

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

**The D.C. Office of,
Campaign Finance**

Petitioner,

v.

**Toliver for Ward 4,
Dwayne Toliver,
Treasurer**

Respondent.

**Administrative Hearing
Docket No. 19-020**

MEMORANDUM OPINION AND ORDER

This matter came before the Board on Wednesday, December 14, 2018 pursuant to the submission of a Petition by the Office of Campaign Finance (hereinafter “OCF”) for Enforcement of its January 29, 2018 Order (“Order”) imposing a fine of \$2,650.00 dollars against Dwayne Toliver, Toliver for Ward 4, Campaign Committee. The fine was imposed for failure to timely file July 31st Report of Receipts and Expenditures in accordance with D.C. Official Code § 1-1163.09(b), which was due on August 16, 2017.

Pursuant to D.C. Official Code § 1-1163.09(a)(1) and (b), each treasurer of a political committee that supports a candidate “shall file with the Director of Campaign Finance...reports of receipts and expenditures on forms to be prescribed or approved by the Director of Campaign Finance.” Such reports “shall be filed on the 10th day of March, June, August, October, and December in the 7 months preceding the date on which, and in each year during which, an election is held for the office sought, and on the 8th day next preceding the date on which the election is held, and also by the 31st day of January of each year.” During non-election years, such reports “shall be filed on the 31st day of July[.]” At all times pertinent

hereto, Respondent was required to file the July 31st Report of Receipts and Expenditures by the required due date. Respondent failed to timely file the July 31st Report of Receipts and Expenditures by August 16, 2017.

Pursuant to 3 DCMR §§3709.3 and 3709.4, OCF issued to the Respondent a Notice of Hearing, Statement of Violations, and Order of Appearance (“Notice of Hearing”) dated September 22, 2017, ordering him to appear at an informal hearing on October 11, 2017, and show cause why he should not be found in violation of the D.C. Campaign Finance Act of 2011, as amended by D.C. Official Code § 1-1163.01 *et seq.*, and fined accordingly. Pursuant to 3 DCMR § 3709.4(f), the Notice of Hearing was served by regular mail. The Respondent did not appear at the hearing.

Pursuant to 3 DCMR § 3709.8, OCF rescheduled the informal hearing for November 1, 2017, and issued to the Respondent an amended Notice of Hearing to reflect the rescheduled hearing date. Pursuant to 3 DCMR § 3709.8(c), the amended Notice of Hearing was served by regular mail and certified mail on October 17, 2017. The amended Notice of Hearing served by regular mail and certified mail were not returned to OCF. The Respondent failed to appear at the second hearing.

The penalty established by 3 DCMR §§ 3711.1(b) and 3711.2(f) for failure to file the July 31st Report of Receipts and Expenditures, required by D.C. Official Code § 1-1163.09(b), is a fine of \$50 per day for each business day subsequent to the due date. In accordance with D.C. Official Code § 1-1163.35(a)(3) and 3 DCMR § 3711.4, Respondent may be fined a maximum of \$4,000 for failing to timely file a Report of Receipts and Expenditures. Under 3 DCMR § 3711.7, for good cause shown, the Director of Campaign Finance may modify, rescind, dismiss, or suspend any fine. On the basis of the record and the recommendation of the Hearing Officer, the Director issued the Order imposing a fine of \$2,650.00 dollars for failure to timely file the July 31st Report of Receipts and Expenditures, in accordance with D.C. Official Code § 1-1163.09(b) on January 29, 2017. The fine of \$2,650.00 became effective on February 14, 2016 the 16th business day following the issuance of the Order of the Director, pursuant to 3 DCMR §§

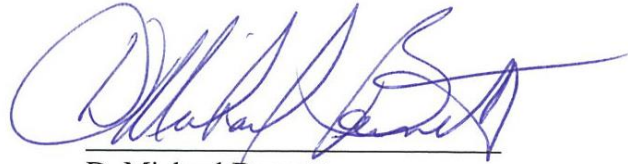
3711.5 and 3711.6; and in absence of a request for review of the penalty by Respondent to the Board of Elections, in accordance with 3 DCMR § 3709.11. The deadline for payment of the fine imposed was February 14, 2018 pursuant to 3 DCMR §§ 3711.5 and 3711.8, within 10 business days of the effective date of the issuance of the Order of the Director. To date, the Respondent has failed to pay the fine imposed by the Order.

On June 25, 2018, OCF transmitted a Petition for Enforcement of its Order to the Office of the General Counsel for the Board. The General Counsel held a pre-hearing conference in the matter on October 10, 2018. Despite being served by regular mail and electronic mail on September 25, 2018 respectively, the Respondent failed to appear. The Board held a hearing in the matter on Wednesday, December 14, 2018. Despite being served with notice of this hearing by regular mail and electronic mail on December 4, 2018, the Respondent again failed to appear.

D.C. Code § 1-1163.35(a)(4) provides that “[i]f the person against whom a civil penalty is assessed fails to pay the penalty, the Elections Board shall file a petition for enforcement of its order assessing the penalty in the Superior Court of the District of Columbia.” OCF has shown that the fine of \$2,650.00 imposed against the Respondent was wholly justified. Despite numerous attempts on the part of the Office of the General Counsel to meet with the Respondent and arrange to settle the matter, the Respondent has not demonstrated a willingness to do so.

Accordingly, it is this 18th day of January, 2019,

ORDERED that the Order of the Director of the Office of Campaign Finance be enforced and that a Petition for the Enforcement of Order be filed with the Superior Court.

A handwritten signature in blue ink, appearing to read "D. Michael Bennett", written over a horizontal line.

D. Michael Bennett
Chairman,
Board of Elections