

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

IN THE MATTER OF

**Committee to Elect Jim DeMartino
James DeMartino, Candidate
1000 New Jersey Avenue, SE #705
Washington, DC 20003**

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**Docket No: 011 C-012
Docket No: 012 C-019
Date: November 2, 2012**

ORDER

Statement of the Case

This matter initially came before the Office of Campaign Finance (hereafter OCF) Office of the General Counsel following a determination by its Public Information and Records Management Division, that pursuant to The Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform and Amendment Act” (The Act), codified in DC Official Code 1-1163.09(b). Jim DeMartino, candidate and treasurer failed to timely file, the Receipt and Expenditure Report (hereafter R&E Report) due on January 31, 2011 before expiration of the extended filing date of February 17, 2012.

By Notice of Hearing, Statement of Violations and Order of Appearance dated March 10, 2011, certified notices sent on May 9, 2011, and June 9, 2011 OCF ordered the former committee treasurer John Haynes (hereafter Respondent), to appear at scheduled hearings on March 24, 2011, May 26, 2011, and for a third hearing scheduled for June 21, 2011.

James DeMartino (hereafter Respondent candidate) was sent a notice on March 5, 2012 to appear at a hearing scheduled for March 15, 2012 in response to the notice sent for failure to file the January 31, 2012 R&E Report, and show cause why he should not be found in violation of Title III of the Campaign Finance Act of 2011, and fined accordingly.

Summary of Evidence

The resolution of the aforementioned allegations involved a tedious and arduous endeavor that lasted more than eighteen (18) months in duration.

The campaign committee initially identified John Haynes as its treasurer. Mr. Haynes responded to the initial hearing notice in March 2011 by contacting OCF by telephone. He informed OCF that he was no longer the treasurer. Mr. Haynes also stated that following the respondent candidate’s loss in the election; they no longer maintained regular contact with each other. Mr.

Haynes stated that he would contact the respondent candidate and have him contact OCF. Mr. Haynes periodically contacted OCF and stated what progress he made in contacting the Respondent candidate. Mr. Haynes submitted a "Letter of Termination" withdrawing from the treasure's post on or about April 28, 2011.

On or about March 23, 2012, Respondent candidate visited OCF. In 2011, he was a candidate for the city council from Ward 6. He stated that he did not receive the prior notices sent to him and provided OCF his new address, telephone number, and email address for the receipt of future communications. Respondent candidate stated that he would file the outstanding R&E Reports and requested an extension of time in which to do so. He further stated that he did not have the financial records and would have to contact the bank to obtain them before he files the outstanding reports. The Respondent candidate was granted a reasonable extension of time.

On July 13, 2012, OCF the respondent candidate was sent via email another notice to appear for hearing scheduled for July 24, 2012. Respondent candidate appeared at the hearing, and acted on his own behalf. He apologized for the delay in filing the outstanding R&E Reports citing his difficulty in obtaining the financial records from the bank as the reason. Respondent candidate stated that on July 23, 2012 he filed an R&E Report for December 10, 2010. He also stated that on the morning of July 24, 2012, he electronically filed the R&E Reports for January 31, 2011 and the R&E Reports for January 31, 2011 and January 31, 2012 respectively. The filing of these reports was confirmed.

Findings of Fact

Having reviewed the allegations and the record herein, I find:

1. Respondent candidate was a candidate for councilmember for Ward 6 in the 2010 election.
2. Respondent committee was required to file the January 1, 2011 R&E Report on or before January 31, 2011 in accordance with D.C. Official Code § 1-1102.06(a). Since that period the law has been revised. The controlling legal statute is DC Official Code §1-1163.09(b).
3. Respondent committee was required to file the January 1, 2012 R&E Report on or before the close of the extended deadline on February 17, 2012 in accordance with D.C. Official Code §1-1163.09(b)..
4. Respondent candidate electronically filed the R&E Report for January 31, 2011 and the R&E Report for January 31, 2012 on July 24, 2012.¹

¹ Respondent candidate also filed R&E Reports for December 10, 2010 on July 23, 2012, and filed an R&E Report for July 31, 2011 with OCF. These reports are not at issue in this hearing.

5. Respondent candidate after receiving notice of the alleged violations “voluntarily” contacted OCF. He was not able to immediately file the outstanding R&E Reports because he had to obtain the financial records from the campaign committee’s bank. Respondent further stated that he was of the belief that once the election was over that he nor his former treasurer had a duty to continue filing R&E Reports.

Conclusions of Law

Based on the record provided by the OCF, I therefore conclude:

1. Respondent PCC violated DC Official Code §1-1163.09(b).
2. The penalty established at DC Official Code §1-1163.09, §1-1163.35, 3 DCMR §§3711.2(f), 3711.3 and 3711.4 for failure to timely file the January 1, 2011 R&E Report is a fine of \$50.00 per day for each business day subsequent to the due date.
3. The penalty established at DC Official Code §1-1163.09, §1-1163.35, 3 DCMR §§3711.2(f), 3711.3 and 3711.4 for failure to timely file the January 1, 2012 R&E Report is a fine of \$50.00 per day for each business day subsequent to the due date.
4. In accordance with DC Official Code 1-1163.35, the respondent PCC may be fined a maximum of \$2000.00 for failing to timely file a January 1, 2011 R&E Report.
5. In accordance with DC Official Code 1-1163.35 the respondent PCC may be fined a maximum of \$2000.00 for failing to timely file a January 1, 2012 R&E Report.
6. For good cause shown pursuant to 3 DCMR 3711.6, the Director of the Office of Campaign Finance (Director) may modify, rescind, dismiss or suspend any fine.

Recommendation

In view of the foregoing and information included in the record, I hereby recommend that the Director impose a fine of Two Hundred Fifty Dollars (\$250) for failure to timely file the January 1, 2011 R&E Report, and Two Hundred Fifty Dollars for failure to file the 2012 January 1, 2012 R&E Report. The total fine being Five Hundred Dollars (\$500).

Date

Hearing Officer

Concurrence

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

Date

William O. SanFord
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that the fine in this matter be Two Hundred Fifty Dollars (\$250) for failure to timely file the January 1, 2011 R&E Report, and Two Hundred Fifty Dollars for failure to file the January 1, 2012 R&E Report. The total fine is Five Hundred Dollars (\$500).

Date

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order on Jim DeMartino by regular mail, and by electronic mail to: james.demartino@gmail.com on _____.

NOTICE

Any party adversely affected by and order of the Director may obtain review of the order by filing with the Board of Elections and Ethics, a request for a hearing *de novo*. Pursuant to 3 DCMR §3711.5, 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, 2000 Fourteenth Street, N.W., Suite 433 Washington, DC 20009.