

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

The D.C. Office of Campaign Finance

Petitioner,

v.

Dellena Cunningham

Respondent.

**Administrative Hearing
Docket No. 03-007**

MEMORANDUM OPINION AND ORDER

This matter came to be heard by the Board on Wednesday, December 3 2003 at 10:30 a.m. pursuant to the submission of a Petition by the Office of Campaign Finance (hereinafter "OCF") for Enforcement of its January 16 2003 Order ("Order") imposing a fine of \$2,000.00 against Dellena Cunningham , Director of Quality Improvement with the Commission on Mental Health Services. The fine was imposed as a result of the Respondent's failure to timely file a Financial Disclosure Statement ("FDS") for the calendar year 2001 by the due date as required by D.C. Code § 1106.02 (2001 ed.).

The Respondent was employed with the Commission on Mental Health Services during calendar year 2001. D.C. Code § 1106.02 requires each public official, including members of certain boards and commissions and excepted service employees paid at a rate of GS-13 or above, to file an FDS by May 15th of each year. See D.C. CODE § 1106.02(a), (d). Accordingly, the Respondent was required to file such Statement by May 15, 2002. The Respondent failed to do so.

By Notice of Hearings, Statements of Violations and Orders of Appearance dated August 8, 2002 and August 22, 2002, the Office of Campaign Finance ordered the Respondent to appear at hearings scheduled on August 15, 2002 and August 28, 2002, and show cause why she should not be found in violation of the D.C. Campaign Finance Reform and Conflict of Interest Act of 1974, as amended by D.C. Code § 1-1106.01 et seq. (“the Act”) and fined accordingly. The Respondent failed to appear at either of these hearings.

The penalty established at 3 DCMR §§ 3711.2(y) for failure to file the FDS as required by D.C. Code § 1-1106.2(a) is a fine of \$50.00 per day for each business day subsequent to the due date for each violation. On January 16, 2003, the Director of OCF issued the Order imposing a fine of \$2,000.00 against the Respondent for failure to file the FDS by the due date in violation of D.C. Code § 1-1106.2(a). This Order became effective on February 3, 2003, in the absence of a request for review of the penalty by the Respondent Committee to the Board, pursuant to 3 DCMR § 3711.5.¹ Payment of the fine was due no later than February 13, 2003 pursuant to 3 DCMR § 3711.7.² To date, the Respondent had failed to pay the fine imposed by the Order of the Director issued January 16, 2003.

On October 21, 2003, OCF transmitted a Petition for Enforcement of its Order to the Office of the General Counsel for the Board. The General Counsel held a pre-hearing conference in the matter on November 18, 2003. Despite being served with

¹ 3 D.C.M.R. § 3711.5 provides that “[a]ny fine imposed by the Director under § 3711.2 shall become effective on the sixteenth (16th) day following the issuance of a decision and order; Provided that the respondent does not request a hearing under § 3709.12.”

² 3 D.C.M.R. § 3711.7 provides that “[f]ines imposed under [Chapter 37, “Investigations and Hearings”] shall be paid within ten (10) days of the effective date.”

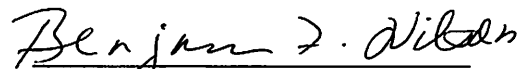
notice of this conference by hand delivery on Tuesday, November 4, 2003, the Respondent failed to appear. A hearing in this matter was held before the Board on December 3, 2003. Despite being served with notice of this hearing by hand delivery on November 4, 2003 the Respondent again failed to appear.

D.C. Code § 1-1103.05(b)(4) provides that “[i]f the person against whom a civil penalty is assessed fails to pay the penalty, the Board shall file a petition for the enforcement of its order assessing the penalty in the Superior Court of the District of Columbia.” OCF has shown that the fine of \$2,000.00 imposed against the Respondent was wholly justified. Despite attempts on the part of the Office of the General Counsel to meet with the Respondent and make arrangements to settle the matter, the Respondent has not demonstrated a willingness to do so.

Accordingly, it is this 11th day of December 2003,

ORDERED that the Order of the Director of OCF be enforced and that a Petition for the Enforcement of Order be filed in Superior Court forthwith.

December 11, 2003
Date


Benjamin Wilson, Chairman
Board of Elections and Ethics