

**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

**Coalition for Better District of Columbia
James Walker, Treasurer
1209 Crittenden Street, NW
Washington, DC 20011**

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**DOCKET NO: 012 P-032
Date: March 15, 2013**

ORDER

Statement of the Case

This matter came before the Office of Campaign Finance (hereinafter 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), James T. Walker, treasurer for the political action committee Coalition for a Better District of Columbia (CBDC) failed to timely file, a Receipt and Expenditure Report (hereafter R&E) which was due on July 31, 2012.

By Notice of Hearing, Statement of Violations and Order of Appearance sent via regular mail and electronic mail dated Monday September 4, 2012, a second Notice of Hearing sent via certified mail dated Friday September 21, 2012, and a third Notice of Hearing sent on or about Monday November 19, 2012, OCF ordered James T. Walker (hereinafter Respondent), to appear at a scheduled hearing on Thursday September 20, 2012, Friday October 5, 2012, Thursday November 29, 2012 and Tuesday January 15, 2013 and show cause why he should not be found in violation of Title III of the Campaign Finance Act of 2011, as amended and fined accordingly.

Summary of Evidence

Respondent James T. Walker did not appear for the hearing conducted on January 15, 2013. He was represented by legal counsel, Thorn Pozen from the law firm of Stinson, Morrison Hecker, LLP. Attorney Pozen waived his client's appearance at the hearing.

In response to the allegations that formed the bases for the hearing, Attorney Pozen read into the record statements from an un-notarized affidavit from James (Skip) Walker, Jr. that was executed on January 7, 2013. In the affidavit Respondent repeatedly represents that he never received notice of failing to file the R&E Report. He specifically writes "I do not, however, recall receiving any notice of a failure to file an OCF Report prior to this Third and Final Notice."

The evidence produced by OCF rebuts this representation several times over.

Findings of Fact

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

1. OCF finds the veracity of the statements read into the record from Respondent James Walker's affidavit to be questionable, and intended to mislead the Hearing Officer. Specifically, the statement that "I do not, however, recall receiving any notice of a failure to file an OCF Report prior to this Third and Final Notice." Respondent treasurer also states that "Prior to my receipt of the OCF Notice, I was not aware of the need to continue to file Reports of Receipts and Expenditures for the CBDC..." (Exhibit #1)
2. OCF sent Respondent treasurer, via the US Postal Service first class prepaid mail a "Reminder to File Your July 31st Report 2012" on or about July 11, 2012. This letter was not returned to OCF marked "undeliverable" or "addressee unknown", and it is presumed to have been delivered to Respondent treasurer (Exhibit #2).
3. OCF sent Respondent treasurer a "Notice of Non-Compliance for "Failure to File July 31st Report 2012" on or about August 10, 2012. This letter was not returned to OCF marked "undeliverable" or "addressee unknown", and it is also presumed to have been delivered to Respondent treasurer (Exhibit #3).
4. On or about Monday September 4, 2012 OCF sent Respondent the first of four (4) Notices of Hearing for the instant matter. The notice was sent via US Postal Service, first class, postage prepaid mail and via electronic mail to skipwalker@aol.com . The notice sent via the US Postal Service was also never returned to OCF marked "undeliverable" or "addressee unknown".
5. On or about September 10, 2012, OCF received an email from Respondent. In the email Respondent requested his name removed as treasurer of record for the PAC, and he requested that OCF stop sending him mail for the organization. Respondent also requested that the mail be sent to "the 4 Thompson Circle Address." This notice was received within six (6) days following the mailing of the initial hearing notice to Respondent treasurer, and it is presumed that it was sent to OCF in response to that notice (Exhibit #4)
6. On or about September 21, 2012, OCF sent Respondent a second Notice of Hearing requesting his appearance on Friday October 5, 2012. This notice was sent to Respondent via US Postal Service certified mail with return receipt requested. On October 3, 2012 the letter was received by James Walker. The receipt was returned to OCF on or about October 9, 2012 (Exhibit #5).

7. On October 9, 2012, OCF received the Statement of Withdrawal of Position of Treasurer from Respondent. Respondent PAC and treasurer failed to file the Termination R&E Report as instructed by Wesley Williams, OCF Public Relations and Information Manager.
8. Respondent filed the July 31st R&E Report on November 21, 2012. Respondent treasurer James Walker's name appears as the treasurer of record. Along with the filing, OCF received a letter from the PAC. In the letter the PAC was of the belief that when they filed the R&E Report they had fulfilled their obligations, and expected a cancellation of the scheduled hearing for Thursday November 29, 2012. The R&E Report was filed eighty (80) days past the due date.
9. On November 23, 2012, OCF sent an email message addressed to Mr. Peebles and Mr. Walker. The email acknowledged receipt of the filed July 31st R&E Report and instructed their appearance because the report was filed nearly 4 months late, and that there was a question of a fine that needed to be addressed.
10. James Walker, at all times during this matter has been, and is the treasurer for the political action committee Coalition for a Better District of Columbia.
11. All notices mailed to Respondent treasurer were sent to the treasurer's address of record. That address is 1209 Crittenden Street, NW Washington, DC 20011.
12. Respondent's defense that he lacked notice of his failure to file the R&E Report due on July 31, 2012 is incredible and unpersuasive. OCF is not required to give the treasurer notices of when to file their R&E Reports. The filing dates are codified in the DC Official Code. Any notices sent as a reminder is sent out as a courtesy to the committee.
13. Prior to conducting the instant hearing the Respondent committee had no prior adjudicative history with OCF for failing to timely file their R&E Reports.

Conclusions of Law

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

1. Respondent Coalition for Better District of Columbia PAC violated DC Official Code §1-1163.09(b).
2. The resignation and removal of James Walker as treasurer for the PAC is void. DCMR 3000.13 and 3000.17 (c) required a new treasurer to take James Walker's place upon his resignation, and this never happened. Moreover, James Walker's name is reflected as the treasurer signing the R&E report that was eventually submitted to OCF
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 July 31st R&E Report required by 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 PAC may be fined a maximum of \$2000.00 for failing to timely file the July 31st R&E Report.
5. 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

Prior to conducting the instant hearing the Respondent committee had no prior adjudicative history of failing to timely file their R&E Reports. Therefore, in view of the foregoing and information included in the record, I hereby recommend that the Director impose a reduced fine of Five Hundred Dollars (\$500.00) in this matter.

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 is hereby Five Hundred Dollars (\$500.00).

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 Thorn Pozen, Esquire Stinson, Morrison Hecker, LLP by regular mail, and via electronic mail to: tpozen@stinson.com on _____.

NOTICE

Any party adversely affected by any 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.