

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ELECTIONS COMMISSION,)
)
 Petitioner,)
)
vs.) Case No. 09-5612
)
ETHEL FRESEN, TREASURER FOR)
ERIK FRESEN'S CAMPAIGN,)
)
 Respondent.)
_____)

SUMMARY FINAL ORDER

This order is entered pursuant to Section 120.57(1)(h),
Florida Statutes (2009).

APPEARANCES

For Petitioner: Eric M. Lipman, Esquire
Florida Elections Commission
Collins Building, Suite 224
Tallahassee, Florida 32399

For Respondent: No appearance

STATEMENT OF THE ISSUE

Whether the Respondent committed the violations alleged in
the Order of Probable Cause entered August 26, 2009, and, if so,
the penalty that should be imposed.

PRELIMINARY STATEMENT

In an Order of Probable Cause entered August 26, 2009, the
Florida Elections Commission ("Commission") charged Ethel
Fresen, Treasurer for Erik Fresen's Campaign, with three

violations of Section 106.07(2)(b).1, Florida Statutes (2007 and 2008).¹ Specifically, Ms. Fresen was charged with failing "to file with the candidate's filing officer an addendum to the candidate's incomplete campaign report due on" October 10, 2007, January 10, 2008, and April 10, 2008. Ms. Fresen did not request a hearing, nor did she choose to resolve this matter through a consent order. Accordingly, the Commission transmitted the matter to the Division of Administrative Hearings for assignment of an administrative law judge, pursuant to Section 106.25(5), Florida Statutes, which provides in pertinent part:

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.

On October 15, 2009, the Commission served on Ms. Fresen its First Request for Admissions. On November 20, 2009, the Commission filed Petitioner's Motion for Summary Final Order. In the motion, the Commission stated that Ms. Fresen had failed to respond timely to the request for admissions. It further

argued that, because the matters in the request for admissions were deemed admitted by operation of Florida Rule of Civil Procedure 1.370(a) and (b), there were no disputed issues of material fact to be resolved in an evidentiary hearing and that it was, therefore, entitled to entry of a summary final order pursuant to Section 120.57(1)(h), Florida Statutes (2009).

Ms. Fresen did not respond to the Petitioner's Motion for Summary Final Order. On December 9, 2009, an order was entered cancelling the final hearing scheduled for December 11, 2009, and an Order to Show Cause was entered on the same date. In the Order to Show Cause, Ms. Fresen was advised of the consequences of her failure to respond to the Commission's request for admission, and she was ordered to file a response to the Order to Show Cause and serve on the Commission responses to the Petitioner's First Request for Admissions on or before December 18, 2009. Ms. Fresen was also advised that, if she failed to respond to the Order to Show Cause and/or to serve responses to the request for admissions, a final order would be entered in the case without further notice or an opportunity for a hearing. On January 11, 2010, the Commission filed a Notice of Failure to Respond to Petitioner's Request for Admissions, in which it stated that Ms. Fresen had failed to respond to its request for admissions, as directed in the Order to Show Cause.

FINDINGS OF FACT

Because Ms. Fresen failed to respond to the Petitioner's First Request for Admissions, the matters of which admissions were requested are deemed conclusively established for purposes of this administrative proceeding. See Fla. R. Civ. P. 1.370. The Petitioner's First Request for Admissions is attached to this Final Order, and the matters of which admissions were requested are adopted herein as findings of fact.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2009).

2. In its Order of Probable Cause, the Commission seeks to impose penalties against Ms. Fresen in the form of an administrative fine. Therefore, it has the burden of proving by clear and convincing evidence that Ms. Fresen committed the violations alleged in the Administrative Complaint. Department of Banking & Finance, Division of Securities & Investor Protection v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

3. Section 106.07(1), Florida Statutes, provides in pertinent 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. Reports shall be filed on the 10th day following the end of each calendar quarter from the time the campaign treasurer is appointed, except that, if the 10th day following the end of a calendar quarter occurs on a Saturday, Sunday, or legal holiday, the report shall be filed on the next following day which is not a Saturday, Sunday, or legal holiday. Quarterly reports shall include all contributions received and expenditures made during the calendar quarter which have not otherwise been reported pursuant to this section.

4. Section 106.07(2)(b)1., Florida Statutes, provides as follows:

b)1. Any report which is deemed to be incomplete by the officer with whom the candidate qualifies shall be accepted on a conditional basis, and the campaign treasurer shall be notified by registered mail as to why the report is incomplete and be given 3 days from receipt of such notice to file an addendum to the report providing all information necessary to complete the report in compliance with this section. Failure to file a complete report after such notice constitutes a violation of this chapter.

5. Section 106.265, Florida Statutes, provides:

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.

6. Based on the findings of fact herein, the Commission has proven by clear and convincing evidence that Ms. Fresen committed three violations of Section 106.07(2)(b)1., Florida Statutes. In accordance with the penalty provision in Section 106.265(1), Florida Statutes, and in light of the lack of good faith shown by Ms. Fresen in complying with the statutory requirement for the filing of campaign finance reports, a penalty in the amount of \$3,000.00 appears to be justified.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Ethel Fresen shall pay an administrative fine in the amount of \$1,000.00 for each of the three violations of Section 106.07(2)(b)1., Florida Statutes, proven by the

Florida Elections Commission, for a total administrative fine of \$3,000.00.

DONE AND ORDERED this 12th day of January, 2010, in Tallahassee, Leon County, Florida.



PATRICIA M. HART
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of January, 2010.

ENDNOTE

^{1/} All references herein to the Florida Statutes are to the 2007 and 2008 editions unless otherwise indicated. These two statutory sections are identical to one another in all respects pertinent to this matter.

COPIES FURNISHED:

Eric M. Lipman, Esquire
Florida Elections Commission
Collins Building, Suite 224
Tallahassee, Florida 32399

Ethel Fresen
1500 Southwest 45 Avenue
Miami, Florida 33134-3712

Barbara M. Linthicum, Executive Director
Florida Elections Commission
The Collins Building, Suite 224
107 West Gaines Street
Tallahassee, Florida 32399-1050

Patsy Rushing, Clerk
Florida Elections Commission
The Collins Building, Suite 224
107 West Gaines Street
Tallahassee, Florida 32399-1050

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.