



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Silver, Commissioners Baker, Ortiz, Wilson and Wood

From: James M. Lindsay, Chief of Enforcement
Marissa Corona, Senior Commission Counsel

Subject: *In the Matter of Sandy Genis for Costa Mesa City Council 2016, Sandy Genis for Costa Mesa City Mayor 2018, and Sandy Genis for Costa Mesa City Mayor 2020;* FPPC No. 18/1359; Enforcement Division’s Response to Respondent's Motion to Vacate Default Judgment

Date: December 23, 2024

BACKGROUND

As detailed in the Default, Sandy Genis (“Genis”) has served in public office for a significant period and, therefore, has significant experience with the Act’s requirements. Genis began serving in public office in 1988, over 35 years ago.¹ Genis served as a city council member at various times between 1988 through 2020.² In addition to serving as a city council member, Genis also served as the Mayor of Costa Mesa.³ Having served as a public official extensively, Genis should have known the requirements of the Act, including the proper way to terminate a committee, which, in this case, could have reduced the counts extensively.

Despite her experience, the Enforcement Division received three filing officer referrals for the failure to timely file campaign statements on all three of Genis’ committees. In an effort to gain compliance and resolve this matter, the Enforcement Division attempted to have meaningful contact with Genis regarding this matter. However, no meaningful contact was established. Therefore, administrative proceedings began on July 8, 2024 when Sandy Genis for Costa Mesa City Council 2016, Sandy Genis for Costa Mesa City Mayor 2018, Sandy Genis for Costa Mesa City Mayor 2020, and Sandy Genis (“Respondents”) were personally served with the Accusation at Genis’ home, satisfying the service requirement for Accusations.⁴ Respondents did not file a Notice of Defense.⁵

Due to the failure to file a Notice of Defense, on October 1, 2024, a letter titled, “Notice of Default Decision and Order” was sent to Genis’ home, the same address Genis was personally served with the Accusation.⁶ This letter served as pre-notice that the Enforcement Division intended to pursue a default in the Respondent's case. The initial notice of the default appeared

¹ Default Decision and Order FPPC No. 18/1359 at page 44.

² *Ibid.*

³ Default Decision and Order FPPC No. 18/1359 at pages 33 and 77.

⁴ Government Code § 11505, subd. (c).

⁵ Default Decision and Order FPPC No. 18/1359 at page 5.

⁶ Default Decision and Order FPPC No. 18/1359 at page 147.

on the published agenda for the Commission’s public meeting on October 17, 2024. On October 24, 2024 a second letter, Notice of Intent to Enter Default Decision and Order, was also sent to Genis’ home.⁷ This letter informed Respondents that on November 21, 2024 at the Commission’s public meeting, the Enforcement Division would ask the Commission to adopt the default and impose an administrative penalty of \$68,000. A copy of the default, decision, and order and accompanying exhibits the Commission considered at its meeting on November 21, 2024 was enclosed with the letter. Respondents were also provided instructions regarding the opportunity to respond to the Default. Respondents failed to respond or contact the Enforcement Division.

On November 21, 2024 the Commission approved a Default, Decision and Order on the consent calendar for the case: *In the Matter of Sandy Genis for Costa Mesa City Council 2016, Sandy Genis for Costa Mesa City Mayor 2018, and Sandy Genis for Costa Mesa City Mayor 2020*; FPPC No. 18/1359 (the “Default”). On December 4, 2024 Genis was personally served with a copy of the signed Default Decision and Order, Exhibit 1 in Support of a Default Decision, Exhibits A-1 through A-20, and a copy of California Code of Regulations, Title 2, Section 18361.11, attached herein. On December 9, 2024, Genis filed a Motion to Vacate the Default, Decision and Order. Given Genis’ experience with the Act, the behavior outlined in the Motion to Vacate is inexcusable. As stated in the Default documents approved by the Commission and noted here, Respondents have not met their burden to grant the Motion to Vacate the Default.

LAW

The Commission has the authority to vacate its prior decision on a default and grant the respondent a hearing but only on a showing of good cause.⁸ “Good cause” includes, but is not limited to, (1) failure of the person to receive notice of the Accusation, and (2) mistake, inadvertence, surprise, or excusable neglect.⁹ Genis does not dispute the personal service; therefore, Genis’ request to vacate rests on the presence of mistake, inadvertence, surprise or excusable neglect.

When a request to vacate a default judgment is made, courts have applied California Code of Civil Procedure §473, subd. (b) which states, in part: “The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” A review of court rulings on this standard sheds light on how the Commission can and should similarly apply the standard for good cause in Government Code Section 11505, subdivision (c).

When considering this standard, while it is generally true that courts prefer to hear cases on their merits, “courts do not act as guardians for parties who are grossly careless as to their own affairs” (*Beall v. Munson*, 204 Cal. App. 2d 396, 400). One court stated, “This section was not designed to afford relief from judgments validly entered on constructive notice to those who, with full knowledge of service on them of a copy of summons and complaint through the mail,

⁷ Default Decision and Order FPPC No. 18/1359 at page 150.

⁸ Government Code § 11520, subd. (c), and California Code of Regulations, Title 2, § 18361.11, subd. (d)(2).

⁹ Government Code § 11520, subd. (c) and California Code of Civil Procedure § 473.

remain inactive.” (*Pierson v. Fischer*, 131 Cal. App. 2d 208, 212). In *Yarbrough v. Yarbrough*, the Court found that the mislaying of documents was not sufficient to vacate the judgment (*Yarbrough v. Yarbrough*, 144 Cal. App. 2d. 610, 615). Finally, “forgetfulness or intentional disregard of service are not ‘mistake, inadvertence, surprise or excusable neglect’ as those terms are used in this section, and they do not require the court to set aside the default.” (*Price v. Hibbs*, 225 Cal. App. 2d 209, 217).

The court in *Kooper v. King* explained the standard this way: “Before setting aside a judgment for neglect or inadvertence, it should appear that something more than mere inadvertence or neglect without reasonable excuse or justification existed, and that inadvertence or neglect in question was not the result of mere forgetfulness on part of person charged with duty of responding to legal process in due time, but that such inadvertence and neglect were based on other circumstances that would suffice to render same excusable” (*Kooper v. King*, 195 Cal. App. 2d 621, 627).

ARGUMENT

The Commission’s discretion to grant a Motion to Vacate a Default rests on whether the respondent asserts good cause for not responding to the present administrative action, not good cause as to why the violations occurred. Here, Genis has asserted no facts on which the Commission can rely to grant the Motion to Vacate based on good cause.

Although Genis references the good cause standard, she does so in the wrong context. Genis does not assert good cause as to why, after being personally served with the Accusation on July 8, 2024, the start of this administrative action, she failed to respond. Instead, Genis spends time trying to persuade the Commission that various calamities caused her to commit the violations detailed in the default. For example, Genis states, “This matter has arisen due to my failure to submit any FPPC filings since the 2020 elections. My failure in this regard was not due to any intent to hide anything but was neglect on my part.” The arguments presented are irrelevant to the standard at issue here and do not address the good cause standard, as it was intended to be used. Furthermore, Genis admits to returning to “normal life” in 2022, establishing that, at the time the Accusation was served in 2024, there was no longer any reason for the failure to respond to the Accusation. Therefore, the Commission cannot grant this motion because the arguments and circumstances laid out in the Motion to Vacate do not even assert the necessary good cause, much less establish it.

Genis admits receiving a packet of information “earlier this year” and “set it aside,” failing to contact the Commission regarding this matter. Further, Genis also admits to receiving documents from our office in October. In October, as mentioned previously, two letters were sent to Genis regarding the Default. Similar to the inactive language in *Pierson v. Fischer*, Genis admits in the Motion to Vacate that one or both of these letters were again set aside “without even opening it.” This behavior is not the type of circumstance contemplated as good cause. The behavior was not a mistake, inadvertent, or excusable neglect because Genis received documentation from the Enforcement Division but chose not to open paperwork on multiple occasions and ignored many contact attempts, including personal service of the Accusation. This behavior is, as *Price v. Hibbs* described, an “intentional disregard for service” and is inexcusable. (*Price*, at 217).

In *Kooper v. King*, the customer received a summons and complaint, placed it a general file and inadvertently failed to make a motion on it (*Kooper*, at 625). The court held this did not meet the standard to have the judgment vacated (*Kooper*, at 627). “There is no indication that King did not understand the true nature of the papers; rather he called his business associate regarding the matter. There is no indication that the acts of any third person intervened, contributing to the inadvertence; rather the inadvertence herein was mere forgetfulness” (*Ibid*). Here, similar to *Kooper v. King*, there is also evidence that Genis understood the true nature of these proceedings because in her response Genis stated that she “realize(d) I should have taken care of all this long ago.” Additionally, Genis communicated with the Enforcement Division regarding these matters before the Commission approved the Default Decision and Order. At various points throughout this case, Genis would respond to the Enforcement Division contact attempts; however, they would then become unreachable.¹⁰

Further, Genis does not cite any third-person intervention, as mentioned in *Kooper v. King*. For example, *Kooper v. King* references *Gorman v. California Transit Co.* In *Gorman v. California Transit Co.*, the motion to vacate was upheld when documents were mistakenly removed from the desk of the traffic department manager by another employee (*Gorman v. California Transit Co.*, 199 Cal. 246, 248-249). Unlike in *Gorman v. California Transit*, here, there is no such claim.

Here, we have more than mere forgetfulness, as referenced in *Kooper v. King*. For example, during the time of the Enforcement case, Genis admitted in the Motion to Vacate that her political committees were “out of sight, out of mind.” Genis further admitted in the Motion to Vacate that she intentionally deleted thousands of emails without review, which undoubtedly included various emails from Enforcement Division staff attempting to contact Genis regarding this matter. Over a period of four years, Genis purposely ignored contact attempts from the Enforcement Division, acting grossly careless as to her own affairs, similar to the behavior mentioned in *Beall v. Munson*. Again, this behavior is inexcusable.

Genis also claims that she misplaced and later found “a packet of materials from October under a box of craft supplies, nowhere near where I would put any mail.” Similarly, in *Yarbrough v. Yarbrough*, a party to a divorce “misplaced the documents” and did not find them until default proceedings (*Yarbrough*, at 613). In *Yarbrough v. Yarbrough*, the Court found that the mislaying of documents was not sufficient to vacate the judgment, as should the Commission here (*Ibid*, at 615).

Genis further claims various issues in her life prevented her from contacting the Enforcement Division regarding this case, including sinus headaches, a fall, a concussion, dogs diagnosed with cancer, and isolation. In *Kesselman v. Kesselman*, the Court upheld the motion to vacate when a husband failed to file an answer to the complaint, in part, because the husband suffered from a cerebral stroke which affected his ability to speak and walk (*Kesselman v. Kesselman*, 212 Cal. App. 2d. 196, 208). This case is unlike *Kesselman* for two reasons. First, none of the conditions and circumstances Genis mentions rise to the level of impairment seen in *Kesselman v. Kesselman*. Throughout the life of this case, Genis was able to speak, walk, and use cognitive

¹⁰ Default Decision and Order FPPC No. 18/1359 at pages 14-15.

functioning. Nothing prevented her from promptly and adequately taking care of her affairs with the Enforcement Division. Second, and more importantly, for the purposes of this motion, the conditions alleged by Genis occurred long ago and do not relate to the reasons she did not respond to the numerous opportunities she was afforded to the administrative action. Again, this behavior was not a mistake or done inadvertently, but the behavior of someone who was “grossly careless at to their own affairs.” Genis purposely chose to ignore these matters for over four years, a pattern that began in 2018.

Genis claims she is “beyond surprised” by these matters. However, Genis has been provided many opportunities to respond to the Secretary of State’s Office, the Costa Mesa City Clerk, and the Enforcement Division regarding her filing obligations between 2018 and 2024. According to the Default, the Secretary of State contacted Genis regarding one of her committees on November 7, 2018.¹¹ The City Clerk contacted Genis regarding the committee’s filing obligations on January 25, 2021, February 2, 2021, February 4, 2020 and February 9, 2021.¹²

According to the Default, once these matters were referred to the Enforcement Division, the Enforcement Division emailed Genis at least seventeen times between 2019 and 2024. At various points, Genis responded to the Enforcement Division; however, would then become unreachable.¹³ The Enforcement Division also communicated with Genis on the phone at least eight times, including four voicemails.¹⁴ In total, the Enforcement Division attempted to contact Genis approximately 26 times throughout this case.¹⁵ When Genis was personally served with the Accusation, a Notice of Defense was not filed and Genis did not contact the Enforcement Division.¹⁶ Genis has made no serious attempt to contact the Enforcement Division regarding this matter until filing the Motion to Vacate, despite the various contact attempts made since 2018.

CONCLUSION

While the Commission generally has discretion to vacate a default, it is specifically predicated upon a showing of good cause that has not occurred in this matter. Respondents have not shown good cause to vacate the Default, Decision, and Order because Genis failed to show mistake, inadvertence, surprise, or excusable neglect as to why she failed to respond to the Accusation, the start of this administrative action, or to any other process that ultimately led to the Default, Decision and Order. Further, the behavior outlined in the Motion to Vacate is inexcusable and is not the type of behavior contemplated to fall under the good cause standard. The Commission must, therefore, deny the Motion to Vacate.

¹¹ Default Decision and Order FPPC No. 18/1359 at page 35.

¹² Default Decision and Order FPPC No. 18/1359 at page 38

¹³ Default Decision and Order FPPC No. 18/1359 at pages 14-15.

¹⁴ *Ibid.*

¹⁵ Default Decision and Order FPPC No. 18/1359 at page 14.

¹⁶ Default Decision and Order FPPC No. 18/1359 at page 9.