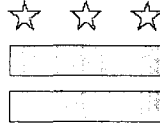


**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**



IN RE: Ron Moten,

Respondent

CASE No. 1087-001

FINAL DECISION

I. Introduction

The Office of Government Ethics (“OGE”) served Ron Moten (“Respondent”) with a Notice of Violation (“NOV”), charging him with one violation of the Code of Conduct. Count 1 is based on section 224 of the Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 (“Ethics Act”), effective April 27, 2012, D.C. Law 19-124, D.C. Official Code § 1-1162.24 (2013 Supp.), and alleges that “Respondent failed to file a Public Disclosure Statement for calendar year 2012 with the Ethics Board by May 15, 2013.”¹

Respondent failed to file a response to the NOV. The Board treated that failure as a general denial.²

Pursuant to notice,³ an evidentiary hearing was scheduled for October 17, 2013 at 1:00 p.m. Because Respondent failed to appear at that time, the Board considered other matters on its agenda and did not commence the hearing until 1:35 p.m.⁴ Respondent still failed to appear, and

¹ Section 224(a)(1) of the Ethics Act provides that, with certain exceptions not applicable here, “public officials shall file annually with the Ethics Board a public report containing a full and complete statement of” certain financial- and business-related information, an affidavit stating that the public official has not caused title to property to be placed in another person or entity for purposes of avoiding disclosure, and a certification of certain other matters. The term “public official” is defined by the Ethics Act and is discussed in the text below. Section 224(c) of the Act provides that the annual reports “shall be filed before May 15th of each year.”

² See 3 DCMR § 5509.6.

³ OGE’s efforts to serve Respondent with the hearing notice and the Board Chair’s subsequent conversation with Respondent about the hearing are detailed at Tr. 7-9.

⁴ See 3 DCMR § 5514.1 (“The Board may wait a reasonable length of time for a party to appear before beginning a proceeding.”).

the Board proceeded without him.⁵ OGE presented testimony, introduced exhibits, and offered argument.

Several hours after the hearing concluded, Respondent emailed the Director of Government Ethics to apologize for his absence at the hearing, explaining that he thought it had been scheduled for the following day. In the interests of fairness and with the Director's consent, the Board later gave Respondent a week to submit a notarized written statement of any relevant matters that he wanted the Board to consider.⁶ Respondent replied, instead, by sending an email and attaching to it a copy of a Financial Disclosure Statement for the period 2010-2011 purportedly filed with the Office of Campaign Finance on August 4, 2011. The email itself is equally unresponsive to the issues in this case, except that it does contain Respondent's admission that "[m]ore than six months after the election [he] received a phone call from a (BEGA) [sic] stating that [he] was out of compliance because [he] did not complete a financial disclosure."⁷

The Board has had the opportunity to review the record in its entirety, including Respondent's email and its attachment, and finds that there is substantial evidence that Respondent violated the Code of Conduct as alleged in Count 1 of the NOV. Accordingly, the Board assesses a civil penalty of \$1,000.

As required by 3 DCMR § 5521.2, the Board's findings of fact, conclusions of law, and analysis are set forth below.

II. Findings of Fact

The facts in this case can be summarized as follows:

On December 21, 2011, Respondent filed a nominating petition with the then-Board of Elections and Ethics ("BOEE")⁸ as a Republican candidate for election as the Councilmember representing Ward 7. Tr. 18; OGE Ex. 1.

⁵ See *id.* at § 5503.4 ("If any person or party... fails to appear at a hearing, the Board may proceed ex parte, unless the Board extends the time of the hearing or unless the person's appearance is required by statute."); see also *id.* at § 5514.1(a) (providing that if a noticed party has not appeared after a reasonable time, Board Chair "may proceed with the hearing, obtain the testimony of those persons present, and, on the basis of the testimony and the record, the Board may issue a decision in the case").

⁶ See *id.* at § 5507.8 ("No document or other writing shall be accepted for the record after the close of the hearing, except with the consent of the Board after due notice to the opposing parties and only when the receipt of the document will not unfairly affect the interest of a party.").

⁷ OGE's witness testified that an OGE Attorney Advisor had "contacted Mr. Moten by telephone and Mr. Moten provided an email address which [the Attorney Advisor] used to forward the non-compliance letter to him." Tr. 27; see also OGE Ex. 6 (containing, among other things, a printout of Respondent's May 29, 2013 email to the Attorney Advisor following the telephone call).

⁸ The BOEE was re-established by section 305 of the Campaign Finance Act of 2011 (D.C. Official Code § 1-1163.05) as the Board of Elections. That re-establishment has no legal significance for purposes of this Decision.

On April 3, 2012, Respondent appeared on the Republican primary ballot as a candidate for election as the Councilmember representing Ward 7. OGE Ex. 2.

On November 6, 2012, Respondent appeared on the general election ballot as the Republican candidate for election as the Councilmember representing Ward 7. OGE Ex. 3.

Respondent failed to file a public financial disclosure report for calendar year 2012 with the Ethics Board by May 15, 2013. Tr. 31.

As of October 17, 2013, Respondent had failed to file a public financial disclosure report for calendar year 2012 with the Ethics Board, despite direct notification by OGE staff and public notice published in the *D.C. Register*. Tr. 33, 34; OGE Ex. 4, 5, 6, 7.

III. Conclusions of Law and Analysis

Count 1 (Financial Disclosures and Honoraria – Public Reporting)

Even though the Board proceeded with the hearing in this case without Respondent, the question, nonetheless, is whether OGE has met its burden of proving Respondent's violation of the public financial disclosure requirements of section 224 of the Ethics Act by substantial evidence.⁹ The Board finds that OGE has satisfied that burden.

Section 101(47)(A) of the Ethics Act (D.C. Official Code § 1-1161.01(47)(A)) defines "public official" as meaning "[a] candidate for nomination for election, or election, to public office[.]" Further, section 224(f) of the Act (D.C. Official Code § 1-1162.24(f)) provides that "a person shall be considered to have been a public official if he or she has served as a public official for more than 30 days during any calendar year in a position for which [public financial disclosure] reports are required under this section."

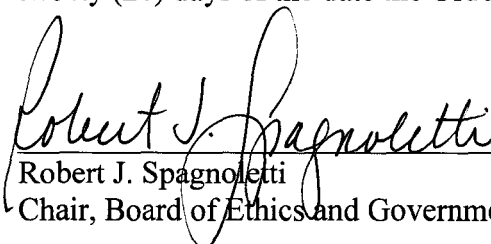
Here, Respondent became a candidate in December 2011, when he filed his nominating petition with the BOEE as a Republican candidate for election as the Ward 7 Councilmember. He ran as a candidate for the seat on the Republican primary ballot in April 2012 and, in November, as the Republican candidate in the general election. In short, Respondent was a public official in 2012 for more than 30 days by virtue of his candidacy and, as such, was required by section 224 of the Ethics Act to file a public financial disclosure report before May 15, 2013. However, he did not file and, despite personal and public notice, he has yet to do so.

⁹ See 3 DCMR § 5518.1 ("In all cases involving a notice of violation, the Director [of Government Ethics] has the burden of persuading the Board that a violation has occurred by substantial evidence."); see also *id.* at § 5521.4 ("A decision [by the Board] shall be supported by substantial evidence on the record. Pursuant to the substantial evidence rule, courts shall uphold an administrative determination of fact if on the entire record the determination is rationally supportable and could have been arrived at reasonably.").

Disposition

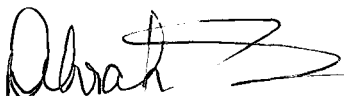
For the foregoing reasons, the Board finds, as alleged in Count 1 of the NOV, that Respondent violated the Code of Conduct and, accordingly, assesses a civil penalty against him totaling \$1,000.¹⁰

An appropriate Order accompanies this Final Decision. Pursuant to 3 DCMR § 5404, Respondent may appeal the Order to the Superior Court of the District of Columbia within twenty (20) days of the date the Order is served upon him.



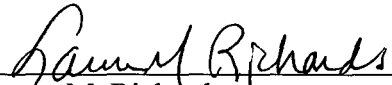
Robert J. Spagnoletti
Chair, Board of Ethics and Government Accountability

12/5/13
Date



Deborah A. Lathen
Member, Board of Ethics and Government Accountability

12/15/13
Date

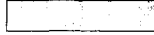


Laura M. Richards
Member, Board of Ethics and Government Accountability

12-5-13
Date

¹⁰ Section 221(a)(1) of the Ethics Act (D.C. Official Code § 1-1162.21(a)(1)) authorizes the Board to “assess a civil penalty for a violation of the Code of Conduct of not more than \$5,000 per violation[.]”

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY



IN RE: Ron Moten,

Respondent

CASE No. 1087-001


ORDER

This case came before the Board for an evidentiary hearing on October 17, 2013, and, based upon the findings of fact and conclusions of law contained in the accompanying Final Decision and upon the entire record in this case,

IT APPEARING that Respondent violated Count 1 of the Notice of Violation (failing to file a public financial disclosure report for calendar year 2012); it is, therefore

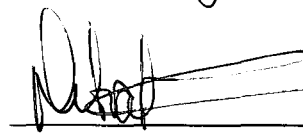
ORDERED that Respondent pay a civil penalty in the amount of ONE THOUSAND DOLLARS (\$1,000.00); and it is further

ORDERED that this case be CLOSED.



Robert J. Spagnoletti
Chair, Board of Ethics and Government Accountability

12/5/13
Date



Deborah A. Lathen
Member, Board of Ethics and Government Accountability

12/5/13
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Laura M. Richards
Laura M. Richards
Member, Board of Ethics and Government Accountability

12-5-13
Date