

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ELECTIONS COMMISSION,

Petitioner,

vs.

Case No. 15-5995FEC

JUSTICE-2-JESUS,

Respondent.

_____ /

SUMMARY FINAL ORDER

On September 15, 2015, an Order of Probable Cause was entered by Petitioner, Florida Elections Commission (Petitioner/Commission), charging Respondent, Justice-2-Jesus, a political committee (Respondent), with the following violations:

Count 1

On or about April 10, 2013, Respondent violated section 106.07(7), Florida Statutes, when Respondent failed to notify the Division of Elections in writing on or before April 10, 2013, that Respondent would not be filing his 2013 Q1 Report on the prescribed due date.

Count 2

On or about December 10, 2013, Respondent violated Section 106.07(7), Florida Statutes, when Respondent failed to notify the Division of Elections in writing on or before December 10, 2013, that Respondent would not be filing his 2013 M11 Report on the prescribed due date.

Count 3

On or about August 8, 2014, Respondent violated Section 106.07(7), Florida Statutes, when Respondent failed to notify the Division of Elections in writing on or before August 8, 2014, that Respondent would not be filing his 2014 P5 Report on the prescribed due date.

Count 4

On or about August 15, 2014, Respondent violated Section 106.07(7), Florida Statutes, when Respondent failed to notify the Division of Elections in writing on or before August 15, 2014, that Respondent would not be filing his 2014 P6 Report on the prescribed due date.

Count 5

On or about October 26, 2014, Respondent violated Section 106.07(7), Florida Statutes, when Respondent failed to notify the Division of Elections in writing on or before October 26, 2014, that Respondent would not be filing his 2014 D2 Report on the prescribed due date.

Count 6

On or about October 28, 2014, Respondent violated Section 106.07(7), Florida Statutes, when Respondent failed to notify the Division of Elections in writing on or before October 28, 2014, that Respondent would not be filing his 2014 D4 Report on the prescribed due date.

Count 7

On or about January 12, 2015, Respondent violated Section 106.07(7), Florida Statutes, when Respondent failed to notify the Division of Elections in writing on or before January 12, 2015, that Respondent would not be filing his 2014 M12 Report on the prescribed due date.

Respondent was served with a copy of the Order of Probable Cause, and on or about October 14, 2015, Respondent requested a formal administrative hearing before an ALJ of the Division of Administrative Hearings (DOAH).

This cause was set for final hearing on December 30, 2015. On December 14, 2015, Petitioner filed a Motion for Summary Final Order. The motion was served on Respondent via email and U.S. Mail. On December 17, 2015, Petitioner filed an Amended Motion for Summary Final Order, which was also served on Respondent via email and U.S. Mail. On December 28, 2015, Respondent filed Respondents [sic] Verified Opposition to Summary Final Order. Given the proximity of the filing of the amended motion, and Respondent's response thereto, to the scheduled date for the final hearing, the undersigned elected to hear argument on Petitioner's motion at the final hearing. For the reasons set forth below, Petitioner's Amended Motion for Summary Final Order is GRANTED.

FINDINGS OF FACTS

1. On November 3, 2015, Petitioner filed and served its First Request for Admissions upon Respondent by U.S. Mail and electronic mail. Florida Rule of Civil Procedure 1.370(a), which is adopted in Florida Administrative Code Rule 28-106.206, provides:

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter within 30 days after service of the request

2. Additionally, rule 1.370(b) provides that “[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” Respondent neither responded to Petitioner’s First Request for Admissions nor sought relief from the matters deemed admitted by operation of law.

3. Respondent’s failure to provide a written answer or objection to the Commission’s request for admissions conclusively establishes the following facts:

- a. Justice-2-Jesus is a political committee registered with the Division of Elections;
- b. Brian Pitts is the chairman and treasurer of Justice-2-Jesus;

c. By letter dated December 14, 2007, Kristi Reid Bronson, Chief, Bureau of Election Records of the Division sent Brian Pitts, as chairperson of Justice-2-Jesus, an acknowledgement that the organization, Justice-2-Jesus, had been placed on Petitioner's list of active political committees that support issues;

d. Brian Pitts, as chairperson of Justice-2-Jesus, received Kristi Reid Bronson's December 14, 2007, acknowledgment letter;

e. The 2013 Calendar of Reporting Dates was available on-line to Brian Pitts, as chairman and treasurer of Justice-2-Jesus, on the Division of Election's website;

f. The 2014 Calendar of Reporting dates for Political Committees/Independent Expenditures-Only Organizations that file with the Division of Elections was available on-line to Brian Pitts, as chairman and treasurer of Justice-2-Jesus, on the Division of Election's website;

g. Justice-2-Jesus' 2013 Q1 Report was due on April 10, 2013;

h. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to file Justice-2-Jesus' 2013 Q1 Report on April 10, 2013;

i. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to notify the filing officer in writing on April 10, 2013, that Justice-2-Jesus would not be filing a report for the 2013 Q1 reporting period;

j. Justice-2-Jesus' 2013 M11 Report was due on December 10, 2013;

k. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to file Justice-2-Jesus' 2013 M11 Report on December 10, 2013;

l. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to notify the filing officer in writing on December 10, 2013, that Justice-2-Jesus would not be filing a report for the 2013 M11 reporting period;

m. Justice-2-Jesus' 2014 P5 Report was due on August 8, 2014;

n. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to file Justice-2-Jesus' 2014 P5 Report on August 8, 2014;

o. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to notify the filing officer in writing on August 8, 2014, that Justice-2-Jesus would not be filing a report for the 2014 P5 reporting period;

p. Justice-2-Jesus' 2014 P6 Report was due on August 15, 2014;

q. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to file Justice-2-Jesus' 2014 P6 Report on August 15, 2014;

r. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to notify the filing officer in writing on August 15, 2014, that Justice-2-Jesus would not be filing a report for the 2014 P6 reporting period;

s. Justice-2-Jesus' 2014 D2 Report was due on October 26, 2014;

t. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to file Justice-2-Jesus' 2014 D2 Report on October 26, 2014;

u. Brian Pitts, as chairman and treasurer of Justice-2-Jesus s failed to notify the filing officer in writing on October 26, 2014, that Justice-2-Jesus would not be filing a report for the 2014 D2 reporting period;

v. Justice-2-Jesus' 2014 D4 Report was due on October 28, 2014;

w. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to file Justice-2-Jesus' 2014, D4 Report on October 28, 2014;

x. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to notify the filing officer in writing on October 28, 2014, that Justice-2-Jesus would not be filing a report for the 2014 D4 reporting period;

y. Justice-2-Jesus' 2014 M12 Report was due on January 12, 2015;

z. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to file Justice-2-Jesus' 2014 M12 Report on January 12, 2015; and

aa. Brian Pitts, as chairman and treasurer of Justice-2-Jesus failed to notify the filing officer in writing on January 12, 2015, that Justice-2-Jesus would not be filing a report for the 2014 M12 reporting period.

4. One of the purposes of the disclosure requirements that Respondent failed to adhere to is to ensure that the public is appropriately informed that Respondent had no reportable

contributions or expenditures during the 2013 Q1, 2013 M11, 2014 P5, 2014 P6, 2014 D2, 2014 D4, and 2014 M12 reporting periods.

5. Respondent's filing history with the Division of Elections (Division) demonstrates that Respondent knows how to use the Division's electronic filing system (EFS), as it has previously filed documents using the system. See, e.g., Fla. Elec. Comm'n v. Brian Pitts, Treasurer for Justice-2-Jesus, Case No. 09-2806 (Fla. DOAH Oct. 7, 2009) ("Respondent testified that he has assisted several other persons in preparing and filing their electronic reports to the Division.").

6. In Florida Elections Commission v. Brian Pitts, Treasurer, Justice-2-Jesus, Case No. 10-9927 (Fla. DOAH Jan. 3, 2011; Fla. Elec. Comm'n May 24, 2011), the Commission entered a Final Order Imposing Fine in the amount of \$1,000 due to Respondent's failure to file a quarterly report of all contributions received. Through this case, Respondent was again reminded of the Division's filing requirements.

7. In both DOAH cases referenced above, the Commission filed in the Circuit Court of the Second Judicial Circuit, in and for Leon County Florida, petitions to enforce the final orders. On January 13, 2011, and October 1, 2012, the Circuit Court entered Final Judgments in favor of the Commission and against Brian Pitts, Justice-2-Jesus, for \$2,362.50 and \$2,426.30,

respectively. Respondent has failed to satisfy the final judgments.

8. Given Respondent's previous course of dealings with the Division and the Commission, Respondent knew or should have known that it was required to notify the filing officer in writing on the prescribed due date that it would not be filing a report when Respondent had no reportable transactions during the applicable reporting periods. Respondent's actions in this case were willful.

9. At the hearing on the Amended Motion for Summary Final Order, Respondent asserted that Justice-2-Jesus is indigent, but offered no financial data to support the assertion.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over this matter pursuant to sections 120.57(1) and 106.25(5), Florida Statutes (2015), the latter of which states:

A person alleged by the Elections Commission to have committed a violation of this chapter or chapter 104 may elect, as a matter of right, within 30 days after the date of the filing of the commission's allegations, to have 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, which may include the imposition of civil penalties, subject to appeal as provided in s. 120.68. If the person does not elect to have a hearing by an

administrative law judge and does not elect to resolve the complaint by a consent order, the person is entitled to a formal or informal hearing conducted before the commission.

11. 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. Elec. Comm'n, 857 So. 2d 913, 917 (Fla. 3d DCA 2003).

12. 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).

13. Section 106.07(7), Florida Statutes (2012), provides as follows:^{1/}

Notwithstanding any other provisions of this chapter, in any reporting period during which a candidate, political committee, or committee of continuous existence has not received funds, made any contributions, or expended any reportable funds, the filing of the required report for that period is

waived. However, the next report filed must specify that the report covers the entire period between the last submitted report and the report being filed, and any candidate, political committee, or committee of continuous existence not reporting by virtue of this subsection on dates prescribed elsewhere in this chapter shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date.

14. Section 106.07(7), Florida Statutes (2014), provides as follows:^{2/}

Notwithstanding any other provisions of this chapter, in any reporting period during which a candidate or political committee has not received funds, made any contributions, or expended any reportable funds, the filing of the required report for that period is waived. However, the next report filed must specify that the report covers the entire period between the last submitted report and the report being filed, and any candidate or political committee not reporting by virtue of this subsection on dates prescribed elsewhere in this chapter shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date.

15. 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. (2015). Willfulness is a question of fact. § 106.25(3), Fla. Stat. See Beardslee v. Fla. Elec. Comm'n, 962 So. 2d 390, 393 (Fla. 5th DCA 2007); McGann v. Fla.

Elec. Comm'n, 803 So. 2d 763, 764 (Fla. 1st DCA 2001). The matters deemed admitted by Respondent due to the failure to respond to Petitioner's request for admissions, along with the undisputed matters contained in Petitioner's Amended Motion for Summary Final Order, establish that Respondent was well aware of the requirements of section 106.07(7) and acted willfully when violating the said requirements, as alleged in the Order of Probable Cause.

PENALTY

16. Section 106.265, Florida Statutes (2015), provides in part as follows:

(1) The commission or, in cases referred to the Division of Administrative Hearings pursuant to s. 106.25(5), the administrative law judge 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, or, if applicable, to impose a civil penalty as provided in s. 104.271 or s. 106.19.

(2) In determining the amount of such civil penalties, the commission or administrative law judge 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, affiliated party committee, electioneering communications organization, or political party; and

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

17. In the Final Order in Florida Elections Commission v. Brian Pitts, Treasurer for Justice-2-Jesus, Case No. 09-2806, ALJ Stevenson, in support of the imposition of a \$1,000 fine, wrote:

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 [and expenditures] 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.

18. Similar to cases in which entities fail to file a campaign report required by section 106.07(1), Respondent's failure in the instant case to provide written notice to its filing officer on the prescribed due dates indicating it had no reportable financial transactions during seven reporting periods

as required by section 106.07(7) also frustrates the intent of "who gave it, and who got it" in Florida's elections.

19. In Florida Elections Commission v. Brian Pitts, Treasurer for Justice-2-Jesus, Case No. 09-2806, Respondent willfully violated section 106.07(1) by failing to file a campaign treasurer's report for the first quarter of 2008. In Florida Elections Commission v. Brian Pitts, Treasurer, Justice-2-Jesus, Case No. 10-9927, Respondent was found to have willfully violated section 106.07(1) by failing to file, once again, a quarterly campaign treasurer's report of all contributions received. These cases are similar to the instant case in that they also involve instances where Respondent willfully failed to adhere to the filing requirements found in chapter 106. Respondent's repeated conduct of willful non-compliance justifies, in the present case, the imposition of the maximum fine allowed by statute.

20. In reviewing the record of the instant proceeding in its entirety, including Respondent's Verified Opposition to Summary Final Order and his arguments related thereto at the hearing on Petitioner's Amended Motion for Summary Final Order, it is determined that Respondent has not shown good faith in attempting to comply with section 106.07(7). There are no factors of record that mitigate in favor of a reduced fine.

21. Finally, as noted in the Findings of Fact, Respondent claims that it is indigent, but offered no financial data to support the assertion. At the hearing on the Petitioner's Amended Motion for Summary Final Order, Respondent was given multiple opportunities to present financial data supporting its claim of indigence. Respondent's only response to the request for supporting financial data, was to state that the information "is available on the internet." If Respondent wishes its financial situation to be taken into account in mitigation, Respondent must produce evidence of its financial resources. Diaz de la Portilla, supra at 925.

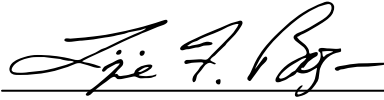
CONCLUSION

Having considered the foregoing Findings of Fact, Conclusions of Law, and the evidence of record, it is, therefore, ORDERED that:

1. Respondent is guilty of willfully violating section 106.07(7), Florida Statutes, as alleged in the Order of Probable Cause.

2. Respondent is assessed a fine of \$1,000.00, for each of the seven counts, for a total of \$7,000.00, which must be paid to the Florida Elections Commission within 30 days of the date of this Summary Final Order.

DONE AND ORDERED this 28th day of January, 2016, in
Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 28th day of January, 2016.

ENDNOTES

^{1/} Respondent's violations cover statutory years 2012, 2013, and 2014. Accordingly, Respondent's violations are governed by the version of section 106.07(7) in effect at the time of Respondent's non-compliant conduct.

^{2/} Section 106.07(7) was last amended on November 1, 2013, by striking "or committee of continuous existence" from the text. The amendment does not impact the violations established herein.

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 administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.