

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ELECTIONS COMMISSION,)
)
 Petitioner,)
)
vs.) Case No. 11-0239
)
ROBERT JAMES HORAN,)
)
 Respondent.)

)

SUMMARY FINAL ORDER

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

APPEARANCES

For Petitioner: Joshua B. Moye, Esquire
Florida Elections Commission
Collins Building, Suite 224
107 East Gaines Street, Suite 224
Tallahassee, Florida 32399

For Respondent: No appearance

STATEMENT OF THE ISSUE

Whether the Respondent committed the violation alleged in
the Order of Probable Cause entered November 18, 2010, and, if
so, the penalty that should be imposed.

PRELIMINARY STATEMENT

In an Order of Probable Cause entered November 18, 2010, the Florida Elections Commission ("Commission") charged Robert James Horan with one violation of section 106.07(1), Florida Statutes. Specifically, the Commission charged Mr. Horan with failing "to file timely with the filing officer his 2010 Q1 report listing all contributions received and all expenditures made, by or on behalf of his campaign." Mr. Horan did not request a hearing, nor did he 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), 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 January 14, 2011, the Commission served on Mr. Horan its First Request for Admissions. On February 21, 2011, the Commission filed Petitioner's Motion for Summary Final Order.

In the motion, the Commission stated that Mr. Horan 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.

Mr. Horan did not respond to the Petitioner's Motion for Summary Final Order within the time specified in Florida Administrative Code Rule 28-106.204(1) (responses to motions shall be filed within seven days of date of service of motion on non-moving party, with five days added if motion served by mail). On March 9, 2011, an Order to Show Cause was entered, in which Mr. Horan was advised of the consequences of his failure to respond to the Commission's requests for admission.

Mr. Horan was ordered to serve on the Commission responses to the Petitioner's First Request for Admissions on or before March 18, 2011, and to file a response to the Order to Show Cause, together with a statement verifying that he had served responses to the Petitioner's First Request for Admissions. Mr. Horan was also advised that, if he failed to respond to the Order to Show Cause, a final order would be entered in the case without further notice or an opportunity for a hearing.

Mr. Horan has failed, as of this date, to respond to the Order to Show Cause as directed.

FINDINGS OF FACT

Because Mr. Horan 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, 120.57(1), and 106.25(5), Florida Statutes (2010).

2. 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.

3. Section 106.265(1) provides that a penalty in an amount not to exceed \$1,000.00 per count may be imposed against a person found to have violated a provision of chapter 106 and that the determination of the amount of the penalty shall be based upon consideration of the following aggravating and mitigating factors:

- (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.

4. Because the penalty for a violation of chapter 106 includes imposition of an administrative fine, the Commission has the burden of proving by clear and convincing evidence that Mr. Horan committed the violation alleged in the Order of Probable Cause. Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932 (Fla.

1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

5. Based on the findings of fact herein, the Commission has proven by clear and convincing evidence that Mr. Horan failed to file his 2010 Q1 Campaign Treasurer's Report in violation of section 106.07(1). Because Mr. Horan's failure to file his 2010 Q1 Campaign Treasurer's Report was willful and because he presented no evidence regarding his financial resources, an administrative fine of \$1,000.00 is appropriate.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Robert James Horan shall pay an administrative fine in the amount of \$1,000.00 for one violation of Section 106.07(1), Florida Statutes. This fine shall be paid to the Florida Elections Commission pursuant to the provisions of section 106.265.

DONE AND ORDERED this 24th day of March, 2011, in
Tallahassee, Leon County, Florida.



PATRICIA M. HART
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of March, 2011.

ENDNOTE

^{1/} All references herein to the Florida Statutes are to the 2009 edition unless otherwise indicated.

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.