

BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
2000 14TH STREET, N.W. SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF

Neil Alpert
Chairperson

D.C. Baseball PAC

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DATE: July 11, 2007

DOCKET NO.: FI-9805Z

ORDER

Statement of the Case

This matter came before the Office of Campaign Finance (hereinafter OCF) pursuant to a complaint filed by Mathew Cary, President, and Allen Madison, Secretary, (Cary and Madison) alleging that Neil Alpert (respondent), former Chairperson of the D.C. Baseball Political Action Committee (PAC), misappropriated PAC funds and filed a false Report of Receipts and Expenditures with the OCF. In the complaint which was filed on August 18, 2005, complainants alleged that respondent engaged in the following prohibited activity:

1. Used substantial amounts of PAC funds to defray his personal expenses;
2. Filed a Report of Receipts and Expenditures with OCF that contains numerous inaccuracies and omissions;
3. Commingled D.C. Baseball PAC and D.C. Baseball Association funds in violation of D.C. Official Code §1-1102.03(a) (2001 Edition) by depositing D.C. Baseball Association funds into the D.C. Baseball PAC bank account.

Issues

1. Whether the respondent used his positions as Chairperson of the D.C. Baseball Political Action Committee and the D.C. Baseball Association to misappropriate funds in violation of D.C. Official Code §1-1102.01(b).

2. Whether the respondent attempted to conceal his unauthorized use of PAC and Association funds by intentionally filing a false Report of Receipts and Expenditures with OCF.

3. Whether the respondent commingled PAC and Association funds to facilitate his use of the funds to cover personal expenses that were neither authorized nor ratified by the PAC or the Association's Board of Directors.

Background

The D.C. Baseball PAC registered with the OCF on November 22, 2004, in accordance with D.C. Official Code §1-1102.04. The complaint alleges that during the period from December 11, 2004 through July 2005, the respondent violated the above referenced provisions of the District of Columbia Campaign Finance and Conflict of Interest Act (hereinafter the Act). Consequently, OCF commenced a Full Investigation to determine whether there was merit to the complainants' allegations that the respondent engaged in activity which was not compatible with the full and proper discharge of his responsibilities as the chairman of the D.C. Baseball PAC.

On September 8, 2005, OCF's Office of the General Counsel notified the respondent that pursuant to D.C. Official Code §1-1103.02 (c) and 3DCMR §3704.3, OCF had commenced a full investigation. Simultaneously, the matter was referred to the Reports Analysis and Audit Division (RAAD) which commenced an audit of the records of the D.C. Baseball PAC. On October 6, 2005, Craig Engle, Esq., entered his appearance as counsel for Mr. Alpert.

Additionally, it was determined that a series of interviews of knowledgeable persons should be conducted by OCF Senior Staff Attorney William O. Sanford, including an examination of the respondent. OCF Audit Manager Renee' Coleman was also requested to attend the interviews. The interviews commenced on January 18, 2006 and concluded on February 5, 2007.

On July 14, 2006, RAAD issued a Preliminary Audit Report in which it recommended that the Committee file an amended consolidated report and include each receipt previously unreported. The Committee failed to comply with RAAD's recommendations. In an Interim Audit Report dated September 18, 2006, RAAD reiterated its prior recommendations and requested additional information not previously provided.

In response to the Interim Audit Report, on October 20, 2006, Mr. Engle (counsel) submitted a letter to the General Counsel of OCF in which he asserted that "the organizers of D. C. Baseball mistakenly registered as a political committee with the District under the assumption that any group that anticipated interacting with elected District officials or the public should register as a political committee. Legally, that is not the case." Counsel, further contended that at no point did the group anticipate or engage in any activity that would qualify it as a political committee. Counsel concluded by requesting that OCF find that the group did not meet the definition of a political committee and terminate the audit.

Despite Mr. Engle's contentions, all the witnesses who attended interviews indicated that it was their intention to establish a political committee when they registered with OCF.

On October 31, 2006 and November 14, 2006, RAAD issued subsequent requests for additional information. On November 14, 2006, the Committee provided a letter stating that it was unable to locate the additional documentation requested.

Pursuant to a request by the General Counsel for OCF, which resulted from numerous unsuccessful attempts over a period of almost a year to schedule interviews with members of the D. C. Baseball Association, the Board of Elections and Ethics issued subpoenas to compel the attendance of all D.C. Baseball Association members at scheduled interviews. With the exception of former treasurer, John Devine, who has allegedly moved to Rhode Island, and could not be located to effect service. Inasmuch as Devine was no longer part of the group, the respondent served as de-facto treasurer. All board members of the D.C. Baseball Association who were served were interviewed. On March 26, 2007, RAAD issued a Final Audit Report which is attached herewith and incorporated by reference. See Attachment A.

Relevant Statutory Provisions

D.C. Official Code §1-1102.01(b) states, in pertinent part: “All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

D.C. Official Code §1-1103.02(a) (1) states, in pertinent part: “The Director, under regulations of general applicability approved by the Board, shall have the power:

“(A) To require any person to submit in writing such reports and answers to questions as the Director may prescribe relating to the administration and enforcement of this chapter; and such submission shall be made within such reasonable period and under oath or otherwise the Director may determine;[and]

“(C) To require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to the execution of its duties.”

Summary of Evidence

The Statement of Organization, Acceptance of Treasurer and Chairperson forms for the D.C. Baseball PAC were filed with OCF on November 19, 2004. Principal Officers of the PAC identified in the documents were John Devine, treasurer, and the respondent, chairperson. The stated purpose of the PAC was to provide a vehicle for promotion of Major League Baseball in the District of Columbia. However, in January, 2005, the D.C. Baseball Association was established to actively participate in a parallel effort to raise funds for the campaign to promote professional baseball in the District of Columbia. Nonetheless, all financial transactions were conducted by the respondent. Following an initial review of the records by RAAD, interviews were scheduled.

On January 18, 2006, respondent attended a scheduled interview at the Office of Campaign Finance, 2000 14th Street, NW, Suite 433, Washington, D.C.20009. The respondent was accompanied

by counsel, Craig Engel, Esq. The interview was conducted by Kathy S. Williams, Esq., General Counsel for OCF, and William O. Sanford, Esq., OCF Senior Staff Attorney. Renee Coleman, OCF Audit Manager, was also in attendance at the interview. The respondent, through counsel, stated that he had read and understood the allegations against him. He also stated that all the allegations were false.

Respondent additionally stated that he was the creator of both the D.C. Baseball PAC and the D.C. Baseball Association; but, he did not have possession of all the bank records, receipts or Reports of Receipts and Expenditures because he had given the documents to Michael Sherman, who was also a member of the D.C. Baseball Association. Respondent, through counsel, stated that he could only currently provide copies of the D.C. Baseball PAC's accounts for the period beginning January 2005 through September 2005, and he would attempt to obtain the remaining records from Mr. Sherman. Ms. Williams advised the respondent and counsel that they were granted additional time to provide the records and noted that OCF would provide any assistance the respondent required to help secure the records from Mr. Sherman. Respondent, through counsel, stated that he believed he could accomplish the task independently.

On December 28, 2006, Complainant, Allen Madison (hereinafter Madison), President of the D.C. Baseball Association, was interviewed by Hearing Officer Sanford and Audit Manager Coleman. During the interview, Madison testified that the respondent had never provided an appropriate accounting to the members of the D.C. Baseball Association despite the fact that the majority of the funds the respondent used had been generated by members of the Association. Madison additionally testified that neither he nor any member of the Association's Board of Directors authorized or ratified Alpert's use of the funds for personal expenses. Madison further stated that he believed that the respondent engaged in a tremendous degree of malfeasance and appeared to use the funds he was entrusted to manage as "his personal piggy bank". Madison additionally stated that the D. C. Baseball Association raised over \$100, 000.00 in funds to promote baseball in the District of Columbia and he did not believe that the respondent used any of the funds for the purposes for which they were intended. Madison was cooperative and appeared credible.

All subsequent witnesses appeared and testified during interviews pursuant to subpoenas issued by the Board of Elections and Ethics.

Michael Sherman, Esq. (hereinafter Sherman) was interviewed by Hearing Officer Sanford and Audit Manager Coleman on December 28, 2006. Sherman testified that he was a member of the Advisory Board of the D.C. Baseball PAC in addition to being on the Board of Directors for the D.C. Baseball Association. He stated that the Association was not established until April 2005, several months after the PAC was already in existence. Sherman also stated that the management of the PAC was limited to the respondent and the treasurer, John Devine. Sherman asserted that the respondent was never authorized to use PAC or Association funds for personal expenses. According to Sherman, the respondent admitted that he had used PAC funds to pay his rent on at least two occasions, and additionally used PAC funds for other personal expenses, none of which were authorized by PAC

Advisory Board or Association members. Sherman stated that he was not aware of the respondent's unauthorized expenditures until he obtained a copy of the July 31, 2005 Report of Receipts and Expenditures. Sherman additionally stated that he did not anticipate the expenditures in the report because they were not connected to purposes for which the funds were intended. He contended that he only had copies of correspondence related to the PAC and the Association, but he did not have any financial records that were provided to him by the respondent. Sherman concluded that he did review bank statements that indicated that there was a balance of approximately \$32,000.00 remaining in the PAC bank account and he has no idea what happened to the funds. Sherman was cooperative and appeared credible.

On December 28, 2006, Joseph Grapensberger (hereinafter Grapensberger) was interviewed at the Office of Campaign Finance by Hearing Officer SanFord and Senior Auditor Dwayne Gilliam. Grapensberger stated that he became a member of the D.C. Baseball PAC Advisory Board in the summer of 2005, and he was not involved with the management of the PAC. He stated that he became aware that there were irregularities with respect to the spending of PAC funds by the respondent after his appointment to the Advisory Board. However, he stated that he did not authorize any of the respondent's expenditures because most were made prior to his appointment to the Board. Grapensberger additionally stated that he recalled a fundraiser being held at a private residence in the District, but he was unable to attend. Grapensberger testified that he believed the complaint against the respondent was filed after Corey Rubin, Esq., conducted an investigation into the allegations that the respondent misappropriated funds on behalf of the Association and determined that they warranted involvement from OCF. Grapensberger was cooperative and appeared credible.

On February 5, 2007, Thomas M. Smith (hereinafter Smith) was interviewed at the Office of Campaign Finance by Hearing Officer SanFord and Audit Manager Coleman. Mr. Smith stated that he was one of the founding Board members of both the D.C. Baseball PAC and the D.C. Baseball Association. He stated that he supported the efforts to bring Major League Baseball to the District of Columbia and to encourage greater student achievement through the Association. Smith additionally stated that he supported the removal of the respondent from the D.C. Baseball Association in June, 2005, because he was absolutely opposed to the respondent's use of PAC and Association funds to cover his own personal expenses. Smith also stated that, as a precaution, prior to the respondent's apparent misconduct, the Association's Advisory Board asked the respondent to add a second name to the bank accounts in which the funds were deposited and the respondent refused. Smith asserted that the most successful fundraiser was organized by the Association at the home of Herb Miller in Georgetown during the month of February 2005, during which approximately \$68,000.00 was raised to support the efforts of the Association and the PAC. He stated that all of the Association's Board members were volunteers who spent their own money and time promoting the return of Major League Baseball to the Nation's Capitol, and at no time did they hire or agree to compensate the respondent for his participation. Smith was cooperative and appeared credible.

A review of the Final Audit revealed RAAD determined that the D.C. Baseball PAC and the respondent engaged in the following prohibited activity:

1. Failed to report numerous contributions and to disclose contributions in the total sum of all receipts accepted by the Committee or reconcile differences between reported receipts and audited receipts.
2. Understated contributions totaling \$1,900.00.
3. Failed to report five (5) bank credits totaling \$1,797.04.
4. Failed to report thirteen (13) expenditures totaling \$30,829.10 on its Report of Receipts and Expenditures.
5. Made two expenditures to Summit Grand Parc on March 8, 2005 and April 7, 2005 in amounts of \$2,700.00 and \$2,925.00, respectively for the noted purpose on each cancelled check of "Neil Alpert #1106", for rent and parking.
6. Failed to report ATM withdrawal and Debit Card purchases totaling \$1,891.87, \$19,500.00, and \$10,653.53, respectively; Made twenty-one (21) expenditures which were listed on Reports of Receipts and Expenditures that were not negotiated through the Committee's bank account.
7. Failed to provide the Audit staff with all Committee bank statements.
8. Misstated Committee receipts, disbursements and cash on hand balance as of July 31, 2005.
9. Failed to file an amended consolidated report to correct the misstatement of financial activity.
10. Made a total of \$37,670.40 in non-qualified campaign expenditures.
11. Did not account for the \$31,897.84 remaining balance per bank records.

Finding of Facts

Having reviewed the allegations, the responses and the entire record, I find:

1. The D.C. Baseball Association authorized the respondent to establish a bank account for funds received by the organization.
2. The respondent as Chairman of the D.C. Baseball PAC exercised exclusive control over PAC funds.
3. The respondent exercised control over the bank account established for funds received by the Association and the PAC.
4. The respondent expended PAC funds for the payment of rent and parking at his apartment in the amounts of \$2,700.00 and \$2,925.00, respectively. See Attachment A, p. 7.

5. The respondent made ATM withdrawals, cash withdrawals, and Debit Card Purchases totaling \$1,891.87, \$19,500.00 and \$10,653.53, that were not included in the Committee's Reports of Receipts and Expenditures. See Attachment A, p. 10.
6. The respondent was not authorized by members of the Association to expend Association and PAC funds for his personal expenses.
7. The July 31, 2005 Report of Receipts and Expenditures submitted by the respondent contained misstatements of receipts, disbursements and cash on hand. See Attachment A, p. 14.
8. The respondent used a single bank account for Association and PAC funds.
9. The audit conducted by the RAAD of OCF concluded that the D.C. Baseball PAC failed to comply with Requests For Additional Information. See Attachment A, p. 15.
10. All witnesses interviewed except the respondent stated that they believed that Mr. Alpert had acted inappropriately and had misappropriated funds that were never intended for his personal use.
11. Mr. Alpert denied all allegations, but, he did not provide a single witness or a single document that supported his contention that the expenditures in question were authorized.
12. The respondent's unauthorized expenditures and failure to timely respond to Requests for Additional Information from RAAD constitute a violation of the District of Columbia Campaign Finance Reform and Conflict of Interest Act.

Conclusions of Law

Based upon the record and evidence, I therefore conclude:

1. Respondent violated D.C. Official Code § 1-1102.01(b).
2. The penalty established at 3 DCMR §§ 3711.2(k) and 3711.4 for depositing contributions in accounts other than campaign depositories in violation of D.C. Official Code § 1-1102.01(b) is a fine of \$50.00 per day for each business day in violation.
3. In accordance with 3DCMR §§ 3711.2(k) and 3711.4, the respondent may be fined a maximum of \$2,000.00 for depositing contributions in accounts other than campaign depositories.
4. Respondent violated D.C. Official Code § 1-1103.02(a).

5. The penalty established at 3DCMR Sections 3711.2(aa) and 3711.4 for failure to timely respond to a Request For Additional Information (RFAI) required by D.C. Official Code §1-1103.02(a) (1) (A) is a fine of \$30.00 per day for each business day subsequent to the due date.
6. In accordance with 3DCMR §§ 3711.2(aa) and 3711.4, the respondent may be fined a maximum of \$2,000.00 for failing to timely respond to an RFAI.
7. Respondent must reimburse the D.C. Baseball PAC and The D.C. Baseball Association \$37,670.40 in non-qualified expenditures.
8. Respondent must reimburse the D.C. Baseball PAC and the D.C. Baseball Association for the remaining balance (per bank account records) which is unaccounted for in any reports submitted to OCF.

Recommendation

In view of the fact that the allegations against the respondent have been sustained, I hereby recommend that the Director order Mr. Alpert to reimburse the D.C. Baseball Association and D.C. Baseball PAC the \$37,670.40 in non-qualified expenditures and the \$31,897.84 remaining balance per the bank account record which was not unaccounted for in any report filed with OCF. Thus, Mr. Alpert is liable for a total repayment amount of \$69,568.24. Additionally, I recommend that Mr. Alpert be fined \$2,000.00 for depositing contributions into accounts other than campaign depositories and \$2,000.00 for failing to timely respond to Requests For Additional Information from RAAD in accordance with the Final Audit dated March 26, 2007 and incorporated herein by reference. I further recommend that absent the filing of a Notice of Appeal with the Board of Elections and Ethics within the prescribed period, Mr. Alpert be ordered to remit the total amount or a plan for repayment of the \$69,568.24 to OCF by close of business August 6, 2007.

Date

William O. SanFord
Hearing Officer

Concurrence

In view of the foregoing, I hereby concur with the Recommendation.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that Neil Alpert reimburse the D.C. Baseball Association and D.C. Baseball PAC the \$37, 670.40 in non-qualified expenditures and the \$31,897.84 remaining balance per bank account record which was not unaccounted for in any report filed with OCF. Therefore, resulting in a total repayment amount of \$69,568.24.

IT IS FURTHER ORDERED that Mr. Alpert be fined \$ 2,000.00 for depositing contributions into accounts other than campaign depositories and \$2,000.00 for failing to comply with the Requests For Additional Information from RAAD in accordance with the Final Audit dated March 26, 2007 and incorporated herein by reference.

IT IS FURTHER ORDERED that absent the filing of a Notice of Appeal with the Board of Elections and Ethics within the prescribed period, Mr. Alpert remit the total amount or a plan for repayment of the \$69,568.24 to OCF by close of business August 6, 2007.

Date

Cecily E. Collier-Montgomery
Director

This Order may be appealed to the Board of Elections and Ethics within 15 days from the date of issuance.

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NOTICE

Pursuant to 3 DCMR § 3711.5 (March 2007), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, and 2000 14th Street, NW, Washington, D.C. 20009.

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order.

April Williams