



**OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS
WASHINGTON, D.C. 20009**

<p>IN THE MATTER OF</p> <p>Brown for Ward 5 Treasurer, Jermaine Brown 1241 Owen Place NE Washington, DC 20002</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Date: July 31, 2012</p> <p>Docket No: 12C-029 12C-050</p>
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ORDER TO VACATE

Statement of the Case

This matter came before the Office of Campaign Finance (hereinafter OCF) Office of the General Counsel pursuant a Motion for Reconsideration filed by candidate Jermaine Brown for the campaign committee Brown for Ward 5, in response to an Order dated July 2, 2012 imposing a fine of \$2,000 for failure to file a March 10th Receipts & Expenditures Report (“R&E”) by March 12, 2012 and a fine of \$1,500 for failure to file the Eight Day Pre-Special R&E Report by May 7, 2012.

Summary of Evidence

By Notice of Hearing, Statement of Violations and Order of Appearance dated April 6, 2012, April 25, 2012 , May 29, 2012 and June 13, 2012, OCF ordered Jermaine Brown (“Respondent”), to appear at a scheduled hearing on April 18, 2012, May 9, 2012, June 6, 2012 and June 21, 2012 and show cause why he should not be found in violation of the D.C. Official Code §1-1101.01 et seq and D.C. Campaign Finance Act of 2012 and filed accordingly.

OCF alleged that Respondent failed to file the March 10th R&E report and the eight day pre-special election R&E report by the prescribed deadlines cited above. In accordance with the Act, OCF issued two (2) Notice of Hearing, Statement of Violations and Order of Appearance for each violation. OCF is confident that the address and contact information for Respondent was accurate and that Respondent receive information necessary to satisfy the filing obligation at issue. OCF is further convinced that Respondent received timely and proper service, via regular mail and/or certified mail, since OCF has yet to receive returned mail address to Respondent.

Respondent failed to appear at the scheduled hearings cited herein and accordingly OCF conducted an informal hearing on June 21, 2012 and made a record of the proceeding in the matter of Respondent’s failure to file both March 10th and the eight day pre-special election R&E reports.

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On July 10, 2012 filed a Motion for Reconsideration of the July 2, 2012 Order of the Director. Respondent asserts that he assumed that he was exempt from filing R&E reports because he filed a Request for Candidate Waiver form with OCF on January 20, 2012. Respondent's assumption was correct about his position as candidate, but Respondent failed to understand and appreciate his position as treasurer and the filing obligations required. Respondent further explained that he did not timely receive notices from OCF because he had to move from his permanent address into a temporary residence while his family residence underwent rehabilitation repairs. Respondent claims that he did not receive his forwarded mail on a consistent and timely basis.

Respondent provided a credible explanation for his failure to file the required R&E reports; and failure to appear at the scheduled hearings. For this reason, OCF accepts Respondent's Motion for Reconsideration.

Findings of Fact

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

1. Respondent is the candidate/treasurer of Brown for Ward 5 campaign committee.
2. Respondent was required to file the March 10th and 8 day pre-special election R&E report on or before March 12, 2012 and May 7, 2012 (respectively), in accordance with D.C. Official Code § 1-1102.06(a).
3. Respondent was ordered to appear on April 18, 2012 and May 9, 2012 to answer to charge of failure to file the March 10th R&E report; and ordered to appear on June 6, 2012 and June 21, 2012 to answer to the charge of failure to file the 8 day pre-special election R&E report; however, Respondent failed to appear before the Office of Campaign Finance on the scheduled hearing dates cited herein.
4. OCF issued an Order dated July 2, 2012 imposing a fine of \$2,000 for failure to file the March 10th R&E report and a fine of \$1,500 for failure to file the eight day pre-special election report.
5. On July 10, 2012, Respondent filed Motion for Reconsideration of the Order dated July 2, 2012.
6. Respondent provided a credible explanation for failure to file the require R&E reports, in that Respondent mistakenly believed he was exempt from filing since he filed a Request for Candidate Waiver form and did not receive and contributions. Respondent also advised that he moved to a temporary residence and did not receive is forward mail consistently and timely.
7. Respondent took action to correct his noncompliance and filed the required R&E report on July 10, 2012.
8. Respondent is currently in compliance with March 10th and Eight day pre-special filing requirements.

Conclusions of Law

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

1. Respondent and/or campaign committee violated DC Official Code §1-1102.06(a).
2. The penalty established by DC Official Code §1-1103.05 (b)(3), 3 DCMR §§3711.2(f), 3711.3 and 3711.4 for failure to timely file an R&E Report required by DC Official Code 1-1102.06 is a fine of \$50.00 per day for each business day subsequent to the due date.
3. In accordance with DC Official Code 1-1103.05(b)(3) and 3 DCMR §3711.3, Respondent and/or campaign committee can be fined up to a maximum of \$2,000.00 for failing to timely file an R&E Report.
4. The Director may modify, rescind, dismiss or suspend any fine imposed, pursuant to 3 DCMR §3711.3, for good cause shown; provided that, fines imposed for failure to file an 8 day pre-special election report shall be mandatory, unless a written extension for filing the report is granted by the Director.
5. Respondent failed to appear before the Office of Campaign Finance on the scheduled hearing dates cited herein and failed to file the March 10th R&E report by March 12, 2012, and failed to file the 8 day pre-special election report by May 7, 2012.
6. OCF issued an Order dated July 2, 2012 imposing a fine of \$2,000 for failure to file the March 10th R&E report and a fine of \$1,500 for failure to file the eight day pre-special election report.
7. Respondent provided a credible explanation for failure to file the required R&E reports, in that Respondent mistakenly believed he was exempt from filing since he filed a Request for Candidate Waiver form and did not receive and contributions. Respondent also advised that he moved to a temporary residence and did not receive his forward mail consistently and timely.
8. Respondent took action to correct his noncompliance and filed the required R&E report on July 10, 2012, and is currently in compliance with the filing obligation in this matter.

Recommendation

In view of the foregoing and information included in the record, I HEREBY RECOMMEND that the Director VACATE the Order dated July 2, 2012 and DISMISS the two thousand (\$2,000) dollar fine for failure to file the March 10th R&E report by March 12, 2012 in this matter.

I FURTHER RECOMMED that the Director DISMISS the fifteen hundred (\$1500) dollar fine for failure to file the 8 day pre-special R&E report in this matter.

July 31, 2012

Date

Kalvanetta K. Peete

Kalvanetta K. Peete
Hearing Officer

Concurrence

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

July 31, 2012

Date

William O. SanFord

William O. SanFord
General Counsel

ORDER OF THE DIRECTOR

IT IS ORDERED that the Order dated July 2, 2012 is hereby VACATED and the fines of two thousand (\$2,000) dollars and fifteen hundred (\$1,500) dollars are hereby DIMISSED.

July 31, 2012

Date

Cecily E. Collier-Montgomery

Cecily E. Collier-Montgomery
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order has been furnished to Jermaine Brown this 31st day of July 2012 by regular and/or certified mail.

/s/

NOTICE

Any party adversely affected by any order of the Director may obtain review of the order by filing a request for a hearing de novo with the Board of Elections within fifteen (15) days from the issuance by the Director of an order. Any fine imposed by the Director, pursuant to §3711.2 shall become effective on the sixteenth (16th) day following the issuance of a decision and order; provided that, the Respondent does not request a hearing de novo, pursuant to §3709.11. Fines imposed shall be paid within ten (10) days of the effective date of the issuance of an order of the Director. Payment by check or money order shall be payable to the D.C. Treasurer, and directed to the Office of Campaign Finance, Frank D. Reeves Municipal Building, 2000 14th Street NW, Suite 433, Washington, DC 20009.