

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

IN THE MATTER OF)	
)	
BANNUM, INC.)	DATE: July 15, 2004
David Lowry)	
Executive Director)	BOEE NO. 04-002(b)
)	
)	RE: INVESTIGATION NO. 03-01

ORDER

Statement of the Case

On April 8, 2004, the Office of Campaign Finance (OCF) issued to Bannum, Inc., in care of its Executive Director, David Lowry, an order to appear before the Director and to show cause why a civil penalty should not be levied against Bannum, Inc. for an apparent violation of the D.C. Campaign Finance Reform and Conflict of Interest Act of 1974, as amended, D.C. Official Code §§1-1101.01 et seq. (Act).¹

Specifically, it appeared Bannum, Inc. gave round trip coach fare airline tickets to Advisory Neighborhood Commissioners Rhonda Chappelle and Joseph Bowser to visit a Bannum facility on June 11, 2002, in violation of D.C. Official Code §1-1106.01(c) (2001 Edition) and 3 D.C.M.R. §3711.2(u) (1999, as amended), while Bannum “. . . was still trying to garner support from the Ward 5 community and its leaders, including ANC commissioners, for construction of [a community corrections] center [halfway house].” See In Re: Rhonda Chappelle v. Office of Campaign Finance (Board Order), Administrative Hearing No. 04-002 (February 19, 2004) at Background, p. 1; and, In the Matter of: Rhonda Chappelle (OCF Order), Investigation 03-01 (November 5, 2003) at Findings of Fact 12, p. 6, both incorporated by reference in their entirety in the instant Order.

Issue

Whether Bannum, Inc. violated D.C. Official Code §1-1106.01(c) when it gave round trip coach fare airline tickets to Advisory Neighborhood Commissioners Rhonda Chappelle and Joseph Bowser to visit a Bannum facility on June 11, 2002 because Bannum was attempting to garner their support, as Advisory Neighborhood Commissioners, for construction of a halfway house in Ward 5?

¹ Advisory Neighborhood Commissioner Joseph Bowser was also ordered to appear on April 26, 2004, for same, at 10:30 a.m. An order in the matter issues today.

Background

The Office of Campaign Finance initiated an investigation upon the complaint filed by Advisory Neighborhood Commissioner (5B03) Regina James into whether Advisory Neighborhood Commissioner Rhonda Chappelle may have received “a thing of value,” pursuant to D.C. Official Code §1-1106.01(c), when she accepted a roundtrip coach fare plane ticket to Orlando, Florida to visit and inspect a Bannum, Inc. community center in June 2002 and failed to disclose on the record at the February and March 2003 public ANC meetings her “personal interest with Bannum,” *i.e.*, the receipt of the plane ticket, when she took official action; and, whether it was reasonably inferred that the “thing of value,” *i.e.*, the plane ticket, may have influenced her in the discharge of her duties because she accepted it.

As the result of its investigation, OCF found that Commissioner Chappelle indeed violated the Act and fined her therefor. Commissioner Chappelle appealed the OCF Order to the Board of Elections and Ethics, and the Board upheld the OCF Order.

Of significance to the instant matter, OCF found that Bannum, Inc. paid for the roundtrip coach fare plane ticket received by Commissioner Chappelle; and, during the course of the investigation, discovered that Bannum, Inc. may have also paid for the roundtrip coach fare plane ticket to Orlando, Florida of another Advisory Neighborhood Commissioner, Joseph Bowser, who accompanied Commissioner Chappelle. Because this action of Bannum, Inc. may have violated the Act, OCF issued an Order to Show Cause to Bannum, Inc., and requested the appearance of its Executive Director, David Lowry, at the OCF office on April 26, 2004 at 11:30 a.m.

Whereupon, in lieu of appearance due to scheduling problems, on April 23, 2004, Mr. Lowry, through Shawn C. Whittaker, Esq. of the Law Office of Shawn C. Whittaker in Gaithersburg, Maryland, delivered to OCF the Affidavit of David Lowry, dated July 1, 2003 and a Motion to Quash by letter to Benjamin F. Wilson, then Chairperson of the Board of Elections and Ethics. The former is the same document delivered to OCF by Mr. Lowry in the cited OCF Order as Exhibit B. In the second document, counsel questioned OCF’s jurisdiction over a “private individual.”

On the same date, OCF opposed the Motion to Quash and clarified that D.C. Official Code §1-1106.01(c) speaks to the fact that “[n]o person shall offer or give to a public official. . . anything of value[.]” (Emphasis added.) OCF pointed out that prima facie evidence existed to warrant an investigation of Bannum, Inc. OCF clarified that “person” is defined to include, inter alia, “an individual. . . and any other organization.” It is stated therein, “[i]n accordance with D.C. Official Code §1-1101.01 et seq., OCF has original jurisdiction over all investigations of alleged violations of the statute, independently of the [Board of Elections and Ethics]. Accordingly, it is within the sphere of OCF’s statutory mandate to issue an Order to Show Cause to Bannum, Inc. in this matter.”

On April 26, 2004, Mr. Lowry, through Shawn C. Whittaker, Esq., delivered a Supplemental Affidavit by David Lowry, in lieu of appearance.

The scope of the OCF investigation, which was conducted until June 24, 2004, encompassed reviewing and verifying all submitted information, in light of the Campaign Finance Act and ANC statutes; research; and in-house meetings.

Relevant Statutory and Regulatory Provisions

D.C. Official Code §1-309.10(a) reads, in part, “Each [ANC] may advise the [Council], the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect that Commission area.”

D.C. Official Code §1-309.10(c)(1) reads, in part, “Proposed District government actions covered by this part shall include, but shall not be limited to, actions of the [Council], the executive branch, or independent agencies, boards, and commissions. [E]ach agency, board and commission shall, before . . .the formulation of any final policy decision or guideline with respect to . . .requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area. . .provide. . .notice of the proposed action[.]”

D.C. Official Code §1-309.10(d)(3)(A) reads, “The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission’s issues and concerns.”

D.C. Official Code §1-1106.01(c) reads, “No person shall offer or give to a public official or a member of a public official’s household, and no public official shall solicit or receive anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution or promise of future employment, based on any understanding that such public official’s official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his or her duties, or as a reward, except for political contributions publicly reported pursuant to §1-1102.06 and transactions made in the ordinary course of business of the person offering or giving the thing of value.”

D.C. Official Code §1-1106.02(i)(2) states, “Members of Advisory Neighborhood Commissions shall be covered under the conflict of interest provisions of §1-1106.01.”

Pursuant to 3 D.C.M.R. §3709.1, “The Director may institute or conduct an informal hearing on alleged violations of the reporting and disclose requirements, prescribed by the Act and Chapters 30-37 of this title.”

Pursuant to 3 D.C.M.R. §3711.1, “Upon a determination. . .that a violation has occurred, the Director may ministerially impose fines upon the offending party[.]”

Pursuant to 3 D.C.M.R. §3711.2, “Fines shall be imposed as follows:

“(w) Accepting, soliciting or giving any thing of value to influence official government actions \$2000[.]”

For good cause shown pursuant to 3 D.C.M.R. §3711.6, the Director of Campaign Finance may modify, rescind, dismiss or suspend any fine.

According to §1803.1 of the District Personnel Manual (DPM) Employee Conduct regulations:

“An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in, or create the appearance of, the following:

- “(a) Using public office for private gain;
- “(b) Giving preferential treatment to any person;
- “(c) Impeding government efficiency or economy;
- “(d) Losing complete independence or impartiality;
- “(e) Making a government decision outside official channels; or
- “(f) Affecting adversely the confidence of the public in the integrity of government.”

Pursuant to §1802 of the DPM, with the exception of elected officials and certain other government employees, the enforcement authority of the Employee Conduct regulations against government employees shall be the responsibility of each agency head.

Summary of Evidence

To show cause why civil penalties should be imposed against Bannum, Inc., in accordance with 3 D.C.M.R. § 3711.2, David Lowry relied upon his affidavits of July 1, 2003 and April 26, 2004. The former affidavit was submitted in response to OCF’s request for information in an analogous matter concerning Commissioner Rhonda Chappelle. See OCF Order. David Lowry admitted to paying the airfare for Commissioners Chappelle and Joseph Bowser to tour Bannum’s Orlando facility. See Lowry Affidavit of July 1, 2003 at pp. 5-6.

In the latter affidavit, which parrots the first in part, David Lowry avers, “At Mr. Crawford’s [of the D.C. Prisoners’ Rights organization] direction, Bannum then purchased two round trip tickets to Orlando from Washington, D.C. for two ANC Chairs. The tickets cost a total of \$509 or \$254.50 each. No other funds were expended by Bannum for the trip. Bannum did not purchase the tickets to in any way to influence any person or group as we did not believe that we needed the ANC’s permission to do anything whatsoever. Bannum, Inc. made this effort as a result of the pressures and suggestions being asserted by the Mayor of the District of Columbia. Bannum, Inc. was truly in a tough position not wishing to pay for any trip for any person, but at the same

time trying to appease the powers that be and get our contract opened up and operating.”
See Lowry Affidavit of April 26, 2004 at p. 6.²

OCF relied upon the Board and OCF Orders, cited herein.

Findings of Fact

Based upon the evidence submitted in this matter, I find:

1. In seeking to establish a Community Corrections Center in Washington, D.C., David Lowry, Executive Director of Bannum, Inc., sought support from the Ward 5 community and its leaders, including ANC commissioners, for construction of the proposed center, through employees of the Office of the Mayor of the District of Columbia. See OCF Order at Exhibit (Exh.) B and Lowry Affidavit of April 26, 2004.
2. Ostensibly acting on the encouragement of James Crawford, of the D.C. Prisoners’ Legal Services Project, Inc. (a non-governmental agency), an opinion from the Bureau of Prisons of the United States Department of Justice, and a suggestion from an employee in the Office of the Mayor, Rahim Jenkins, David Lowry authorized the payment of two roundtrip coach fare plane tickets to Advisory Neighborhood Commissioners Rhonda Chappelle and Joseph Bowser to view a Bannum facility to benefit from seeing firsthand the operation of a Bannum federal center program; and, to return to the Ward 5 community, and to their Advisory Neighborhood Commission meetings to speak favorably of the proposed Ward 5 community center. Id.
8. On June 11, 2002, Bannum, Inc. paid for two roundtrip coach fare plane tickets for Advisory Neighborhood Commissioners Rhonda Chappelle and Joseph Bowser to travel to its Orlando, Florida center to visit and inspect the site. Id.

Conclusions of Law

Based upon the record, in its entirety, and the evidence, I therefore conclude:

1. As a “person,” pursuant to D.C. Official Code §1-1101.01(8), alleged to have given a “thing of value” to an Advisory Neighborhood Commissioner in Advisory Neighborhood Commission 5A and 5B to influence their actions or judgment or vote regarding the proposed Community Center in Ward 5, David Lowry is subject to the Act’s conflict of interest statute at D.C. Official Code §1-1106.01(c).

² “Crawford confirmed the Orlando, Florida visit and that he attended, at the expense of his employer, D.C. Prisoners’ Legal Services Project, Inc. He stated that he encouraged the visit so that the ANC representatives could view the Bannum halfway house facility in an urban setting. He further confirmed, consistent with the statements of Chappelle and Lowry, that he arranged and facilitated meetings in Ward 5 to create a working relationship between Bannum and the community.” See OCF Order at 5.

2. As Advisory Neighborhood Commissioners in the District of Columbia at public meetings of their respective Advisory Neighborhood Commission, Commissioners Rhonda Chappelle and Joseph Bowser are required to take action on proposed District policy regarding, inter alia, social services programs; and, that the resulting recommendation from the ANC must be strongly considered by the concerned District agency, in accordance with D.C. Official Code §1-309.10.
3. David Lowry, through Bannum, Inc. gave “a thing of value,” pursuant to D.C. Official Code §1-1106.01(c), to Advisory Neighborhood Commissioners Rhonda Chappelle and Joseph Bowser when he paid for two roundtrip coach fare plane tickets to Orlando, Florida for them to visit and inspect the Bannum center site; and, to return to Ward 5, and their Advisory Neighborhood Commission meetings to favorably persuade their constituencies about the proposed Community Center in Ward 5.
4. In accordance with 3 D.C.M.R. §3711.2, Bannum, Inc. may be fined a maximum of \$2,000.00 each for giving “a thing of value,” i.e., a roundtrip coach fare plane ticket, to Orlando, Florida, to Advisory Neighborhood Commissioner Rhonda Chappelle and to Advisory Neighborhood Commissioner Joseph Bowser, “to influence official government actions,” pursuant to D.C. Official Code §1-1106.01(c).

Recommendation

I hereby recommend that the Director of the Office of Campaign Finance impose a fine of \$4,000 upon Bannum, Inc. through David Lowry, its Executive Director, for giving two roundtrip coach fare plane tickets to Orlando, Florida to Advisory Neighborhood Commissioners Rhonda Chappelle and Joseph Bowser to influence them in the discharge of their duties.

I hereby further recommend that the Mayor of the District of Columbia determine whether his employee, Rahim Jenkins, may have violated the DPM Employee Conduct regulations for his alleged participation in this matter; and, if so, to take the necessary steps to enforce the pertinent regulations against same.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that Bannum, Inc. through David Lowry, its Executive Director, pay a fine of \$4,000 for giving two roundtrip coach fare plane tickets to Orlando, Florida to Advisory Neighborhood Commissioners Rhonda Chappelle and Joseph Bowser to influence them in the discharge of their duties.

IT IS FURTHER ORDERED that the Mayor of the District of Columbia determine whether its employee, Rahim Jenkins, may have violated the DPM Employee Conduct regulations for his alleged participation in this matter; and, if so, to take the necessary steps to enforce the pertinent regulations against same.

Date

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

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

Anwar Wilson
Clerk

cc: Shawn C. Whittaker, Esq.
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The Honorable Anthony A. Williams
Mayor, District of Columbia

The Honorable Vincent Orange
Ward 5 Member, City Council

The Honorable David A. Catania
At-large Member, City Council

The Honorable Kathleen Patterson
Ward 3 Member, City Council

The Honorable Carol Schwartz
At-large Member, City Council

The Honorable Sharon Ambrose
Ward 6 Member, City Council

James C. Crawford
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NOTICE

Pursuant to 3 D.C.M.R. §3711.5 (1999), 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, 2000 14th Street, N.W., Washington, D.C., 20009.