

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ELECTIONS COMMISSION,)
)
 Petitioner,)
)
vs.) Case No. 09-2806
)
BRIAN PITTS, TREASURER FOR)
JUSTICE-2-JESUS,)
)
 Respondent.)

)

FINAL ORDER

Pursuant to notice, this cause came on for formal proceeding before Lawrence P. Stevenson, a duly-designated Administrative Law Judge, via video teleconference from sites in St. Petersburg and Tallahassee, Florida, on August 13, 2009.

APPEARANCES

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

For Respondent: Brian Pitts, pro se
Justice-2-Jesus
1119 Newton Avenue
St. Petersburg, Florida 33705

STATEMENT OF THE ISSUE

At issue in this proceeding is whether the Respondent, Brian Pitts, treasurer for Justice-2-Jesus, a political

committee, willfully violated Section 106.07(1), Florida Statutes, by failing to file a Campaign Treasurer's Report for the first quarter of 2008 (referred to herein as the 2008 Q1 CTR).

PRELIMINARY STATEMENT

In an Order of Probable Cause dated March 18, 2009, the Florida Elections Commission (the Commission) determined there was probable cause to believe that Respondent violated Section 106.07(1), Florida Statutes,^{1/} by failing to file the 2008 Q1 CTR for Justice-2-Jesus, a political committee for which Respondent served as treasurer. Because Respondent did not timely request a formal or informal hearing before the Commission or elect to resolve the complaint by consent order, the Commission forwarded the case to the Division of Administrative Hearings (DOAH) pursuant to Section 106.25(5), Florida Statutes, on May 20, 2009.

In an order dated July 30, 2008, the facts set forth in paragraphs 7a through 7f of the Commission's motion to establish facts were deemed admitted for purposes of the final hearing. Counsel for the Commission read those facts into the record at the final hearing.

At the final hearing, the Commission presented the testimony of Christie Reed Bronson, Chief of the Bureau of Election Records in the Department of State, Division of

Elections. By stipulation, the Commission entered into evidence the deposition testimony of Erin NeSmith, a senior management analyst in the Bureau of Election Records. The Commission's Exhibits 1 through 10 were admitted into evidence without objection. Respondent testified on his own behalf and offered no exhibits into evidence.

The one-volume Transcript of the final hearing was filed at DOAH on August 26, 2009. The Commission timely filed a Proposed Final Order on September 8, 2009. Respondent did not file a proposed final order.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, and the entire record in this proceeding, the following findings of fact are made:

1. Respondent is the treasurer for Justice-2-Jesus, a political committee that registered with the Division of Elections (Division) on December 12, 2007.

2. Justice-2-Jesus registered by filing an "Appointment of Campaign Treasurer and Designation of Campaign Depository for Political Committees and Electioneering Communication Organizations" form, or Form DS-DE-6. Justice-2-Jesus designated Respondent, Brian Pitts, as its treasurer. Respondent signed the document, giving as his address 1119 Newton Avenue South, St. Petersburg, Florida.

3. Also on December 12, 2007, Justice-2-Jesus filed a "Registered Agent Statement of Appointment," Form DS-DE 41, naming Calvester Benjamin-Anderson as its registered agent. Respondent signed the document and gave 1119 Newton Avenue South, St. Petersburg, Florida as the address of the registered agent.

4. The Division sent a letter, dated December 14, 2007, to Respondent acknowledging receipt of the Form DS-DE-6 and providing information about the Division's electronic filing system for CTRs. The letter informed Respondent that all political committees that file reports with the Division are required to do so by means of the electronic filing system.

5. The Division's letter concluded with the following paragraph, set out in bold type:

All of the Division's publications and reporting forms are available on the Division of Elections' web site at <http://election.dos.state.fl.us>. It is your responsibility to read, understand, and follow the requirements of Florida's election laws. Therefore, please print a copy of the following documents: Chapter 106, Florida Statutes, 2006 Committee and Campaign Treasurer Handbook, 2007-2008 Calendar of Reporting Dates, and Rule 1S-2.017, Florida Administrative Code.

6. The Division's letter also enclosed a sealed envelope containing PIN numbers to allow Respondent secure access to the

Division's electronic filing system in order to submit CTRs for Justice-2-Jesus.

7. A CTR lists all contributions received and expenditures made during a given reporting period. The 2008 Q1 CTR is the report that a campaign treasurer should have filed on behalf of his committee at the close of the first quarter of 2008. Respondent's 2008 Q1 CTR was due to be filed on or before April 10, 2008.

8. Candidates and political committees have been required to file their CTRs electronically since 2004. § 106.0705(2), Fla. Stat. The CTR data may be uploaded using any of several proprietary programs that have been approved by the Division. These programs carry a fee for their use. As an alternative, the treasurer may enter the CTR information directly into the Division's electronic filing system at no cost.

9. The Division has published an online "Electronic Filing System (EFS) User's Guide" (the Guide) to explain the use of the electronic filing system. The Guide contains help menus to assist the user in completing the data entry for a CTR. The Guide is available in a PDF format that can be read online or downloaded to the user's computer at no cost.

10. A user may also make a public records request to the Division for a hard copy of the Guide. The Division will

provide the hard copy at a cost of \$0.20 per double-sided page, or approximately \$4.80 for the 47-page Guide.

11. On or about April 11, 2008, the Division sent Respondent a letter informing him that it had not received the 2008 Q1 CTR for Justice-2-Jesus, which had been due on April 10, 2008.

12. On or about April 25, 2008, the Division sent Respondent a second letter informing him that it had not received the 2008 Q1 CTR for Justice-2-Jesus.

13. Both letters were sent to 1119 Newton Avenue South, St. Petersburg, Florida, the address provided by Respondent on the Form DS-DE-6 for Justice-2-Jesus. Neither letter was returned to the Division as undeliverable or unclaimed. At the hearing, Respondent did not deny receiving these letters in April 2008.

14. On or about July 10, 2008, the Division sent to Calvester Benjamin-Anderson, the registered agent for Justice-2-Jesus, a final notice that Respondent had failed to file the 2008 Q1 CTR for Justice-2-Jesus. The letter was sent certified mail, return receipt requested. Ms. Benjamin-Anderson signed for the letter on or about July 14, 2008.

15. Respondent testified that he attempted to hand-deliver a paper copy of the 2008 Q1 CTR to the Division, but that a

Division employee told him that he was required to file all reports for his committee electronically.

16. The Division's records indicate that Respondent had filed Justice-2-Jesus' 2007 Q4 CTR and its 2007 SR2 report^{2/} electronically, prior to the due date for the 2008 Q1 CTR.

17. Erin NeSmith, a supervisor in the Bureau of Election Records, testified that Respondent came into the Division's offices on November 20, 2008. Respondent asked Ms. NeSmith questions about the 2008 Q1 CTR. She told him that the matter had already been referred to the Commission because Respondent had not filed the report despite repeated notices, but that Respondent still needed to file the 2008 Q1 CTR. Respondent explained to Ms. NeSmith that he had not filed the report because he had been busy and had a lot of items to pull together for the report.

18. As of August 10, 2009, Respondent had yet to file the 2008 Q1 CTR for Justice-2-Jesus.

19. At the hearing, Respondent testified that he had at least 50 contributions and 80 to 100 expenditures to report for the first quarter of 2008.

20. Respondent testified that the due date for the 2008 Q1 CTR fell during the legislative session, when Respondent was extremely busy at the Florida Capitol. The Division's offices are open only during normal business hours, when Respondent was

unavailable, and thus Respondent was unable to phone the Division for assistance in preparing the reports.

21. Respondent defended his subsequent failure to file the report as something in the nature of a protest against the Division's electronic filing requirement and its alleged refusal to provide him with a paper copy of the Guide to facilitate his preparation of the report.

22. Respondent complained that the vendors who provide Division-approved data uploading programs charge prohibitively expensive fees. He further complained that the alternative means of filing, direct entry of the data onto the Division's electronic filing system, is difficult and confusing without a paper copy of the Guide for assistance.

23. Respondent acknowledged the availability of the Guide in printable PDF format, but asserted that purchasing printer cartridges and paper sufficient to print the Guide and other necessary Division handbooks would cost between \$80.00 and \$120.00. Respondent did not acknowledge the Division's willingness to print the Guide for \$0.20 per double-sided page pursuant to a public records request.

24. Respondent testified that he has assisted several other persons in preparing and filing their electronic reports to the Division. On behalf of Justice-2-Jesus, Respondent has

electronically filed several reports to the Division subsequent to the due date for 2008 Q1 CTR.

25. Willfulness is a question of fact. § 106.25(3), Fla. Stat. See Beardslee v. Fla. Elections Comm'n, 962 So. 2d 390, 393 (Fla. 5th DCA 2007); McGann v. Fla. Elections Comm'n, 803 So. 2d 763, 764 (Fla. 1st DCA 2001).

26. Florida Administrative Code Rule 2B-1.002 provides:

For purposes of imposing a civil penalty for violating Chapter 104 or 106, F.S, the following definitions shall apply:

(1) A person acts "willful" or "willfully" when he or she knew that, or showed reckless disregard for whether his or her conduct was prohibited or required by Chapter 104 or 106, F.S.

(2) "Knew" means that the person was aware of a provision of Chapter 104 or 106, F.S., understood the meaning of the provision, and then performed an act prohibited by the provision or failed to perform an act required by the provision.

(3) "Reckless disregard" means that the person disregarded the requirements of Chapter 104 or 106, F.S., or was plainly indifferent to its requirements, by failing to make any reasonable effort to determine whether his or her acts were prohibited by Chapter 104 or 106, F.S., or whether he or she failed to perform an act required by Chapter 104 or 106, F.S.

27. The evidence established that Respondent was well aware of the requirement to file the 2008 Q1 CTR on behalf of Justice-2-Jesus. Shortly after Respondent filed the committee's

initial paperwork, the Division sent him an acknowledgement letter directing him to the Division's website for information about the electronic filing of campaign treasurer's reports. Respondent could have downloaded the Guide or any other Division publication.

28. At the hearing, Respondent claimed no lack of knowledge of the filing requirements. After he failed to file the 2008 Q1 CTR, Respondent received two letters from the Division notifying him of the failure. Despite these notices, Respondent never filed the report.

29. The evidence established that Respondent electronically filed two reports with the Division prior to the due date of the 2008 Q1 CTR, and filed several electronic reports after the due date of the 2008 Q1 CTR. These facts demonstrate Respondent's knowledge of the filing requirements and ability to prepare an electronic report.

30. Respondent has acted willfully in his failure to file the 2008 Q1 CTR for Justice-2-Jesus.

31. At the hearing, Respondent asserted that Justice-2-Jesus was indigent, but offered no financial data to support the assertion.

CONCLUSIONS OF LAW

32. DOAH has jurisdiction of the subject matter of and the parties to this proceeding. § 106.25(5), Fla. Stat.

33. The Commission has the burden to prove the violations alleged in the Order of Probable Cause by clear and convincing evidence. Diaz de la Portilla v. Fla. Elections Comm'n, 857 So. 2d 913, 917 (Fla. 3d DCA 2003).

34. In Evans Packing Co. v. Department of Agriculture and Consumer Services, 550 So. 2d 112, 116, n. 5 (Fla. 1st DCA 1989), the court defined clear and convincing evidence as follows:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the evidence must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief of conviction, without hesitancy, as to the truth of the allegations sought to be established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

35. Judge Sharp, in her dissenting opinion in Walker v. Florida Department of Business and Professional Regulation, 705 So. 2d 652, 655 (Fla. 5th DCA 1998)(Sharp, J., dissenting), reviewed recent pronouncements on clear and convincing evidence:

Clear and convincing evidence requires more proof than preponderance of evidence, but less than beyond a reasonable doubt. In re Inquiry Concerning a Judge re Graziano, 696 So. 2d 744 (Fla. 1997). It is an intermediate level of proof that entails both qualitative and quantitative [sic] elements. In re Adoption of Baby E.A.W., 658 So. 2d 961, 967 (Fla. 1995), cert.

denied, 516 U.S. 1051, 116 S. Ct. 719, 133 L.Ed.2d 672 (1996). The sum total of evidence must be sufficient to convince the trier of fact without any hesitancy. Id. It must produce in the mind of the fact finder a firm belief or conviction as to the truth of the allegations sought to be established. Inquiry Concerning Davey, 645 So. 2d 398, 404 (Fla. 1994).

36. The Commission must prove not only that Respondent violated a provision of the campaign finance laws but that the act or omission constituting the violation was "willful." § 106.25(3), Fla. Stat.

37. Section 106.07(1), Florida Statutes, provides as follows, in relevant part:

Each campaign treasurer designated by a candidate or political committee pursuant to s.106.021 shall file regular reports of all contributions received, and all expenditures made, by or on behalf of such candidate or political committee.

38. Justice-2-Jesus was a political committee. As the campaign treasurer for Justice-2-Jesus, Respondent had the legal obligation to file the campaign treasurer's reports required by Section 106.07(1), Florida Statutes.

39. Section 106.0705(2)(b), Florida Statutes, provides as follows:

Each political committee, committee of continuous existence, electioneering communications organization, or state executive committee that is required to file reports with the division under s. 106.04, s. 106.07, s. 106.0703, or s. 106.29, as

applicable, must file such reports with the division by means of the division's electronic filing system.

40. Respondent was required to file the 2008 Q1 CTR by means of the Division's electronic filing system.

Notwithstanding his attempt to file a paper report, Respondent knew and understood the electronic filing requirement.

41. Respondent knew and understood when and how he was required by law to file the 2008 Q1 CTR on behalf of Justice-2-Jesus. Respondent failed to file the report despite numerous notices from the Division.

42. The Commission has met its burden in this case. It has proven by clear and convincing evidence that Respondent willfully violated Section 106.07(1), Florida Statutes, by failing to file Justice-2-Jesus' 2008 Q1 CTR.

43. Section 106.265, Florida Statutes, prescribes civil penalties for violations of the campaign finance laws, and provides as follows, in relevant part:

(1) The Commission is authorized upon the finding of a violation of this chapter or chapter 104 to impose civil penalties in the form of fines not to exceed \$1,000 per count. In determining the amount of such civil penalties, the Commission shall consider, among other mitigating and aggravating circumstances:

(a) The gravity of the act or omission;

(b) Any previous history of similar acts or omissions;

(c) The appropriateness of such penalty to the financial resources of the person, political committee, committee of continuous existence, or political party; and

(d) Whether the person, political committee, committee of continuous existence, or political party has shown good faith in attempting to comply with the provisions of this chapter or chapter 104.

44. Full disclosure to the public of "who gave it, who got it" has long been understood as the spirit of Chapter 106, Florida Statutes. See, e.g., Division of Elections Advisory Opinions DE 89-02 (April 5, 1989) and DE 77-10 (March 22, 1977). Reporting campaign contributions is one of the most basic requirements of the election laws. Therefore, the knowing and willful failure to file a required campaign treasurer's report constitutes a serious violation.

45. Respondent has no previous history of violating Chapter 106, Florida Statutes.

46. Respondent has claimed that Justice-2-Jesus is indigent, but presented no evidence to demonstrate the committee's financial situation. If Respondent wishes his financial situation to be taken into account in mitigation, he must produce evidence of his financial resources. Diaz de la Portilla, 857 So. 2d at 925.

47. Respondent failed to show good faith in attempting to comply with the requirement to file Justice-2-Jesus' 2008 Q1

CTR. Respondent received three letters reminding him of his obligation. He spoke to Ms. NeSmith at the Division, who reminded him of his continuing obligation to file the report. Respondent has filed other reports for Justice-2-Jesus and has assisted other committees in preparing their electronic reports. Yet Respondent failed to file the required report that was the subject of this proceeding.

CONCLUSION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is, therefore,

ORDERED that:

1. Respondent is guilty of willfully violating Section 106.07(1), Florida Statutes, as alleged in the Order of Probable Cause.

2. Respondent is assessed an administrative fine of \$1,000.00, which must be paid to the Florida Elections Commission within 30 days of the date of this Final Order.

DONE AND ORDERED this 7th day of October, 2009, in
Tallahassee, Leon County, Florida.

Lawrence P. Stevenson

LAWRENCE P. STEVENSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of October, 2009.

ENDNOTES

^{1/} All references to the Florida Statutes are to the 2008
edition, unless noted otherwise.

^{2/} "SR2" was not explained at the hearing. The Division's on-
line reference sources provide no ready explanation for much of
the jargon employed in campaign reporting. A glossary of terms
would be helpful.

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.