

Conflicts of Interest Bd. v. One Public Servant

OATH Index No. 957/11 (Feb. 2, 2011)

In a civil penalty proceeding, on default, respondent was found guilty of intentionally failing to file disclosure reports in 2008, 2009, and 2010, and failing to pay statutory late fees for each year. ALJ recommended fines of \$1,000, \$1,500, and \$1,000, for each year, respectively.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
CONFLICTS OF INTEREST BOARD
Petitioner
- against -
ONE PUBLIC SERVANT¹
Respondent

REPORT AND RECOMMENDATION

TYNIA D. RICHARD, *Administrative Law Judge*

Petitioner, the Conflicts of Interest Board (the “Board”), brought this civil penalty proceeding under the Administrative Code, Chapter 68 of the New York City Charter (“Charter”) and Title 53 of the Rules of the City of New York (the “Board’s rules”). *See* Admin. Code § 12-110; Charter § 2603(h); 53 RCNY § 2-03(a). The petition charges that respondent, formerly an employee of the Department of Education (“Department”), was required by section 12-110 of the Administrative Code to file financial disclosure reports for calendar years 2008, 2009, and 2010, and that she intentionally failed to do so. Further, the petition charges that, having failed to file the disclosure within one week of the filing deadline in each calendar year, she is required to pay late filing fines for each year.

Respondent failed to answer the petition and did not appear at the hearing scheduled for January 20, 2011. The record established that the petition and notice of hearing were served

¹ The identity of a person charged with a violation of the City’s ethics rules is confidential unless and until the Board issues a final determination against such person. 53 RCNY § 2-05(f) (Lexis 2009). Therefore, in order to permit use of this Report and Recommendation for public purposes, names or other identifying data are omitted. Supplementing this Report and Recommendation is a memorandum that will not be made public which separately states my recommended disposition as to this respondent. The trial transcript and exhibits also are confidential to the extent that they contain respondent’s name or other identifying information.

properly on respondent at her last known address by first class mail and by certified mail, return receipt requested (Pet. Exs. 5, 6). 53 RCNY § 2-05(c) (Lexis 2009). Such evidence established the jurisdictional prerequisites for finding respondent in default, and the matter proceeded as an inquest.

On the record before me, I find that petitioner proved the charges and recommend that fines be imposed in the amount of \$1,000, \$1,500, and \$1,000 for calendar years 2008, 2009, and 2010, respectively.

ANALYSIS

Under the Board's rules, respondent's failure to answer the petition constitutes an admission of all the allegations contained therein. Thus, petitioner was required only to "submit for the record an offer of proof" of the pertinent facts. 53 RCNY § 2-02(c)(3) (Lexis 2009). At the hearing, petitioner presented the testimony of two witnesses, who testified to respondent's filing status, the notices sent to her, and her failure to file.

Samantha Biletsky, Ethics Officer, Senior Counsel, and Financial Disclosure Liaison for the Department of Education, testified that she identified respondent as an employee required to file financial disclosure reports for calendar years 2008, 2009, and 2010 (Tr. 41, 50; ALJ Ex. 1 at 3). *See* Admin. Code § 12-110(b)(3)(a)(2). Joanne Giurga-Else, Deputy Director of the Board's Financial Disclosure Unit, testified that respondent failed to file in all three years (Tr. 25, 33, 37). They identified numerous documents – sign-out sheets indicating receipt of the filing packet (Pet. Exs. 7, 10), official notices (Pet. Exs. 8, 9, 11), email notices (Pet. Exs. 12, 13), and other email communications with respondent (Pet. Exs. 14-20) – indicating that respondent was given ample notice of her obligation to file for calendar years 2008, 2009, and 2010, and of the consequences for not filing. Ms. Biletsky, who had a phone conversation and numerous email communications with respondent counseling her about her obligation to file and the procedure for filing, said respondent conceded her obligation and agreed to file (Tr. 54-56). Yet, she did not. Not only did respondent fail to file in those years but she also failed to pay the statutory late filing fines.²

Given respondent's presumptive receipt of notices of her obligation to file financial disclosure reports, it is proper to infer that her failure to file and to pay the late filing fine was

² Respondent left her position with the Department on September 26, 2010 (Tr. 37). Employees separating from service are required to file for the portion of the last calendar year in their position (Tr. 60). *See* Admin. Code § 12-110(b)(3)(b)(1).

intentional. Moreover, respondent also received notice of this proceeding and failed to appear and defend herself against the charges. Therefore, I find that the petition is sustained.

FINDINGS AND CONCLUSIONS

1. Respondent was served with the petition and notice of trial.
2. Respondent was required to file a financial disclosure report for calendar years 2008, 2009, and 2010, on or before established deadlines, and has failed to file any such reports to date.
3. Respondent was timely notified of her obligation to file her financial disclosure reports.
4. Respondent intentionally failed to file her 2008, 2009, and 2010 financial disclosure reports with petitioner on or before the required deadlines, and she has failed to file such reports to date.

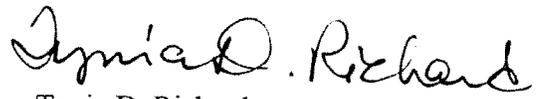
RECOMMENDATION

The financial disclosure requirements serve important public policies of open and honest government. As demonstrated by the record in this proceeding, petitioner has made diligent efforts to notify respondent of her obligation to file financial disclosure reports and of her obligation to pay the statutory late filing fines. Thus, respondent's willful violation of the reporting provisions of section 12-110 of the Administrative Code warrants a stern penalty.

Under the Administrative Code, any person required to file who has not filed at the end of one week after the date required for filing is subject to a fine of not less than \$250 or more than \$10,000. Admin. Code § 12-110(g)(1). An intentional violation is punishable by imprisonment of not more than one year, or by a fine not to exceed \$1,000, or both. Admin. Code § 12-110(g)(2). For respondent's intentional failure to file in calendar years 2008, 2009, and 2010, petitioner has asked that I recommend the imposition of fines in the amounts of \$1,000, \$1,500, and \$1,000, respectively. A civil penalty is not sought (Tr. 60). *See* Admin. Code § 12-110(g)(2) ("any intentional violation of the provisions of this section may subject the person reporting to assessment by [the Board] of a civil penalty in an amount not to exceed ten thousand dollars.").

The fines sought by the Board are provided for under the statute and are even lighter than some imposed in past cases. *See Conflicts of Interest Bd. v. Three Public Servants*, OATH Index Nos. 361/04, 366/04 & 370/04 (Nov. 6, 2003) (\$10,000 penalty assessed on non-filer (who failed to file financial disclosure report); late filers assessed \$1,000 for late filing and failure to pay the late filing fine); *Conflicts of Interest Bd. v. Three Public Servants*, OATH Index Nos. 2406/00, 2412/00 & 2415/00 (Oct. 12, 2000), Board Dec. (July 30, 2001) (\$10,000 penalty assessed on non-filers; ALJ recommendation of \$500 penalty for late filer who failed to pay the statutory late fine was rejected by the Board which imposed \$1,000 fine); *Conflicts of Interest Bd. v. Nine Public Servants*, OATH Index Nos. 363/95, 381/95, 390/95, 396/95, 399/95, 407/95, 410/95, 411/95 & 416/95 (Nov. 14, 1994) (late filers assessed \$1,000 penalty for late filing and refusing to pay late filing fee).

For respondent's intentional failure to file her financial disclosure report in calendar years 2008, 2009, and 2010, and her failure to pay statutory late filing fine, I recommend that fines be assessed in the amounts of \$1,000, \$1,500, and \$1,000, respectively.


Tynia D. Richard
Administrative Law Judge

February 2, 2011

SUBMITTED TO:

STEVEN B. ROSENFELD
Chair

APPEARANCES:

JULIA DAVIS, ESQ.
Attorney for Petitioner

No Appearance by Respondent