

**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 John Settles for DC Council :
Treasurer, Patricia Mitchell :
12 R Street, NW :
Washington, DC 20001 :**

**Docket No: 013 C-016
Date: June 28, 2013**

ORDER

Statement of the Case

This matter 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). Ms. Patricia Mitchell, treasurer for the campaign Committee to Elect John Settles for DC Council failed to timely file the 8 day Pre-special election Receipts and Expenditure Report (hereafter R&E Report) that was due on or before April 15, 2013.

By Notice of Hearing, Statement of Violations and Order of Appearance dated April 26, 2013 and a second notice sent via certified mail on May 15, 2013¹, OCF ordered Patricia Mitchell (hereafter Respondent), to appear at a scheduled hearings on May 14, 2013 and May 28, 2013 respectively and show cause why she should not be found in violation of Title III of the “Campaign Finance Act of 2011”, and fined accordingly. On or about June 3, 2013, Respondent contacted OCF via electronic mail, and stated that she did not receive the hearing notices sent via the US Postal Service, and requested a third date for the hearing. OCF accommodated the Respondent, re-scheduled the hearing for a third time. The third hearing date was scheduled for June 17, 2013.

Summary of Evidence

On June 17, 2013 the Respondent and the candidate Mr. John Settles appeared for the hearing. Mr. Settles acted pro se in the proceedings.

Mr. Settles began his testimony by apologizing for the committee’s failure to timely file the 8 Day Pre-special election R&E Report. He stated that the failure to file the report was due

¹ In addition to the mailings, hearing notices were also sent electronically to the Respondent. The electronic notices were sent to pmitchell@columbiadb.com. The hearing notices sent via the US Postal Service may not have been delivered because the address for the Respondent was incorrect. The hearing notices sent via electronic mail the Respondent received.

to a misinterpretation of the information obtained from the OCF website. Mr. Settles stated that prior to the special election his candidacy and campaign lost a challenge from the Board of Elections (BOE). He stated that he was removed from the ballot in mid-February by the BOE. He further stated that after being removed from the ballot it was their (treasurer's and candidate's) belief that the committee did not have to file the 8 Day Pre-special election report.

In support of that assertion, Ms. Mitchell sent to OCF via electronic mail a notarized affidavit. Ms. Mitchell stated that their belief that the committee did not have to file the 8 Day Pre-special Election report was based on information taken from the OCF website in which it states that under the 2013 filing date requirements..."Only required by candidates/principal campaign committees and PACs participating in the 2013 special election."

Mr. Settles admitted that the committee prior to being removed from the ballot collected approximately \$28,000.00 in contributions. He also admitted that subsequent to his removal from the ballot the committee was unable to terminate the campaign because they had outstanding bills and debts. At the hearing, Mr. Settles stated that the committee had only approximately \$200.00 remaining in their bank account. He further stated that the 8 Day Pre-special election R&E Report was filed on June 13, 2013, and that the June 10th R&E Report was filed.

Mr. Settles and Ms. Mitchell both asserted that OCF sent the hearing notices to the wrong address. They were advised to check with the Public Records and Information Management (PRIM) division to confirm their contact information.

Findings of Fact

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

1. Respondent is the treasurer of the campaign Committee to Elect John Settles for DC Council.
2. Respondent committee was required to file the 8 Day Pre-special election R&E Report on or before April 15, 2013 in accordance with D.C. Official Code § 1-1163.09
3. Respondent treasurer filed the 8 Day Pre-special election R&E Report on June 13, 2013.
4. Respondent attributes the failure to file the 8 Day Pre-special election R&E Report to a misinterpretation of the filing requirements. Respondent stated that the candidate lost a challenge from the BOE and was removed from the ballot in February 2013.
5. Respondent and Mr. Settles also stated that they relied on the information stated on the OCF website. Specifically, they were of the belief that since Mr. Settles lost the

challenge to his candidacy, and was removed from the ballot there was no need to file the 8 Day Pre-special Election R&E Report.

6. The OCF website states that the filing of reports is ..."Only required by candidates/principal campaign committees and PACs participating in the 2013 special election."
7. The Respondent's and committee's reliance on the information found on the OCF website is unpersuasive. Notwithstanding that the candidate lost the challenge to his candidacy and was removed from the ballot in February, the campaign committee continued to conduct business associated with the election. Therefore, the Respondent was required to comply with DC Code 1-1163.09 and District of Columbia Municipal Regulations (DCMR) 3015.2 and file the 8 Day Pre-special Election R&E Report that was due on or about April 15, 2013.
8. The campaign committee filed the 8 Day Pre-special Election R&E Report on June 13, 2013. On the date filed the report was 42 days past due.

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) and DCMR 3015.2.
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 8 Day Pre-special Election R&E Report is a fine of \$50.00 per day for each business day subsequent to the due date.
3. Respondent file the 8 Day Pre-special Election R&E Report on June 13, 2013. On the date of filing the report was 42 days past due.
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 the 8 Day Pre-special Election R&E Report that was due on or about April 15, 2013.
5. DCMR 3711.7 imposes a mandatory fine for failure to file the eight (8) day pre-election 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.
7. During the hearing it was noted that this was the first time the Respondent and/or committee was found to be in violation of failure to file the R&E Report. This factor is given consideration in determining the fine. It is recommended that the fine be reduced.

Recommendation

In view of the foregoing, and information included in the record, I hereby recommend that the Director reduce the fine in this matter, and impose a fine of Two Hundred Dollars (\$200.00) for failure to file the 8 Day Pre-special Election R&E Report.

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 reduced and the Committee to Elect John Settles to the DC Council is fined Two Hundred Dollars (\$200.00).

Date

Cecily E. Collier-Montgomery
Director

CERTIFICATE OF SERVICE

This is to certify that I have served a true copy of the foregoing Order on Ms. Patricia Mitchell by regular mail, and via electronic mail to pmitchell@columbiadb.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.