

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

D.C. Office of Campaign Finance,)	
Complainant)	
)	
v.)	Docket No. 11-007
)	
The Committee to Re-Elect Kwame Brown,)	
Respondent)	
)	

MEMORANDUM OPINION AND ORDER

This matter came before the Board on Thursday, July 7, 2011 pursuant to a complaint filed by the District of Columbia Office of Campaign Finance (“OCF”) (“Complainant”) against The Committee to Re-Elect Kwame Brown (“Respondent”). The complaint was the culmination of an OCF investigation of the Respondent launched pursuant to a Final Audit Report issued by OCF’s Reports Analysis and Audit Division (RAAD) which determined that the Respondent was not in substantial compliance with the D.C. Campaign Finance Reform and Conflict of Interest Act of 1974 (“the Act”).

Board Chairman Togo D. West, Jr. and Member Charles R. Lowery, Jr. presided over the matter. OCF was represented by its General Counsel, William O. Sanford, Esq., and the Respondent was represented by Frederick D. Cooke, Esq.

I. Background

The Respondent was designated and registered on April 24, 2007 as the Principal Campaign Committee (“PCC”) in support of Kwame R. Brown’s (“Brown”) campaign for re-election to the office of At-Large Member of the Council of the District of Columbia during the 2008 election cycle. At all times relevant to this matter, the Respondent was obligated to file Reports of Receipts and Expenditures with OCF in accordance with D.C. Official Code § 1-1102.06.

Pursuant to D.C. Official Code § 1-1103.03(8)¹, RAAD commenced an audit of the reports and statements filed by the Respondent. On April 4, 2011, RAAD issued a Final Audit Report (“Final Audit Report”) which determined that the Respondent was not in substantial compliance with the Act. (Exhibit #1) Subsequently, OCF launched an investigation of the Respondent, and determined at the conclusion thereof that the

¹ D.C. Official Code § 1-1103.03(8) provides that the Director of OCF shall “[m]ake from time to time audits and field investigations with respect to reports and statements filed under the provisions of this subchapter, and with respect to alleged failures to file any report or statement required under the provisions of this part[.]”

Respondent had committed several violations of the Act. Specifically, OCF determined that the Respondent:

- 1) violated D.C. Official Code § 1-1102.04(c)², by:
 - a. failing to timely amend its Statement of Organization to include bank account #1189735 which was established at the Industrial Bank of Washington on August 20, 2008, and in which \$60,000.00 in campaign funds were deposited; and
 - b. failing to timely amend its Statement of Organization to include Che Brown as an officer of the Respondent with signatory authority on bank accounts, in light of the fact that an account (# 1189735), which was established at the Industrial Bank of Washington and which was identified as Respondent's "Side Account", listed Che Brown as a signatory.
- 2) violated D.C. Official Code § 1-1102.06(b)(2)³ by failing to timely report 210 contributions totaling \$102,763.00 which were received by the Respondent;
- 3) violated D.C. Official Code § 1-1102.06(b)(8)⁴ by failing to timely report 210 contributions totaling \$102,763.00 in the total sum of all receipts which were received by the Respondent;
- 4) violated D.C. Official Code § 1-1102.06(b)(9)⁵ by failing to timely report 53 expenditures totaling \$169,431.49 that were made by the Respondent;
- 5) violated District of Columbia Official Code § 1-1102.06(b)(10)⁶ by failing to timely report 53 expenditures totaling \$169,431.49 in the total sum of all expenditures that were made by the Respondent;

² D.C. Official Code § 1-1102.04(c) provides in pertinent part that, "Any change in information previously submitted in a statement of organization shall be reported to the Director within the 10 day period following the change."

³ D.C. Official Code § 1-1102.06(b)(2) provides in pertinent part that each report shall disclose, "The full name and mailing address (including the occupation and the principal place of business; if any) of each person who has made 1 or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggregate amount or value in excess of \$50 or more , together with the amount and date of such contributions."

⁴ D.C. Official Code § 1-1102.06(b)(8) provides in pertinent part that each report shall disclose, "The total sum of all receipts by or for such committee or candidate during the reporting period."

⁵ D.C. Official Code § 1-1102.06(b)(9) provides in pertinent part that each report shall disclose, "The full name and mailing address (including the occupation and the principal place of business; if any) of each person to whom expenditures have been made by such committee or on behalf of such committee or candidate within the calendar year in an aggregate amount or value of \$10 or more, the amount, date, and purpose of each such expenditure."

- 6) violated District of Columbia Official Code § 1-1102.01(c)(3)⁷ by failing to produce detailed records of expenditures made to prime consultant, Banner Consulting and subcontractor, Partners in Learning;
- 7) violated Title 3 of the District of Columbia Municipal Regulations (3 DCMR) § 3400.2⁸ by failing to maintain proper records of receipts and expenditures; and
- 8) failed at all times relevant to fulfill its obligation to comply with the applicable registration and reporting provisions of the Act.

OCF further determined that, as a result of these violations, it was unable to verify the accuracy of the Reports of Receipts and Expenditures submitted by the Respondent; \$174,785.57 in expenditures by the Respondent to prime consultant Banner Consulting and sub-contractor Partners in Learning; and the services provided to the Respondent as indicated in 54 invoices submitted by prime consultant Banner Consulting and sub-contractor Partners in Learning.

On Friday, June 10, 2011, OCF filed a complaint (“the Complaint”) against the Respondent with the Board, alleging the aforementioned violations, and requesting that the Board order the Respondent to provide the bank records and statements related to the financial transactions between Banner Consulting and Partners in Learning; disallow all

⁶ D.C. Official Code § 1-1102.06(b)(10) provides in pertinent part that each report shall disclose, “The total sum of expenditures made by such committee or candidate during the calendar year.”

⁷ D.C. Official Code § 1-1102.01(c)(3) provides in pertinent part that, “Except for account of expenditures made out of the petty cash fund provided for under § 1-1102.03(b), the treasurer of a political committee and each candidate, shall keep a detailed and exact account of ... All expenditures made by or on behalf of such committee or candidate.”

⁸ 3 DCMR § 3400.2 provides in pertinent part that, “Each required filer, under § 3400.1 shall obtain and preserve, from the date of registration, detailed records of all contributors and expenditures disclosed in reports and statements filed with the Director, including the following:

- (a) Check stubs;
- (b) Bank statements;
- (c) Cancelled checks;
- (d) Contributor cards and copies of donor checks;
- (e) Deposit slips;
- (f) Invoices;
- (g) Receipts;
- (h) Contracts;
- (i) Payroll records;
- (j) Tax records;
- (k) Lease agreements;
- (l) Petty cash journals;
- (m) Ledgers;
- (n) Vouchers; and
- (o) Loan documents.

expenditures the Respondent made to Banner Consulting and Partners in Learning that are not supported by proper documentation; order the Respondent to seek reimbursement of the total amount disallowed so that such amount may be properly disposed of; and provide any further relief deemed appropriate, including the imposition of fines for the violations alleged, or the referral of the matter to the United States Attorney for the District of Columbia. The complaint incorporated by reference the Final Audit Report. On Tuesday, June 21, 2011, the Respondent filed an Unopposed Motion to Hold Proceedings in Abeyance and for Prompt Referral to the United States Attorney for the District of Columbia. The matter came before the Board on Thursday, July 7, 2011.

II. Motion to Hold Proceedings in Abeyance and for Prompt Referral to the United States Attorney for the District of Columbia

The Respondent requests that the Board hold a hearing on the Complaint in abeyance and promptly refer the matter to the United States Attorney for the District of Columbia. According to the Respondent, prompt referral of the matter would “result in a more efficient disposition of the matter because it will avoid the time and expense of litigation between the parties before [the] Board of what matters can properly be considered by [the] Board while an investigation by the Office of the United States Attorney may, or may not be pending.”⁹

Any referral to the United States Attorney for the District of Columbia must be predicated upon the Board making “a finding of an apparent violation of [subchapter I of the Act]”¹⁰ subsequent to “the presentation by the Director [of OCF] of evidence constituting”¹¹ such violation, during “an adversary proceeding and an open hearing”¹² in which the respondent has the opportunity to contest the evidence presented. Accordingly, the Board cannot refer the matter to the United States Attorney without holding the very hearing that the Respondent requests be held in abeyance, and making a finding of an apparent violation. For this reason, the Board must decline to grant the Respondent’s motion.

III. Hearing

Notwithstanding the Board’s denial of the Respondent’s motion, the Board understands and agrees with the rationale underlying the Respondent’s request for prompt referral of the matter to the United States Attorney. The Board also notes that OCF does not oppose the motion, and indeed agrees that the matter should be referred to the United States Attorney forthwith.

⁹ Respondent’s Unopposed Motion to Hold Proceedings in Abeyance and for Prompt Referral at 2.

¹⁰ D.C. Official Code § 1-1103.01(c).

¹¹ *Id.*

¹² D.C. Official Code § 1-1103.02(c).

Therefore, with the parties' expressed approval, and consistent with statutory dictates, the Board finds:

- 1) that the proceeding held on Thursday, July 7, 2011 constitutes the "adversary proceeding and an open hearing" ("the Hearing") required by D.C. Official Code § 1-1103.02(c);
- 2) that the presentation by OCF during the Hearing, including specifically the Final Audit Report incorporated by reference in the Complaint and submitted for the record during the Hearing, constitutes "the presentation by the Director [of OCF] of evidence constituting an apparent violation of [subchapter I of the Act] required by D.C. Official Code §§ 1-1103.01(c) and 1-1103.02(c);"
- 3) that the Respondent's Motion to Hold Proceedings in Abeyance and for Prompt Referral to the United States Attorney for the District of Columbia is indicative of both the Respondent's election not to avail itself of the opportunity provided to adjudicate the issue of the finding of an apparent violation of the Act during the Hearing, and the Respondent's request for the opportunity to adjudicate the issue of violation and civil penalties before the Board at a later time if necessary, regardless of the action taken, if any, by the United States Attorney; and
- 4) that the evidence presented by OCF merits a finding of an apparent violation of the Act.

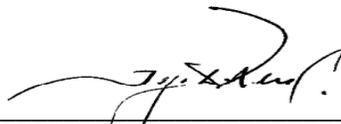
IV. Conclusion

In view of the Board's findings, the Board concludes that this matter is appropriate for referral to the United States Attorney for the District of Columbia for prosecution. The Board further concludes that, in referring the matter to the United States Attorney for the District of Columbia, it does not divest itself of its jurisdiction to hear the matter on the issue of violation and civil penalties at a later time. Accordingly, it is hereby

ORDERED, that this matter be referred to the United States Attorney for the District of Columbia for prosecution.

July 8, 2011

Date



Togo D. West, Jr.
Chairman, Board of Elections and Ethics

Charles R. Lowery, Jr.
Member, Board of Elections and Ethics

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 2011, a true and accurate copy of the foregoing memorandum opinion and order was delivered via electronic mail to the following parties:

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