:44A-22;

(F) Directing the assessment of costs and fees, including attorneys' fees, against Defendants, jointly and severally; and

(G) Granting such other relief that that Court finds to be necessary and proper to effectuate remedial purposes and to prevent any continuing violations.

PAULA T. DOW
ATTORNEY GENERAL OF New Jersey
Attorney for Plaintiff


By: 
Brian O. Lipman
Deputy Attorney General

Dated: *May 25, 2011*

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Brian O. Lipman, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiff.

PAULA T. DOW
ATTORNEY GENERAL OF New Jersey
Attorney for Plaintiff

By: 
Brian O. Lipman
Deputy Attorney General

Dated: *May 25, 2011*

MAY 25 2011

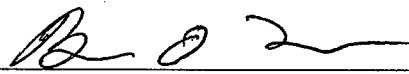
RULE 4:5-1 CERTIFICATION

I certify to the best of my information and belief that the matter in controversy in this action is not the subject of any other action pending in any court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated.

I further certify that there is no other party who should be joined in this action.

PAULA T. DOW
ATTORNEY GENERAL OF New Jersey
Attorney for Plaintiff

By:



Brian O. Lipman
Deputy Attorney General

Dated: *May 25, 2011*

