

**DISRTICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

In re Michael Sindram Complainant,

Administrative Hearing
No. 11-04

ANC 4A Grant Rescission

MEMORANDUM OPINION AND ORDER

I. BACKGROUND

A. Statement of Proceedings

This appeal arises out of a complaint filed by Mr. Michael Sindram on July 7, 2010 in his capacity as a concerned citizen. Mr. Sindram asserts that Advisory Neighborhood Commission (ANC) 4A improperly rescinded a grant awarded to Ms, Denice Rhodes in the amount of two thousand (\$2,000.00) dollars. For the reasons stated herein, Mr. Sindram lacks requisite legal standing to support a claim against an Advisory Neighborhood Commission that he does not reside in on behalf of another person. Moreover, the Board of Elections and Ethics does not have the jurisdiction to grant the relief the Complainant seeks in this matter: namely, to retroactively compel the ANC to award a grant for services rendered outside the particular ANC at issue.

Essentially, Mr. Sindram's objections to ANC 4A's actions amount to this: he was a beneficiary of services offered by Ms. Rhodes, and he now asserts that he is in further need of her follow-up services to digital television, antenna and VCR/DVD

components provided by Ms. Rhodes.¹ The Chair of ANC 4A, Mr. Stephen Whatley contends that the ANC voted to rescind the contingent grant approval award to Ms. Rhodes on a finding that the services proposed were duplicative in contravention to D.C. CODE §1-309.13(m)(1). Moreover, Ms. Rhodes hasn't provided documentation that Mr. Sindram has authority to represent her concerning this issue; Ms. Rhodes has presented no claims against ANC 4A; there is no evidence that Ms. Rhodes provided any goods or services in ANC 4A; and finally, Mr. Sindram does not reside in ANC 4A and would not have been eligible for services pursuant to a grant award in this case.

Mr. Sindram initially filed a request for investigation with the Office of Campaign Finance (OCF), that responded in turn by letter dated December 11, 2009, that:

[B]ased upon D.C. Official Code §1-309(13)(m)(1), a grant is awarded by an ANC for services that must not be duplicative of any that are already performed by the District government... By letter dated January 21, 2010, I again reminded you because you did not list the alleged affected D.C. government services, you did not make a clear and concise statement of that which is alleged to constitute a violation of the Campaign Finance Act.

Mr. Sindram met with the General Counsel of OCF on March 31, 2010 to discuss the gravamen of his complaint. The meeting with OCF General Counsel resulted in a determination that no violation of the Campaign Finance statute occurred, and a dismissal ensued. On July 7, 2010, Mr. Sindram made a formal request for a hearing before the Board of Elections and Ethics appealing the OCF's refusal to enforce compensation initially awarded to Ms. Denice Rhodes doing business as Digital Dynamo.

¹ Although, Mr. Sindram is not a resident of ANC 4A, he insists that he received services and equipment from Ms. Rhodes, and he further maintains that she will not "fine tune" the equipment absent a payment from ANC 4A.

The Board held a pre-hearing conference pursuant to tit. 3 D.C. Mun. Regs §415.1 on November 15, 2010. During this pre-hearing, Mr. Sindram explained the Office on Aging that was alleged to have provided duplicative services only catered to senior citizens aged 60 and over. Mr. Sindram asserted that Ms. Rhodes' efforts could not be duplicative because he would not qualify for the Office on Aging services. Mr. Sindram went on to assert that a grant was unanimously approved by ANC 4A on June 2, 2009. Mr. Sindram's stated basis for his cause of action is the Supremacy Clause of the United States in conjunction with the 14th Amendment guarantee of due process. He asserts the ANC arbitrarily and capriciously rescinded the grant without due process. Mr. Sindram asserted he was a third party beneficiary, and that sufficed to garner standing in the instant case.

During the pre-hearing conference, Mr. Sindram provided no statutory basis supporting his claim of an improper grant rescission; rather, he relied exclusively on his due-process argument. The staff attorney conducting the pre-hearing conference admonished Mr. Sindram to present legal authority for his proposition of an improper grant rescission; jurisdictional basis for the Board to grant the relief he seeks; and any and all supporting documentary evidence to bolster his claims. Mr. Sindram submitted six (6) pieces of documentary evidence during the pre-hearing conference described summarily as follows:

Exhibit 1 – September 17, 2009 correspondence from the Board's General Counsel to the Executive Director of the Office of Advisory Neighborhood Commissions initially referring the matter to the Office for an initial investigation, the results of which Mr. Sindram asserts were never memorialized in writing.

Exhibit 2 – A flyer advertising a consumer workshop sponsored by Councilmember Muriel Bowser and the Office of the People's Counsel held

March 17, 2009 where Ms. Rhodes doing business as Digital Dynamo was an invited speaker.

Exhibit 3 – A flyer advertising the Vietnam Veterans of America organization imploring citizens to: “Remember me. Vote.”

Exhibit 4 – April 14, 2010 edition of the Current newspaper page 8 highlighting the Commission’s approval of a two thousand dollar (\$2,000.00) grant for the Friends of Shepherd Park where commissioners Tolliver and Whatley abstained due to their living in close proximity to the field; commissioner Tolliver’s report that private citizens hired legal counsel to file a temporary restraining order against opening a pawn shop; and the commission’s decision to examine its policy of limiting grants to two thousand dollars (\$2,000.00).

Exhibit 5 – OCF correspondence dated March 11, 2009 acknowledging receipt of Mr. Sindram’s March 9, 2009 and scheduling a March 31, 2010 meeting with the OCF General Counsel.

Exhibit 6 – Flyer advertising the Office on Aging efforts to inform Senior Citizens 60 and older of their services regarding the Digital Television Conversion.

This matter came before the Board of Elections and Ethics (hereinafter “the Board”) on Monday, April 11, 2011. Michael Sindram appeared pro se, and ANC 4A Chair Stephen Whatley attended the public hearing on his own initiative and testified as to the circumstances surrounding the rescinded grant. Board Member Charles R. Lowery, Jr. presided over the hearing.²

B. Statement of Facts

Mr. Sindram attempted to gain assistance from the Office of Veteran Affairs in procuring a digital converter box in time for the June 12, 2009 conversion to digital television. The Office forwarded Mr. Sindram to Ms. Rhodes who in turn informed him of a March 17 presentation that she was conducting, and Mr. Sindram attended that

² See D.C. CODE § 1-1001.05(g) (2006), which allows Board cases to be heard by a 1 member panel.

meeting.³ Mr. Sindram suggested Ms. Rhodes apply for a grant from the ANC to help offset her expenses as a one-person entity non-profit, and she did in fact submit a grant proposal to ANC 4A sometime in June, 2009. Ms. Rhodes was afforded an audience on the June 5th agenda due to the time sensitive nature of the impending digital upgrade.

According to Mr. Sindram, the ANC approved the grant to provide services including supplying digital converter boxes, antennas and possibly new televisions and DVDs and/or VCRs pro bono. The service would necessitate an in-home assessment, followed by a second installation visit. Ms. Rhodes provided Mr. Sindram with a new digital T.V. and an additional VCR/DVD component, but she also relayed to him that she did not receive payment of the grant previously awarded to her by ANC 4A. Ms. Rhodes was not inclined to provide further services because she had limited funds and was expecting the grant award for compensation. Mr. Sindram asserts that he contacted Commissioner Kennedy to inquire about the payment, and Commissioner Kennedy referred him to Commissioner Whatley. Mr. Sindram was made aware of the ANC 4A determination that the grant was duplicative of the Office on Aging services, and that the grant was accordingly rescinded; however, Mr. Sindram asserts from subsequent conversations with Ms. Rhodes that she was not apprised of any rescission determination.

According to Mr. Stephen Whatley, ANC 4A did make a grant to Ms. Rhodes doing business as Digital Dynamo; however, that grant was contingent upon the services not being duplicative of other services performed by the District government. A vote was hastily made without research in this area because of time constraints of the impending digital conversion. Mr. Whatley noted for the record that ANC 4B voted to deny a grant,

³ See Exhibit 2.

but his commission decided that the services were worthy of a two thousand dollar (\$2,000.00) contingent award. Subsequent research and investigation discovered that the Office on Aging performed similar functions for citizens over the age of sixty—which covered a large portion of ANC 4A residents.⁴ Accordingly, ANC 4A rescinded the grant at a subsequent meeting in the Fall of 2009, and Mr. Whatley claims he notified Ms. Rhodes by telephone of ANC 4A’s action. Moreover, Mr. Whatley took the remarkable step of offering to reimburse any costs incurred while the grant was effective provided that receipts were submitted. To date, Ms. Rhodes has not submitted any receipts to ANC 4A nor has she made any claims against ANC 4A. In response to Board Member Lowery’s query as to whether the proper procedure to rescind the grant was followed in the instant case, Mr. Whatley responded as follows:

[P]olicy is that grants should be submitted 7 days before the request of the grant. In this case it was an exception we had said, the Commissioner stated that we’re going to follow policy, they said this is an emergency so let’s consider this right now without doing the due diligence before. What we did was said okay we’ll vote with the following, with contingencies to do this. Upon review of the contingencies...

We had one week to make the decision, we didn’t know if [the digital conversion] was going to be extended. At that point we made the decision then upon doing the research that we found that for the elderly and so forth that this grant did not meet the requirements. But because she could have incurred costs during that period of time we said okay, she may have incurred costs based on what the grant is and we will take care of that, she can bring that back to us, she never came back. So in September we voted to rescind the grant. Then we said okay if she still has receipts, that’s when we said if she has receipts, the ANCs are required to receive receipts as documentation when we file our quarterly statements, and we have to have receipts. We cannot just write a check without receipts for the check or without anticipation of receiving the receipts. Since this period of time, since the September would have been after, from June to September any

⁴ Mr. Sindram maintains that the unique services rendered by Ms. Rhodes were not offered by the Office on Aging; however, he has not provided the grant proposal submitted by Ms. Rhodes describing the services that she would have offered to residents in ANC 4A that the ANC would have used to conduct their investigation and make their decision.

cost she incurred she should have had the receipts for those costs, those expenses. She would have had September, October, November to comply then come to the ANC and say because of what your grant, the grant you granted us, these are the expenses I incurred during that period of time because when you have time to rescind it before then. So we voted to rescind and left the door open, bring us the receipts and we'll gladly pay you the costs you incurred for those expenses

Tr. Hearing at pp. 58-61. Board member Lowery left the record open, and Mr. Whatley forwarded all of his correspondences with Mr. Sindram, and Mr. Sindram in turn responded by reiterating his claim of no duplicative services because he did not qualify for the services offered by the Office on Aging, and the breadth of Ms. Rhodes services surpassed what the Office on Aging provided. Moreover, Mr. Sindram took issue with Mr. Whatley's inability due to computer error to locate a written correspondence detailing the grant rescission and reimbursement options Mr. Whatley believed he sent to Ms. Rhodes.⁵

II. ANALYSIS

A. Standing

In order to have standing to bring a particular agency action, a complainant must have suffered a legal wrong or been adversely affected or aggrieved by the agency action he objects to, D.C. CODE §1-1510, *Diamond v. District of Columbia*, 797 F.2d 179 (D.C. Cir.); **and** must show there is a causal connection between that concrete injury and the agency action complained of, *National Wildlife Federation v. Babbitt* 835 F.Supp. 654; **and** the injury must "likely" to be "redressed by a favorable decision." *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61.

⁵ Although Mr. Sindram asserts Mr. Whatley testified under penalty of law that he had "sent letter to Denice Rhodes t/a Digital Dynamo," the transcript record of the hearing clearly shows that Mr. Whatley was uncertain whether a letter was sent but definitely contacted Ms. Rhodes by telephone.

In brief, the DCAPA requires a petitioner to show not only (1) that the challenged agency action caused her injury in fact, but also (2) that she is “assert[ing] more than a generalized grievance;” (3) that the interest she seeks to protect is “arguably within the zone of interests protected under the statute or constitutional guarantee in question;” (4) that “no clear legislative intent to withhold judicial review is apparent;” and (5) that there exists “a substantial probability that the requested relief would alleviate her asserted injury,” i.e., that her injury can be redressed.

Mallof v. District of Columbia Bd. Of Elections and Ethics, 1 A.3d 383, 394 fn51 (D.C. 2010). In the instant case, Mr. Sindram’s complaint filed with the OCF alleged no violation of Campaign Finance Laws and was properly dismissed. It is noted that Mr. Sindram claims that Ms. Rhodes detrimentally relied on the grant award to perform services on his behalf as a third party beneficiary; however, monies garnered from a grant awarded by ANC 4A could not be used to benefit a resident of ANC 4B. Notwithstanding Mr. Sindram’s notion of the fungible nature of his tax dollars as a D.C. resident of Ward 4, D.C. CODE § 1-309.13(m)(1) specifically circumscribes: “A Commission may approve grants only to organizations that are public in nature and ***benefit persons who reside or work within the Commission area.***” (emphasis added). It follows that Ms. Rhodes’ pro bono services provided to Mr. Sindram cannot become the basis of reimbursement for services rendered during the effective period of the grant award. In other words, the interest that Mr. Sindram seeks to protect on Ms. Rhodes’ behalf is not within the zone of interests protected under the ANC grant statute.

Moreover, Mr. Sindram cites no authority, and the Board can find none that bestows the Board with the jurisdiction to compel an ANC to reinstate a grant found by that agency to be duplicative. Absent any evidence of what the grant proposal entailed, the Board is left to rely on the expertise of the ANC as to what constitutes duplicative services. Furthermore, there is no evidence that services were performed in ANC 4A.

The Board is not inclined to act ultra vires and direct an ANC to act in contravention to the law established in D.C. CODE § 1-309.13(m)(1). Assuming arguendo that the Board had the statutory authority to compel ANC action, grant monies awarded to Ms. Rhodes by ANC 4A could not be used to benefit Mr. Sindram—a resident of ANC 4B—in contravention of D.C. CODE § 1-309.13(m)(1). Therefore, the relief Mr. Sindram requests has no probability of alleviating his asserted injury because Ms. Rhodes would be prohibited from offering services to residents living outside of ANC 4A.

II. CONCLUSION

The Board finds that the complainant has failed to establish standing and that Mr. Sindram as a resident of ANC 4B could not possibly benefit from a grant award issued in ANC 4A. To date, Ms. Rhodes has not submitted receipts for reimbursement for services rendered in ANC 4A during the effective period of the grant; moreover, she has not made a claim against ANC 4A. The Board is sympathetic to Mr. Sindram's needs, but those needs must be met in accordance with the law, and the relief requested does not comply with D.C. CODE § 1-309.13(m)(1).

Accordingly, it is this 6th day of June, 2011,

ORDERED, that the Complainant's appeal be dismissed for lack of standing and jurisdiction.

June 6, 2011



Charles R. Lowery, Jr. Board member
D.C. Board of Elections & Ethics