

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ELECTIONS COMMISSION,)
)
 Petitioner,)
)
vs.) Case No. 08-3373
)
KENTWARD C. FORBES,)
)
 Respondent.)

)

FINAL ORDER

This case is before Administrative Law Judge June C. McKinney, who was assigned to preside in the matter. As demonstrated below, a formal hearing to contest the factual allegations has been waived, and the matter is ready for final disposition.

APPEARANCES

For Petitioner: Charles A. Finkel, Esquire
Eric M. Lipman, Esquire
Florida Elections Commission
107 West Gaines Street, Suite 224
Tallahassee, Florida 32399-1050

For Respondent: No Appearance

STATEMENT OF THE ISSUE

Whether Petitioner's Motion for Summary Final Order should be granted.

PRELIMINARY STATEMENT

On July 14, 2008, Petitioner, Florida Elections Commission (Petitioner or Commission) forwarded this case to the Division of Administrative Hearings for formal proceedings. Along with the referral the Commission filed its Order of Probable Cause together with the Staff Recommendation. An Initial Order was entered on July 14, 2008, and was provided to the Respondent, Kentward C. Forbes (Respondent). The Initial Order was returned as undeliverable. Respondent's address of record was corrected to 25121 Southwest 120th Place and the Notice of Hearing and Order of Pre-Hearing Instructions were sent to Respondent at the corrected address of record on August 7, 2008. Neither were returned undeliverable.

On July 18, 2008, Petitioner filed a Motion for Summary Final Order. Respondent did not file a timely response to the motion. Consequently, on September 25, 2008, the undersigned entered an Order to Show Cause that directed Respondent to file a response to the allegations. More specifically, the Order to Show Cause provided:

1. The ruling on Petitioner's Motion for Summary Final Order is reserved.

2. No later than October 8, 2008, Respondent shall file, with the Division of Administrative Hearings, a written answer or other pleading setting forth the disputed issues of **fact** with reference to the factual allegations of the two counts of the Order

of Probable Cause dated May 30, 2008, and/or the factors in Section 106.265(1), Florida Statutes, which include, but are not limited to, mitigation issues. Respondent's answer or other pleading shall simultaneously be served upon Petitioner's counsel of record.

3. The failure to file a response to this order will be deemed an admission of the information set forth in the Order of Probable Cause and will result in the Motion for Summary Final Order being granted. If the motion is granted, the Respondent can be found guilty of the two violations charged in the Order of Probable Cause and a civil penalty up to an amount of \$2,000 can be imposed.

The Order to Show Cause was provided to Respondent's correct address of record. The Order was not returned undeliverable. It is presumed Respondent received a copy of the Order. To date, Respondent has not responded to the Order to Show Cause.

Respondent has not disputed any of the material facts at issue in this proceeding. Notice of the allegations was provided to Respondent. Respondent did not request an administrative hearing to challenge disputed issues of material fact. Respondent has not alleged any mitigating circumstance to warrant consideration of additional information within an administrative hearing.

Section 106.25, Florida Statutes (2008), authorizes an administrative law judge to enter a final order in this proceeding. The statute provides:

(5) Unless a person alleged by the Elections Commission to have committed a violation of this chapter or chapter 104 elects, within 30 days after the date of the filing of the commission's allegations, to have a formal or informal hearing conducted before the commission, or elects to resolve the complaint by consent order, such person shall be entitled to a formal administrative hearing conducted by an administrative law judge in the Division of Administrative Hearings. The administrative law judge in such proceedings shall enter a final order subject to appeal as provided in s. 120.68.

Accordingly, it is

ORDERED:

1. Petitioner's Motion for Summary Final Order is granted.
2. The hearing scheduled for October 22, 2008, is canceled.

DONE AND ORDERED this 20th day of October, 2008, in Tallahassee, Leon County, Florida.



JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of October, 2008.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.