

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

Office of Campaign Finance

Petitioner,

v.

Citizens for Jeff Smith,

Respondent.

Case No. 2011-004 (PET)

Admin. Order No. 11-010

MEMORANDUM OPINION AND ORDER

This matter came before the Board on Wednesday, August 3, 2011 at 10:30 a.m. pursuant to the submission of a Petition by the Office of Campaign Finance for Enforcement (“Petition”) of an amended order filed May 25, 2011 (“revised Order”) imposing a fine of \$2,650 against Citizens for Jeff Smith (“Respondent”).¹ The fine was imposed as a result of Respondent Committee’s failure to timely file the October 10, 2010 and December 10, 2010 Reports of Receipts and Expenditures due on or before October 12, 2010 and December 20, 2010 respectively, as required by D.C. Official Code § 1-1102.06.

D.C. Official Code § 1-1102.06 (a) states, in relevant part, that the treasurer of each political committee supporting a candidate shall file reports of receipts and expenditures on the 10th day of March, June, August, October and December in each year during which there is held an election for the office the candidate seeks. To date, Respondent Committee has not filed a

¹ The May 25, 2011 Order amends a previous order from which OCF seeks enforcement in the amount of \$3400. The revised order adjusts the amount of the fine to correct a clerical error. OCF clarified at a June 22, 2011 prehearing conference that it seeks to enforce the fine from the revised Order in the amount of \$2650.

December 10, 2010 Report of Receipts and Expenditures. Jeff Smith, on behalf of Respondent Committee, appeared at a hearing before the Office of Campaign Finance on January 24, 2011 and promised to have any outstanding reports filed on or before February 28, 2011. Mr. Smith did not file the outstanding Report of Receipts and Expenditures by the agreed upon date and the Respondent Committee was fined accordingly, at a rate of \$50.00 per day for each business day following the due date. (3 DCMR §§ 3711.2 (f) and 3711.4). On March 1, 2011, an order was issued imposing a fine of \$3,400.00 against Respondent Committee, Citizens for Jeff Smith. The order became effective March 17, 2011² and payment was due not later than March 31, 2011.³ Respondent failed to pay the fine imposed by the March 1, 2011 Order. Subsequently, it was discovered that the fine imposed by the March 1, 2011 Order overstated the amount of penalty by \$750.00. The revised Order seeking a fine in the amount of \$2650.00 was issued on May 25, 2011.

The Office of Campaign Finance filed the Petition with the Board seeking enforcement of the revised Order on June 10, 2011.⁴ A prehearing conference was held on this matter on June 22, 2011. Despite receiving notice by hand-delivered letter on June 15, 2011, Respondent Committee failed to appear at this proceeding.⁵ At the prehearing conference, it was determined that the revised Order of May 25, 2011 became effective June 17, 2011 with the exhaustion of

² 3 DCMR §3711.5 provides that “[a]ny fine imposed by the Director under §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 under §3709.12.”

³ 3DCMR §3711.7 provides that “[f]ines imposed under [Chapter 37, “Investigations and Hearings”] shall be paid within ten (10) days of the effective date.”

⁴ 3 DCMR §3711.8 provides that the Director of Campaign Finance may petition for enforcement of its order within sixty (60) days of the expiration of the period provided for payment of the fine, under §3711.7, before the Board in an adversary proceeding and open hearing.

⁵ All notices of prehearings and hearings were hand-delivered to the former candidate, Jeff Smith, on behalf of the Respondent Committee. Although the duty of filing reports of receipts and expenditures is the responsibility of the treasurer of each political committee, it was the former candidate, Jeff Smith, who had appeared at the OCF hearing on January 24, 2011 concerning this matter. See Petition at ¶¶ 2, 6. At the January 24, 2011 hearing, Mr. Smith indicated that the treasurer, Brian Wright, could not be located. Petition at ¶ 6.

the payment period occurring on July 1, 2011. Thus, at the time of the June 22, 2011 prehearing conference, Respondent Committee was not yet in violation of the revised Order.

By hand-delivered letter dated June 28, 2011, the Office of the General Counsel informed Respondent Committee of its ability to comply with the revised Order, but that no further action would result in the Petition being treated as refilled on July 5, 2011, and in such instance, a second prehearing would be held on July 20, 2011. .

A second prehearing conference was held on July 20, 2011. Despite receiving notice of the conference by hand-delivered letter on June 28, 2011, Respondent Committee did not appear at the second prehearing conference. A hearing in this matter was then held before the Board on August 3, 2011 at 10:30 a.m. Despite being served with notice of this hearing on July 25, 2011, the Respondent Committee again failed to appear. ⁶

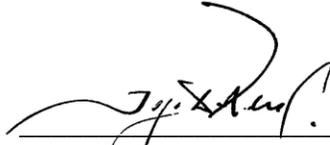
D.C. Code §1-1103.05(b)(4) provides that “[i]f the person against whom a civil penalty is assessed fails to pay the penalty, the Board shall file a petition for the enforcement of its order assessing the penalty in the Superior Court of the District of Columbia.” OCF has shown that the fine of \$2650.00 imposed against the Respondent Committee was justified. Despite attempts on the part of the Office of the General Counsel to meet with Respondent Committee and make arrangements to settle the matter, Respondent Committee has not demonstrated a willingness to do so.

Accordingly, it is on this 3rd day of August, 2011

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 in Superior Court.

⁶ 3 DCMR §418.1(b) provides that if the respondent fails to appear and that default appears deliberate, the Chairperson may proceed with the hearing, obtain the testimony of those present and, on the basis of the testimony and record, issue a decision on the matter.

August 3, 2011



Togo D. West, Jr.,
Chairman, Board of Elections & Ethics

Charles R. Lowery, Jr.
Member, Board of Elections & Ethics