

Summary of Evidence

At all times pertinent herein, Respondent was required to file the August 10th R&E report due August 10, 2012. Respondent was also required to appear at a scheduled hearing on September 14, 2012 and September 26, 2012. Respondent failed to file the required report and failed to appear at either scheduled hearing.

On September 26, 2012, after waiting a reasonable amount of time for the Respondent to appear for the scheduled hearing, OCF conducted the hearing by making a record of the proceeding, pursuant to 3 DCMR §3709.9. Latia Gaskins, Clerical Assistant appeared on behalf of the OCF, PIRM division. Ms. Gaskins testified that Respondent failed to timely file the August 10th Report of Receipts of Expenditures by Friday, August 10, 2012, in accord with D.C. Official Code § 1-1163.09(b). As of September 26, 2012, the August 10th R&E report became twenty three (23) days delinquent.

At all times pertinent herein, Respondent was required to file the October 10th R&E report due October 10, 2012. Respondent failed to file the required report. By Notice of Hearing, Statement of Violations and Order of Appearance dated October 22, 2012, OCF ordered respondent to appear at a scheduled hearing on November 1, 2012. On October 22, 2012, OCF administratively dismissed this matter, in error stating that Respondent filed the October 10th report on October 11, 2012. The error was subsequently discovered upon review of the committee's filing record in January 2013, which indicated that the October 10th report had not been filed. Therefore, on January 14, 2013 OCF issued an Order to vacate the administrative dismissal, dated October 22, 2013. Consequently, on October 22, 2012, the October 10th R&E report became sixteen (16) days delinquent.

In compliance with the Notice of Hearing, Statement of Violations and Order of Appearance dated January 18, 2013, Respondent appeared (pro se) on January 25, 2013 to answer the allegations of failure to timely file the October 10th and December 10th Report of Receipts and Expenditures. Latia Gaskins, Clerical Assistant, appeared on behalf of Campaign Finance. Ms. Gaskins testified that Respondent failed to timely file the October 10th Report of Receipts and Expenditures due Wednesday, October 10, 2012 and the December 10th Report of Receipts and Expenditures due Monday December 10, 2012. Henry Tucker, Auditor with Campaign Finance also appeared at the scheduled hearing as an observer and did not testify in this matter.

Respondent testified that the candidate was unsuccessful in the primary election of March 2012. As a result, the committee dissolved, the campaign office closed, and Respondent filed the final financial report on June 10, 2012. Respondent contends that he had no further communication with the candidate or committee members after June 2012. The hearing examiner explained to Respondent that OCF relied on the contact information and address provided on the Statement of Organization, which listed Respondent's address. Respondent explained that address provided on the statement of organization was not his residential address: it was the business address of the campaign committee. Therefore, Respondent contends that he was unaware of the delinquent reports and did not receive any letters or notices to the same. Respondent asserts that he first became aware of the matter via candidate William Bennett, days before the scheduled hearing.

The hearing examiner explained to Respondent that he mistakenly believed that the committee had properly dissolved when he filed the June 10th R&E report. Accordingly, Respondent had a continued duty to satisfy the filing obligations for the committee when required. Respondent apologized for the untimely filings and pleaded for a suspension of any fine because the committee does not have any finances. Respondent reiterated that the committee dissolved after the primary election in March 2012, closed the campaign account and shut down the campaign office. The hearing examiner advised Respondent that he could correct the current noncompliance by filing each delinquent report, as well as, a termination report and a statement of withdrawal of treasurer position form immediately after the hearing. Respondent filed the required report and additional forms on January 25, 2013.

The committee has a history of filing delinquencies. However, in this matter Respondent provided a credible explanation for the untimely filings and reasonably believed that the committee had officially dissolved in March/June of 2012. Therefore, the hearing examiner recommends a reduced fine for each violation.

Findings of Fact

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

1. Respondent is the treasurer of Bennett for Ward 7 campaign committee.
2. At all times pertinent, Respondent was required to file the August 10th, October 10th, and December 10th reports on August 10, 2012, October 10, 2012 and December 10, 2012, respectively.
3. Respondent failed to file the required reports when due.
4. In compliance with a Notice of Hearing, Statement of Violations and Order of Appearance, dated January 14, 2013, Respondent appeared at the scheduled hearing on January 25, 2013 to answer to the August 10th, October 10th and December 10th reporting noncompliance.
5. Respondent provided credible testimony for the untimely filings in that Respondent did not receive the delinquent filing notices because they were mailed to the campaign office and not to Respondent's residential address. Furthermore, Respondent presumed that the committee had been properly dissolved, closed its campaign office, and filed its final report in June 2012.
6. Respondent took action to correct the noncompliance and filed each delinquent report and a Termination report on January 25, 2013.
7. Currently, the committee complies with the statute; however the committee has a history of filing delinquencies.

Conclusions of Law

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

1. Respondent violated D.C. Official Code §1-1163.09(b) and may be assessed a civil penalty.
2. The Director may ministerially impose fines upon the Respondent for each separate occurrence of a violation. Each occurrence shall constitute a separate violation and assessed a separate fine for each day of noncompliance, pursuant to 3 DCMR 3711.1.
3. The civil penalty attached to the violation for failure to file a Report of Receipts and Expenditures is \$50 per day for each business day subsequent to the due date, pursuant to 3 DCMR §§ 3709.2 (k), 3711.2 (u) and 3711.4.
4. The aggregate of penalties imposed under the Director's authority cited under 3 DCMR §3711.2 may not exceed two thousand dollars (\$2,000) for each violation, pursuant to D.C. Official Code §§1-1163.3.
5. The Director may modify, rescind, dismiss or suspend any fine imposed, pursuant to 3 DCMR §3711.6, for good cause shown.
6. Respondent was required to file the August 10th, October 10th and December 10th reports due August 10, 2012, October 10, 2012 and December 10, 2012; respectively.
7. Respondent filed each required report and a Termination report on January 25, 2013.
8. Currently, the committee complies with the statute; however the committee has a history of filing delinquencies.

Recommendation

In view of the foregoing and information included in the record for the matter of Docket No. 12C-081 for failure to timely file the August 10th R&E report, I HEREBY RECOMMEND that the Director impose a fine of One Hundred Fifty Dollars (\$150) in this matter;

IN THE MATTER OF: Bennett for Ward 7
Page 5

In the matter of Docket No. 12C-100 for failure to timely file the October 10th R&E report, I HEREBY RECOMMEND that the Director impose a fine of Fifty Dollars (\$50) in this matter; and

In the matter of Docket No. 12C-135 for failure to timely file the December 10th R&E report, I HEREBY RECOMMEND that the Director impose a fine of One Hundred Fifty Dollars (\$150) in this matter.

Date

Kalvanetta K. Peete
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 in the matter of docket 12C-081, a fine of \$150 dollars shall be imposed in this matter;

ALSO ORDERED that in the matter of docket 12C-100 a fine of \$50 dollars shall be Imposed in this matter;

AND ORDERED that in the matter of docket 12C-135 a fine of \$150 dollars shall be imposed in this matter.

Date

Cecily E. Collier-Montgomery
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order has been served upon treasurer DAVID OKHUMALE this _____ day of April 2013 by regular and/or certified mail.

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 date of issuance 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/or 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 issued Order of the Director. Make payment by check or money order, payable to: *District of Columbia Treasurer*. Send payment to the *Office of Campaign Finance, Frank D. Reeves Municipal Building, 2000 14th Street NW, Suite 433, Washington, DC 20009*.