

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

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|-------------------------------------|---|------------------------|
| Kevin Chapple, |) | |
| Advisory Neighborhood Commissioner, |) | |
| Advisory Neighborhood Commission |) | |
| 2C02 |) | Administrative Hearing |
| v. |) | No. 09-005 |
| |) | |
| D.C. Office of Campaign Finance |) | |

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the D.C. Board of Elections and Ethics (“the Board”) on Wednesday, May 6, 2009 pursuant to a Request for Review of a May 1, 2009 order (“the Order”) of the D.C. Office of Campaign Finance (“OCF”). The Order held that Advisory Neighborhood Commissioner Kevin Chapple (“Chapple”) violated D.C. Official Code §1-1106.01(b)¹ because he “us[ed] his official position and office to solicit and receive funds for his limited liability company through advertisements in his affected ANC 2C02 magazine where ANC 2C02 residents believed the magazine to be the magazine of ANC 2C02.”

Board Chairman Errol Arthur and Member Charles Lowery presided over the matter. Chapple, an attorney, appeared *pro se*.

Background

On Monday, June 16, 2008, Earline Matthews, filed a formal complaint against Chapple alleging that he “ ‘violated campaign and finance law by using his elected position as the Advisory Neighborhood Commissioner for ANC 2C-02, to publish a magazine called ‘anc 2c02 & You,’ to collect money to charge constituents, developers and politicians and business’s (sic) to publish this magazine for financial benefit[,]” specifically in contravention of D.C. Official Code § 1-1106.01(b).” Order at 1. OCF accepted this Complaint on June 26, 2008, and at that time commenced a full investigation into the matter. The investigation was subsequently enlarged to encompass a second Complaint that was submitted on Monday, November 10, 2008 by Mahdi Leroy Thorpe. Mr.

¹ D.C. Official Code §1-1106.01(b) reads, in part, “No public official shall use his or her official position or office to obtain financial gain for himself or herself, ... other than that compensation provided by law for said public official.”

Thorpe alleged that Chapple used his “web site to collect money to charge constituents for publication of the magazine and ... to use the money for personal use.” Order at 1.²

OCF’s investigation of this matter revealed the following facts, which are pertinent to the Board’s decision. Chapple, who at all times pertinent to this matter was the Advisory Neighborhood Commissioner for Advisory Neighborhood Commission (“ANC”) 2C02. In January 2007, he started the publishing magazine, “anc2c02 & You,” (“the Magazine”). Thereafter, he solicited advertisements for the Magazine; and collected, or authorized his friend and neighbor, Martin Moulton, to collect, advertisement proceeds to fund the Magazine. In May of 2008, Chapple’s ANC letterhead was used for an invoice soliciting payment from the “Re-Elect Kwame R. Brown” campaign committee for advertisements that ran in the Magazine (“the Invoice”).

Prior to July of 2007, Chapple attempted to establish a business bank account in which to deposit the Magazine’s advertising revenues. When informed that he would be unable to set up such an account unless there was an associated business entity registered with the D.C. government, Chapple created a limited liability company, ANC-2C02 LLC (“the LLC”). The purpose of the LLC was “to promote the civic, cultural, and social interests of residents of the District of Columbia and especially the residents within the Shaw community and to generate a profit in any legal manner[.]” Chapple listed himself as the sole organizer for the LLC; served as its President and also served as its Registered Agent. After establishing the LLC, Chapple successfully set up a bank account in which to deposit the funds collected for the Magazine.

On January 13, 2009, OCF concluded its investigation of the matter³, and it issued an Order on Friday, January 23, 2009 (“Initial Order”). In the Initial Order, OCF ruled that Chapple violated D.C. Official Code §1-1106.01(b) by “using his official position and office to solicit and receive funds for his limited liability company through advertisements in his affected ANC 2C02 magazine where ANC 2C02 residents believed the magazine to be the magazine of ANC 2C02.” As a result of this violation, OCF imposed a \$2000 fine upon Chapple. However, OCF suspended this fine because it determined that the primary purpose of the limited liability company created by Chapple was “to promote the civic, cultural, and social interests of residents of the District of Columbia and especially the residents within the Shaw community.” Moreover, OCF determined that Chapple’s intent was to ‘use any proceeds, and none were realized, above paying expenses for the publication of the ANC 2C02 community magazine for projects to benefit the Shaw community[.]” Initial Order at 9. Finally, Chapple was admonished regarding the proscriptions of D.C. Official Code § 1-1106.01(b).

² As a result of enlargement of the scope of the full investigation, the need to notify Chapple of the second complaint, and other factors, OCF sought and received from the Board at one of its regular Board meetings an extension of time in which to produce an order in this matter. Accordingly, OCF issued the Initial Order on January 23, 2009, more than ninety (90) days after it received the Earline Matthews complaint. See D.C. MUN. REGS., tit. 3, § 3704.8-3704.9 (indicating that OCF must resolve complaints within ninety (90) days unless it requests and receives an extension of time).

³ The investigation entailed “reviewing and verifying all submitted information, in light of the OCF and ANC statutes, legal research into the specific issue of law in question, an informal hearing, interviews, and in-house meetings.” Order at 3.

On Friday, March 13, 2009, Chapple filed a Request for Review of the Initial Order with the Board. On Friday, May 1, 2009, a pre-hearing conference on the matter was held in the Board's offices. During this proceeding, the parties stipulated that there were certain factual errors⁴, and that the sole issue before the Board at the hearing would be whether Mr. Chapple violated D.C. Official Code § 1-1106.01(b) when he used letterhead imprinted with his name and status as Advisory Neighborhood Commissioner of Single-Member District 2C02 to solicit and receive advertisement monies to fund the Magazine.

On Wednesday, May 6, 2009, the Board heard the parties' arguments with respect to the aforementioned issue. During this hearing, OCF presented an Amended Order, which corrected the factual errors in the Initial Order.⁵ The Board's General Counsel subsequently determined that the circumstances under which the Amended Order was issued rendered the Initial Order moot, and that, in order for the matter to properly be before the Board, Chapple would have to file a new appeal, one that was directed at the Amended Order. Chapple did so on Tuesday, May 26, 2009. For purposes of resolving this matter, which is the subject of this order, the Board took the arguments made by the parties during the May 6, 2009 hearing, as well as the additional information submitted by Chapple thereafter, into consideration.

Relevant Statutory and/or Regulatory Provisions

D.C. Official Code § 1-1106.01(b) reads, in part, "No public official shall use his or her official position or office to obtain financial gain for himself or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated[.]"

D.C. Official Code § 1-1106.01(h)(1) defines "business to mean any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted for profit."

D.C. Official Code § 1-1106.01(h)(2) defines "business with which he or she is associated to mean "any business of which the person or member of his or her household is a director, officer, owner, employee, or holder of stock worth \$1000 or more at fair market value, and any business which is a client of that person."

D.C. Official Code § 1-1106.01(i)(2) provides that "Members of Advisory Neighborhood Commissions shall be covered under the conflict of interest provisions of § 1-1106.01.

3 DCMR § 3711.1 provides that, "Upon a determination ... that a violation has occurred, the Director may ministerially impose fines upon the offending party[.]"

⁴ The Initial Order indicated that Chapple was appointed to the position of Advisory Neighborhood Commissioner of ANC 2C02 when he was in fact elected in November 2006 and took office in January 2007. The Initial Order also indicated that Chapple established the ANC 2C02, LLC bank account in February 2007 when it was actually not established until after the LLC was established July 2007.

⁵ Aside from the corrections, the Amended Order and the Initial Order are identical.

Pursuant to 3 D.C.M.R. §3711.2, "Fines shall be imposed as follows:

"(v) Use of official position for personal financial gain \$2000[.]"

Pursuant to 3 D.C.M.R. §3711.2, the Director of Campaign Finance "may modify, rescind, dismiss or suspend any fine imposed."

Issue Presented

Whether Chapple violated D.C. Official Code § 1-1106.01(b) when he used letterhead imprinted with his name and status as Advisory Neighborhood Commissioner of Single-Member District 2C02 to solicit and receive advertisement monies to fund the Magazine.

Discussion

There appears to be no question but that Chapple used letterhead to solicit and receive advertisement monies to fund the Magazine. During the May 1, 2009 pre-hearing conference, Chapple acknowledged as much in the following exchange between himself and Senior Staff Attorney Terri Stroud:

MS. STROUD: *[S]o apparently you used your ANC letterhead to solicit monies using -- I mean to solicit money for the advertising for the newsletter.*

COMMISSIONER CHAPPLE: *That's correct.*

MS. STROUD: *So that's -- there is not an issue there?*

COMMISSIONER CHAPPLE: *Yeah. The issue was that I did it to generate a profit. That's what the issue is.*

MS. STROUD: *Okay. So you're saying that you did not do that to generate a profit?*

COMMISSIONER CHAPPLE: *Right. It was only to put forth the newsletter, not to generate a profit.*

MS. STROUD: *And so you were using the letterhead to solicit money to kind of mitigate your --*

COMMISSIONER CHAPPLE: *Right.*

MS. STROUD: *Okay.*

COMMISSIONER CHAPPLE: Not to generate a profit, as was stated by Ms. Williams, that this was all done to -- as she says, not to keep the magazine going, not to supplement my funds, not to -- because I could not continue --

MS. STROUD: Well, so you -- let me see your -- or actually I have your letter here. (Perusing document.)

COMMISSIONER CHAPPLE: Okay. It starts at the end of page two, that last paragraph. It starts in paragraph nine, her finding of facts⁶, that she states as a fact that this was done only to generate a profit. That's what she states. And it was never done to generate a profit. In paragraph nine under the finding of facts, that's what she states.

MS. STROUD: So in your request for review, you're saying that you were soliciting funds to lessen the financial burden on you and Mr. Moulton.

COMMISSIONER CHAPPLE: Right.

May 1, 2009 Pre-hearing Transcript at 19-21 (emphasis added).

The foregoing exchange reveals that the *only* concern Chapple had with Paragraph 9 in the Findings of Fact section of the Order is that it indicates that his use of the ANC letterhead to solicit money was “only to generate a profit”, as opposed to being done to “put forth the newsletter.” In other words, Chapple did not dispute that he used his ANC letterhead to solicit money – he only disputed the *purpose* of such solicitation.

The Invoice is an example of Chapple’s use of his ANC letterhead to solicit and receive advertisement monies to fund the Magazine. In his request for review, Chapple did not take issue at all with Paragraph 8 in the Findings of Fact section of the Initial Order (“Paragraph 8”), which references the Invoice:

8. On at least one occasion in May 2008, respondent, simultaneously as organizer and registered agent of ANC-2C02 LLC and as Advisory

⁶ The portion of the Order that Chapple refers to, Paragraph 9 in the Findings of Fact section (“Paragraph 9”), reads as follows:

9. On at least one occasion in July 2008, respondent, simultaneously as organizer and registered agent of ANC-2C02 LLC and as Advisory Neighborhood Commissioner for ANC 2C02, authorized Martin Moulton, as publisher of the magazine, to solicit and collect monies from persons and other businesses for advertising in the magazine in an effort to, among other things, “generate a profit” from the magazine especially because respondent used his ANC letterhead.

Order at 7.

Neighborhood Commissioner for ANC 2C02, solicited and collected monies from persons and other businesses for advertising in the magazine in an effort to, among other things, “generate a profit” from the magazine especially because respondent used his ANC letterhead. RT; Summary of Interviews (Summary at Moulton); Invoice for advertisement in ANC2C02&YOU! Magazine on ANC 2C02 letterhead of Advisory Neighborhood Commissioner Kevin L. Chapple, dated May 22, 2008.

Order at 7.

Chapple curiously claims that the Invoice is “not a solicitation of funds, but an acknowledgment of funds already received.” Email from Chapple (May 14, 2009, 12:54 EST). He further attests that he had not seen the Invoice prior to the May 6, 2009 hearing.

The Board cannot accept these contentions. First, the Invoice clearly solicits payment, providing both the name of the entity to which the check should be made payable and a mailing address. Second, the Invoice is dated May 22, 2008, but the check received in response to the Invoice is dated May 31, 2008. This demonstrates that the Invoice -- coming, as it did, *before* the payment was received -- could not have been “an acknowledgment of funds already received.” Third, the Initial Order, which referred to the Invoice, was issued on January 23, 2009, yet Chapple did not allege at any time prior to May 14, 2009 that he was unaware of the existence of the Invoice identifying him as the ANC 2C02 Commissioner. In fact, at the May 6, 2009 hearing, Chapple indicated that he had indeed -- at the *very* least -- seen the Invoice. *See* May 6, 2009 Hearing Transcript at 24 (wherein Chapple states that “[The Invoice] was just something that I had drawn up myself, and I was just acknowledging receipt of [payment], but it was received not to me but to the LLC[.]”). Finally, OCF records indicate that Chapple himself provided the invoice on August 5, 2008.

D.C. Official Code § 1-1106.01(b) provides that “[n]o public official shall use his or her official position or office to obtain financial gain for himself or herself, any member of his or her household, or any business with which he or she or a member of his or her household is associated[.]” Chapple, an ANC Commissioner, violated this provision when he used his ANC letterhead on the Invoice which solicited payment for advertisements in the Magazine, an enterprise that Chapple ran under the auspices of the LLC for which he was the President and sole organizer. As a result of the Invoice, Chapple collected payment for the advertisements in the Magazine. The Invoice, printed on Chapple’s letterhead, was intended to -- and did -- result in financial gain for the Magazine.

Chapple argued in his request for review and throughout these proceedings that he could not have realized financial gain because he incurred losses as a result of publishing the Magazine that far exceeded whatever revenue he gained through payments for advertising therein. The Board agrees with OCF’s position that it is irrelevant that Chapple’s losses exceeded revenues gained; D.C. Official Code § 1-1106.01(b)

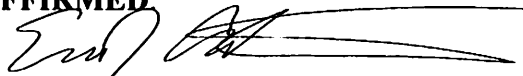
contemplates an absolute rule, such that: 1) the act of using one's official position to obtain financial gain is what is of concern in assessing whether a violation of this provision has occurred, and; 2) *any* monies earned through the use of one's official position or office is prohibited regardless of whether or not those monies result in a net gain.

Conclusion

In light of the foregoing discussion, it is hereby

ORDERED that the Amended Order be **AFFIRMED**

August 25, 2009



Errol R. Arthur
Chairman

Charles R. Lowery
Member