

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

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

Petitioner,

v.

**The Honorable Kendall
Simmons,
Commissioner, ANC
SMD 8E04**

Respondent.

**Administrative Hearing
Docket No. 19-002**

MEMORANDUM OPINION AND ORDER

This matter came before the Board on Wednesday, October 3rd, 2018 pursuant to the submission of a Petition by the Office of Campaign Finance (hereinafter “OCF”) for Enforcement of its July 7, 2017 Order (“Order”) imposing a fine of \$2,100.00 dollars against The Honorable Kendall Simmons, Commissioner, ANC SMD 8E04, Campaign Committee. The fine was imposed for failure to timely file the ANC Summary Financial Statement for the 2016 General Election in accordance with D.C. Official Code § 1-1163.09(b), which was due on March 17, 2017.

Pursuant to 3 DCMR § 3002.6, the Summary Financial Statement form of the Candidate for the Office of Member of an Advisory Neighborhood Commission (ANC) shall be filed no later than sixty (60) days after the certification by the Board of Elections (the Board) of the election results by the following individuals:

- (a) ANC candidates who qualified for the ballot through the write-in process;
- (b) ANC candidates who qualified for the ballot through the nominating petition process;
- (c) ANC candidates who accepted contributions or made expenditures and did not qualify for the ballot; and
- (d) ANC candidates who qualified as candidates for selection in the ANC vacancy filling process.

At all times pertinent hereto, Respondent was required to file the ANC Summary Financial Statement by the required due date. Respondent failed to timely file the ANC Summary Financial Statement by March 17, 2017.

Pursuant to 3 DCMR §§3709.3 and 3709.4, OCF issued to the Respondent a Notice of Hearing, Statement of Violations, and Order of Appearance (“Notice of Hearing”) dated April 4, 2017, ordering him to appear at an informal hearing on April 19, 2017, 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. Pursuant to 3 DCMR § 3709.4(f), the Notice of Hearing was served by regular mail. The Respondent did not appear at the hearing.

Pursuant to 3 DCMR § 3709.8, OCF rescheduled the informal hearing for May 17, 2017, and issued to the Respondent an amended Notice of Hearing to reflect the rescheduled hearing date. Pursuant to 3 DCMR § 3709.8(c), the amended Notice of Hearing was served by regular mail and certified mail on April 21, 2017. The amended Notice of Hearing served by regular mail and certified mail were not returned to OCF. The Respondent failed to appear at the second hearing.

The penalty established by 3 DCMR §§ 3711.1(b) and 3711.2(s) for failure to timely file the ANC Summary Financial Statement, required by D.C. Official Code § 1-1163.09(b), is a fine of \$50 per day for each business day subsequent to the due date. In accordance with D.C. Official Code § 1-1163.35(a)(3) and 3 DCMR § 3711.4, Respondent may be fined a maximum of \$4,000 for failing to timely file the ANC Summary Financial Statement. Under 3 DCMR § 3711.7, for good cause shown, the Director of Campaign

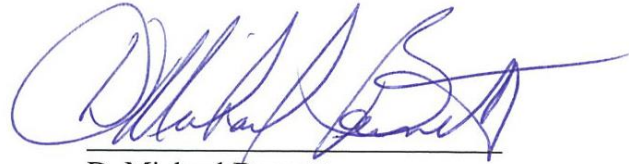
Finance may modify, rescind, dismiss, or suspend any fine. On the basis of the record and the recommendation of the Hearing Officer, the Director issued the Order imposing a fine of \$2,100.00 dollars for failure to timely file the ANC Summary Financial Statement in accordance with D.C. Official Code § 1-1163.09(b) on July 7, 2017. The fine of \$2,100.00 became effective on July 21, 2017 the 16th business day following the issuance of the Order of the Director, pursuant to 3 DCMR §§ 3711.5 and 3711.6; and in absence of a request for review of the penalty by Respondent to the Board of Elections, in accordance with 3 DCMR § 3709.11. The deadline for payment of the fine imposed was July 31, 2017 pursuant to 3 DCMR §§ 3711.5 and 3711.8, within 10 business days of the effective date of the issuance of the Order of the Director. To date, the Respondent has failed to pay the fine imposed by the Order.

On December 11, 2017, OCF transmitted a Petition for Enforcement of its Order to the Office of the General Counsel for the Board. The General Counsel held pre-hearing conferences in the matter on April 11, 2018. Despite being served by regular mail and electronic mail on March 27, 2018 respectively, the Respondent failed to appear. The Board held a hearing in the matter on Wednesday, October 3, 2018. Despite being served with notice of this hearing by regular mail and electronic mail on September 18, 2018, the Respondent again failed to appear.

D.C. Code § 1-1163.35(a)(4) 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.” OCF has shown that the fine of \$2,100.00 imposed against the Respondent was wholly justified. Despite numerous attempts on the part of the Office of the General Counsel to meet with the Respondent and arrange to settle the matter, the Respondent has not demonstrated a willingness to do so.

Accordingly, it is this 7th day of January, 2019,

ORDERED that the Order of the Director of the Office of Campaign Finance be enforced and that a Petition for the Enforcement of Order be filed with the Superior Court.

A handwritten signature in blue ink, appearing to read "D. Michael Bennett", written over a horizontal line.

D. Michael Bennett
Chairman,
Board of Elections