

Conflicts of Interest Bd. v. Levine

OATH Index No. 956/11 (Jan. 28, 2011)

Following default hearing ALJ found that a former Rent Guidelines Board member intentionally failed to file 2008 and 2009 financial disclosure reports. ALJ recommended a \$5,000 fine.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of

CONFLICTS OF INTEREST BOARD

Petitioner

- against -

RISA LEVINE

Respondent

REPORT AND RECOMMENDATION

ALESSANDRA F. ZORGNIOTTI, *Administrative Law Judge*

Petitioner, the Conflicts of Interest Board, brought this civil penalty proceeding under Chapter 68 of the New York City Charter (“Charter”) and Title 53 of the Rules of the City of New York (“RCNY”). The Board alleges that Risa Levine, a former Rent Guidelines Board member, was required by section 12-110 of the Administrative Code to file annual financial disclosure reports for calendar years 2008 and 2009 and that she failed to do so (ALJ Ex. 1).

Respondent failed to answer the petition, and did not appear for the hearing scheduled for January 13, 2011. The record established that the petition and notice of hearing were served on respondent at her last known address by first class and certified mail, return receipt requested (Pet. Exs. 6-11), as required by 53 RCNY section 2-05(c) (Lexis 2009). Such evidence established the jurisdictional prerequisites for finding respondent in default and the matter proceeded in the form of an inquest.

The petition and notice of hearing also advised respondent of her time to file an answer, the consequences of the failure to answer, the right to representation, and the consequences of a failure to appear at trial (ALJ Ex. 1). Under petitioner’s rules, respondent’s failure to answer the petition constituted an admission to all of the allegations contained therein. Petitioner was required only to “submit for the record an offer of proof” of the pertinent facts. 53 RCNY § 2-

02(c)(3); see also *Conflicts of Interest Bd. v. Three Public Servants*, OATH Index Nos. 2406/00 2412/00 & 2415/00 (Oct. 12, 2000). Petitioner produced testimony and documentary evidence showing that respondent was obligated to file financial disclosure forms in 2008 and 2009 and that she failed to do so.

I find that petitioner proved the charges and recommend a fine in the amount of \$5,000.

ANALYSIS

At all times relevant to this action, respondent was a member of the Rent Guidelines Board (Pet. Exs. 12, 13; Tr. 31). Because respondent was a compensated board member and a policy maker (Tr. 11, 15, 35-36, 41), she was required to file an annual financial disclosure report with the Board. Admin. Code § 12-110(b)(3)(a) (Lexis 2009).

Mr. McLaughlin testified that he is the executive director of the Rent Guidelines Board and is responsible for distributing financial disclosure packages to board members (Tr. 33). On June 4, 2009, and May 16, 2010, respondent signed for and received financial disclosure packages for 2008 and 2009, respectively (Tr. 37, 40; Pet. Exs. 1, 5). In addition, Mr. McLaughlin sent an email message to board members, including respondent, on May 20, and July 6, 2009, reminding them of their obligation to file the disclosure forms (Tr. 36; Pet. Exs. 14, 16). Mr. McLaughlin testified that the duty to file 2008 and 2009 disclosure statements was also discussed at Rent Guidelines Board meetings on June, 4, 2009, March 23, 2010, and April 16, 27, and 30, 2010. Respondent was present for these meetings (Tr. 38-39, 41-47; Pet. Exs. 15, 17-20). Mr. McLaughlin further stated that he spoke personally to respondent about filing her disclosure report in 2009 because she had failed to do so in 2008 (Tr. 47).

Ms. Giura-Else, the Deputy Director of the Financial Disclosure Unit, testified that petitioner compiled a list of all city employees, including respondent, who were required to file financial disclosure reports for the calendar years 2008 and 2009, but failed to do so. The list of non-filers was created from a database concerning disclosure reports (Tr. 13-17). Ms. Giura-Else also testified that respondent filed her disclosure forms in 2006 and 2007 late and that both times the late fees were waived (Tr. 29-30).

Petitioner mailed three letters to respondent notifying her of the failure to file disclosure forms in 2008 and 2009 in violation of the Administrative Code and offering respondent the opportunity to file the reports and pay the late filing fines, or face a civil penalty up to \$10,000

(Tr. 20-26; Pet. Exs. 2-4). Between October 14 and November 29, 2010, petitioner mailed respondent three trial notices again informing her of the violations and the opportunity to correct them or face larger penalties at trial (Tr. 26-29; Pet. Exs. 6-11).

Given respondent's actual knowledge of the obligation to file timely annual financial disclosure reports and her receipt of the packages in 2008 and 2009, it is reasonable to infer that her failure to file in 2008 and 2009 was intentional. Therefore, the charges are sustained.

FINDINGS AND CONCLUSIONS

1. Respondent was properly served with the charges and notice of hearing.
2. Respondent intentionally failed to file 2008 and 2009 financial disclosure reports as required by section 12-110 of the Administrative Code.

RECOMMENDATION

The financial disclosure requirement of section 12-110 of the Administrative Code was enacted to deter corruption and conflicts of interest and to enhance confidence in the integrity of government. *See Barry v. City of New York*, 712 F.2d 1554, 1560 (2d Cir. 1983); *see also Conflicts of Interest Bd. v. Nine Public Servants*, OATH Index No. 363/95, 381/95, 390/95, 396/95, 399/95, 407/95, 410/95, 411/95, 416/95 (Nov. 14, 1994) ("The financial disclosure requirements serve important public policies of open and honest government.").

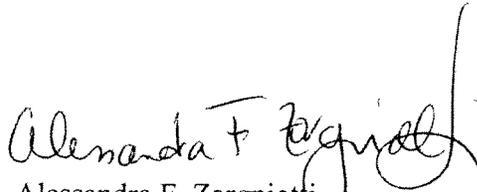
Under the Administrative Code, the maximum fine for a violation of the financial disclosure law is \$10,000. Admin. Code § 12-110(g)(1) (Lexis 2009). In addition to a \$10,000 fine, a willful violation constitutes a misdemeanor punishable by imprisonment for up to one year as well as removal from office as provided by law. Admin. Code § 12-110(g)(2). The factors to be considered when determining a fine include whether the person failed to timely file in prior years and the length of the delay in filing. Admin. Code § 12-110(g)(1).

As demonstrated by the record, petitioner and Mr. McLaughlin repeatedly notified respondent of her obligations to file reports in 2008 and 2009. As of the hearing date, respondent had failed to do so. Moreover, respondent filed late in 2006 and 2007 and had the late filing fees waived. Thus, respondent's willful violation of the reporting provisions of section 12-110 of the Administrative Code warrants a stern penalty.

Counsel for petitioner asks that I recommend imposition of a fine of \$5,000 for both violations. The Board has sometimes implemented a graduated penalty where the maximum civil penalty of \$10,000 is imposed, with the opportunity to have the fine reduced to \$7,500 if the report is filed within one year of service of the Board's final order, \$5,000 if filed within nine months, \$2,500 if filed within six months, or \$1,500 if filed within 60 days. *See e.g. Conflicts of Interest Bd. v. Three Public Servants*, OATH Index Nos. 361/04, 366/04 & 370/04 (Nov. 6, 2003), *adopted, Conflicts of Interest Bd. Case No. FD2003-8* (Dec. 15, 2003); *Conflicts of Interest Bd. v. Two Individual Respondents*, OATH Index Nos. 1624/98 & 1634/98 (Sept. 2, 1998). The Board has also imposed fixed fines. *See Conflicts of Interest Bd. v. Two City Council Candidates*, OATH Index Nos. 902/93 & 143/93 (July 7, 1993) (\$2,500 fines for candidates for city council who failed to file financial disclosure forms); *Conflicts of Interest Bd. v. Seventeen City Council Candidates*, OATH Index Nos. 142/93-161/93 (Oct. 5, 1992) (same).

Given that respondent has had two prior late filing fees waived and intentionally failed to file her financial disclosure reports on two subsequent occasions, a fixed penalty rather than a graduated is reasonable. Because respondent did not appear at the hearing, no mitigating circumstances were presented and none are apparent from the record.

Under the circumstances, petitioner's requested penalty of \$2,500 for each violation is reasonable. Accordingly, I recommend that a \$5,000 penalty be imposed on respondent for her failure to file financial disclosure reports in 2008 and 2009.


Alessandra F. Zorziotti
Administrative Law Judge

January 28, 2011

SUBMITTED TO:

STEVEN B. ROSENFELD
Chair

APPEARANCES:

JULIA DAVIS, ESQ.
Attorney for Petitioner

No Appearance for Respondent