

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

D.C. Office of Campaign Finance, Complainant)	
)	Administrative Hearing No. 13-08
)	
v.)	
)	
The Committee to Re-Elect Kwame Brown, Respondent)	Re: Penatly Phase
)	
)	

MEMORANDUM OPINION AND ORDER

The penalty phase of the above-captioned matter came before the Board of Elections (“the Board”), pursuant to D.C. Official Code § 1-1163.35(a)(2) (2012 Supp.), on Wednesday, June 12, 2013. The purpose of the proceeding was to consider the assessment of civil penalties against The Committee to Re-elect Kwame Brown (“the Committee”) for violations of the D.C. Campaign Finance Reform and Conflict of Interest Act of 1974 (“the Act”).¹ Board Chairman Deborah K. Nichols and Members Devarieste Curry and Stephen Danzansky presided over the hearing. The Office of Campaign Finance (“OCF”) was represented by William O. SanFord, Esq., and the Committee was represented by Frederick D. Cooke, Esq.

The procedural history of this case is extensive, and need not be revisited here, as the Board’s earlier order in this matter (issued on July 8, 2011), fully lays out that history, and is incorporated by reference herein (“the Administrative Order”). It is sufficient here to say, in sum, that: 1) OCF filed a complaint (“the Complaint”) against the Committee alleging several violations of the Act; 2) the Board found that the evidence presented by OCF in support of the Complaint merited a finding of “an apparent violation of [subchapter I of the Act]”² and, accordingly, referral to the United States Attorney for the District of Columbia (“USAO”) for prosecution; and 3) the Board opted to forego its own consideration of the issue of violation and civil penalties in this matter until such time as the USAO had completed its own investigation concerning the Committee. In December 2012, the USAO informed the Board by letter that it had concluded its investigation. Subsequently, the Board, after closing out matters related to the April 23, 2013 Special Election, scheduled a penalty hearing regarding the case for June 12, 2013.

On June 4, 2013, the Board’s Office of the General Counsel conducted a prehearing conference during which Mr. Cooke, on behalf of the Committee, stipulated to the violations alleged in the Complaint. On June 5, 2013, the Board issued an Order directing the Committee to show cause

¹ The Act was repealed pursuant to the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, enacted February 27, 2012 (D.C. Act 19-318; D.C. Official Code § 1-1161.01 et seq.) (“the Ethics Act”), but the relevant provisions the Act were reconstituted in Title III of the Ethics Act.

² D.C. Official Code § 1-1103.02(c).

during the scheduled hearing why the Board should not assess the maximum amount of penalties allowed for the violations, pursuant to D.C. Official Code § 1-1163.35(a)(1), and take any other action the Board may deem appropriate.

At the hearing, OCF indicated that it had determined that the Committee committed 267 distinct violations of the Act, and that the Board had the authority to assess a maximum of \$200 for each of the violations, for a total penalty of \$53,400.³ OCF requested that the Board impose the maximum penalty allowed, especially in light of the fact that the Committee had, to date, not taken any steps to comply with the applicable registration and reporting provisions of the Act.

The Committee, through its counsel, made several arguments against the imposition of the maximum penalty allowed. First, it argued that it was improper to construe the violations alleged as 267 discrete violations for each of which a penalty of \$200 should be levied, particularly as there was no indication of an intent to commit 267 separate violations. Second, the Committee asserted that it has not complied with the applicable registration and reporting provisions of the Act because the Committee is defunct. Finally, the Committee indicated that, as it only has \$149.52 remaining in its account, and approximately \$35,000 in debts, it would be impossible for it to pay a total penalty of \$53,400.

The Board does not find any of the Committee's arguments persuasive. The Committee failed to provide any support for its theory regarding how the violations should be construed for purposes of assessing a penalty. Moreover, as OCF noted, the District's campaign finance statute is a strict liability statute; it does not require that intent be shown before a penalty is assessed. Moreover, in assessing a penalty for violations of the statutes it administers and enforces, the Board need not consider whether the culpable entity is still operational, or the contents of its balance sheet. The Board's foremost duty is to protect the integrity of the electoral process, and because full and accurate reporting of campaign contributions and expenditures is such an essential part of the electoral process, it is imperative that participants--candidates and their campaign committees—understand that multiple and extensive violations will be met with the maximum penalty permissible. Such was the record in the case of the Committee to Re-Elect Kwame Brown, as stipulated by the Committee's counsel. Accordingly the Board adopts OCF's recommendation that the Board impose the maximum penalty allowed.

For these reasons, it is hereby

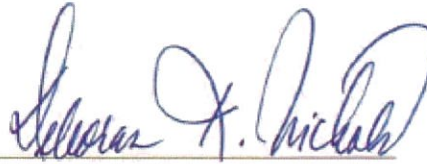
ORDERED that a total penalty of \$53,400 be assessed against the Committee to Re-Elect Kwame Brown for committing 267 violations of the Campaign Finance Act (as it existed at all times relevant to this matter) as outlined in the Complaint.

³ See D.C. Official Code § 1-1163.35(a)(1) (2012 Supp.) (“Any person who violates any provision of parts A through E of this subchapter or of subchapter I of Chapter 10 of this title may be assessed a civil penalty by the Elections Board under paragraph (2) of this subsection of not more than \$200, or 3 times the amount of an unlawful contribution, expenditure, gift, honorarium, or receipt of outside income, whichever is greater, for each such violation. Each occurrence of a violation of parts A through E of this subchapter and each day of noncompliance with a disclosure requirement of parts A through E of this subchapter or an order of the Elections Board shall constitute a separate offense.”)

The penalty should be made payable by check to the D.C. Treasurer. The Committee has thirty (30) days from the entry of this Order to appeal this decision in accordance with the provisions of the District of Columbia Administrative Procedures Act. Payment of the penalty should occur within the time frame specified for appeal.

It is so **ORDERED**.

June 13, 2013

A handwritten signature in blue ink, appearing to read "Deborah K. Nichols", written over a horizontal line.

Deborah K. Nichols
Chairman, Board of Elections

