

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

**The D.C. Office of,
Campaign Finance,**

Petitioner,

v.

Dwayne Toliver,

Respondent.

**Administrative Hearing
Docket No. 23-003
Enforcement of OCF
Order In 21C-016**

MEMORANDUM OPINION AND ORDER

This matter came before the Board on January 4, 2023 pursuant to the submission of a Petition for Enforcement by the Office of Campaign Finance (hereinafter “OCF”) of a May 11, 2021 OCF Order (“Order”) imposing a fine of \$1,650.00 dollars against Toliver for Ward 4, principal campaign committee, and Dwayne Toliver, candidate/treasurer (“Respondent”). The fine was imposed for failure to timely file the January 31st Report of Receipts and Expenditures (“R&E Report”) due, in accordance with D.C. Official Code § 1-1163.09(b).¹

Pursuant to D.C. Official Code § 1-1163.09(a), each treasurer of a political committee that supports a candidate “shall file with the Director of Campaign Finance ... reports of receipts and expenditures on forms to be prescribed or approved by the Director of Campaign Finance.” Such reports “shall be filed ... by the 31st day of January of each year.”²

¹ OCF extended the deadline for the submission of the R & E Report to February 19, 2021.

² D.C. Code § 1-1163.09(b).

OCF's Director is authorized to address noncompliance with campaign finance reporting and disclosure requirements through informal hearing proceedings.³ OCF's regulations require notice of an informal hearing and establish the content of such notice, including that "an alleged violator of the reporting requirements shall be informed of ... [t]he fact that service of process shall be by regular mail."⁴ If the alleged violator (or respondent) fails to appear at the informal hearing, OCF's Director must, under the applicable regulation, reschedule the informal hearing and "[s]erve the respondent both by certified and regular mail."⁵ Where the respondent violator fails to appear at a rescheduled hearing, OCF may proceed in the absence of that party and shall issue a determination as to whether a violation has occurred and as to any fine.⁶ A motion for reconsideration by OCF of an order finding a violation must be filed within five (5) days of OCF's order.⁷ A party adversely affected by such order may also, within fifteen (15) days of the order or of any OCF decision on reconsideration, seek from the Board *de novo* review of OCF's order or decision on reconsideration.⁸ "If the person against whom a civil penalty is assessed fails to pay the penalty, the [Board] shall file a petition for enforcement of its order assessing the penalty in the Superior Court of the District of Columbia."⁹

³ 3 DCMR § 3709.1.

⁴ 3 DCMR §§ 3709.3 and 3709.4(f).

⁵ 3 DCMR § 3709.8.

⁶ 3 DCMR §§ 3709.9 and 3 DCMR § 3709.10.

⁷ 3 DCMR § 3709.13.

⁸ 3 DCMR § 3709.12.

⁹ D.C. Code § 1-1163.35(a)(5).

In its Petition for Enforcement, OCF advises that the Respondent did not file the R & E Report. Accordingly, OCF issued a Notice of Hearing, Statement of Violations, and Order of Appearance (“Notice of Hearing”) dated March 1, 2021, ordering the Respondent to appear at an informal hearing on March 16, 2021, and show cause why he should not be found in violation of the D.C. Campaign Finance Act of 2011, as amended by D.C. Official Code § 1-1163.01 *et seq.*, and fined accordingly.¹⁰ The Respondent did not appear at the March 16, 2021 informal hearing.

The Petition for Enforcement explains that OCF then rescheduled the informal hearing for April 7, 2021, and issued to the Respondent an amended Notice of Hearing to reflect the rescheduled hearing date.¹¹ Once again, the Respondent did not appear.

OCF convened each hearing in Respondent’s absence, issued the Order imposing the \$1,650.00 fine, and, when the fine went unpaid, transmitted to the Board the pending Petition for Enforcement so as to obtain ultimately an order from the D.C. Superior Court enforcing the fine.

On September 30, 2022, the Board’s Office of General Counsel sent, by certified mail and by email, a notice to the Respondent that, on October 26, 2022, the Board’s Office of General Counsel would convene a pre-hearing conference on OCF’s Petition for Enforcement.¹² Respondent did not appear at that pre-hearing conference.

On December 15, 2022, the Board’s Office of General Counsel sent, by certified and electronic mail, a notification that the Board would hear OCF’s Petition on January 4, 2023. On December 23, 2022, a certified mail notice was also sent to another address for the Respondent that appears on the Board’s voter roll.

¹⁰ Although the regulations require that this notice be sent via regular mail, OCF notified the Respondent by email only.

¹¹ While the regulations require that notice of a rescheduled informal hearing be made by certified mail, OCF notified the Respondent again by email only.

¹² 3 DCMR § 415.1 (authorizing the Board’s General Counsel to convene pre-hearing conferences).

At the January 4, 2023 hearing, the Respondent did not appear. OCF's General Counsel, William Sanford, was present and confirmed that the fine imposed on the Respondent remains unpaid.

At all times pertinent hereto, Respondent was required to file the R & E Report by the required due date. OCF has shown, by substantial evidence,¹³ the Respondent's failure to comply with the campaign finance laws. Further, OCF has demonstrated that the \$1,650.00 fine imposed on the Respondent is wholly justified. Despite attempts on the part of the Board's Office of General Counsel to meet with the Respondent and make arrangements to settle the matter, the Respondent has not demonstrated a willingness to do so.¹⁴ As noted above, the law provides that "[i]f the person against whom a civil penalty is assessed fails to pay the penalty, the Elections Board *shall* file a petition for enforcement of its order assessing the penalty in the Superior Court of the District of Columbia." D.C. Code § 1-1163.35(a)(5) (emphasis added).

Accordingly, it is hereby,

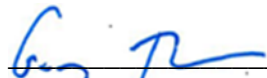
ORDERED that OCF's Petition for Enforcement in this matter is **GRANTED** and that the Board's General Counsel shall file promptly commence an action in the D.C. Superior Court for judicial enforcement of the \$1,650 civil penalty against petitions in the Superior Court seeking an order of enforcement against Dwayne Toliver.

The Board issues this written order today, which is consistent with its oral ruling rendered on January 4, 2023.

¹³ 3 DCMR § 423.5 (requiring OCF to prove violations by substantial evidence).

¹⁴ We find OCF's failure to comply with the service requirements that applied to its hearing proceedings to be harmless where, as here, the Board's Office of General Counsel has sent Respondent three notices by certified mail of the existence of Board proceedings in this matter and he has been sent numerous e-mail notifications.

Date: January 9, 2023



Gary Thompson
Chair
Board of Elections