
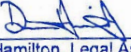


**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**


FILED
OSAH
11/27/2023

Devin Hamilton, Legal Assistant

STATE ETHICS COMMISSION,)	
)	
Petitioner,)	DOCKET NO. 2408434
)	2408434-OSAH-GGTACFC-RV-29-Schroer
v.)	
)	
KEYANTWON STEPHENS,)	
)	
Respondent.)	

DECISION

I. INTRODUCTION

On August 6, 2020, Petitioner, the State Ethics Commission (Petitioner or “Commission”) found reasonable grounds to believe that Respondent Keyantwon Stephens violated the Georgia Government Transparency and Campaign Finance Act. On or about September 14, 2023, the Commission referred this matter to the Office of State Administrative Hearings (“OSAH”), a court of administrative law, to conduct a hearing pursuant to *Code Sections 21-5-6(b)(10) & (14) and 50-13-13*. An administrative hearing was held on October 25, 2023. The Commission was represented by Assistant Attorney General Elizabeth T. Young. On the day of the hearing, Mr. Stephens requested to appear remotely. Although the Court provided a Zoom link for Mr. Stephens, he had technical difficulties and was unable to participate remotely at the time set for the hearing. Consequently, the hearing proceeded without Mr. Stephens present.

After careful consideration of all the evidence of record in this case, and based upon a preponderance of evidence, the Court makes the following findings of facts, conclusions of law, and decision.

II. FINDINGS OF FACT

1.

On or about May 19, 2017, Mr. Stephens filed a declaration of intention to accept campaign contributions for his campaign for Athens-Clarke County Mayor. Mr. Stephens informally withdrew from or otherwise failed to qualify for the Athens-Clarke County mayoral election sometime in the summer of 2018. Nevertheless, under the schedule for filing campaign contribution disclosure reports (“Reports” or “CCDRs”) set forth in Ga. Comp. R. & Regs. 189-3-.01(4)(a),¹ Mr. Stephens was still required to file a Report on each of the following dates: January 31, 2018; June 30, 2018, and January 31, 2019. If Mr. Stephens had excess contributions from his campaign, he was also required to file a December 31 supplemental Report each year until he had expended all the remaining contributions. Id.

2.

The evidence in the record proved that Mr. Stephens filed a Report on February 7, 2018, the last day of the grace period to file the Report due on January 31, 2018. At that time, Mr. Stephens reported that since his last filing, in which he had reported \$9,182.00 in contributions to date, he had received \$30,600.00 in itemized contributions, \$7,100.00 in loans, and \$55,514.00 in separate contributions of \$100 or less, for a total of \$93,214.00 in contributions since his last report. After deducting expenditures of \$13,700.61, his campaign had a net balance on hand of \$88, 695.33 as of February 7, 2018.

¹ Under Commission rules in effect in 2018, “[p]ersons who would have been in a primary election [but who failed to qualify] must file: (1) The June 30 Campaign Contribution Disclosure Report, and (2) the January 31 Campaign Contribution Disclosure Report immediately following the election referred to in the declaration of intention to accept campaign contributions. Any person who has excess contributions from the campaign must file a December 31 supplemental campaign contribution disclosure report each year thereafter until all contributions are expended as provided in the Act.” Ga. Comp. R. & Regs. R. 189-3-.01(4)(a).

3.

Mr. Stephens did not file a Report on June 30, 2018 or January 31, 2019, as required for candidates who filed a declaration of intention, but failed to qualify. He also did not file a Report on December 31, 2019, which would have been required if he still had unspent contributions at that time.

4.

On February 13, 2020, the Commission notified Mr. Stephens by certified mail that it had received a third-party complaint, which alleged that he had violated the Georgia Government Transparency and Campaign Finance Act (the “Act”). Later that year, on July 8, 2020, the Commission issued a Notice of Preliminary Hearing, notifying Mr. Stephens that the Commission would consider the third-party complaint at a meeting on August 6, 2020. Despite notice of the preliminary hearing, Mr. Stephens did not appear, and the Commission found reasonable grounds to believe that Mr. Stephens had violated the Act. The Chair of the Commission signed an Order after Preliminary Hearing, which was served on Mr. Stephens on or about August 19, 2020.² In the Order, the Commission found that Mr. Stephens had failed to file three Reports (June 30, 2018, January 31, 2019, and December 31, 2019) and referred the matter to the Georgia Department of Law for further prosecution.

5.

OSAH received a Statement of Matters Asserted from the Commission relating to Mr. Stephens on September 13, 2023. On September 22, 2023, the Court issued a Notice of Hearing and Pre-Hearing Order, setting the matter for an administrative hearing on October 25, 2023 at

² According to the Commission, the Order contained a scrivener’s error as to the date of the hearing. It also appears to have an error on the signature line, which indicates that the Order was signed on August 6, 2019, nunc pro tunc, August 6, 2020. The Court finds by a preponderance of the evidence that the Order was signed sometime between the date of the hearing on August 6, 2020 and the date of service, August 19, 2020.

3:00 p.m. At approximately 1:40 p.m. on the date of the hearing, Mr. Stephens emailed the Judge's assistant to request to appear virtually for the hearing.³ Although the Court attempted to arrange for Mr. Stephens to appear by Zoom, he had technical difficulties, and did not participate. The Commission appeared through its attorney and presented testimony from Joe Kusak, the Deputy Director and General Counsel for the Commission, and tendered exhibits. In addition, the Commission requested that the record remain open to allow the Commission to file additional exhibits, which were received on October 27, 2023.

6.

In his testimony, Mr. Kusak stated that upon receiving the third-party complaint, the Commission reviewed Mr. Stephens' prior filings and conducted further investigation. He testified that the entry on Mr. Stephens' February 2018 CCDR regarding small-dollar contributions of over \$55,000 was particularly suspect, given that the Commission had never seen small-dollar contributions in that large an amount in a local race. In addition, in determining the amount of a penalty for Mr. Stephens' failure to file required Reports, Mr. Kusak testified that the following factors should be considered: (1) Mr. Stephen's failure to

³ Mr. Stephens stated the following in his email, which is included in the record of this case:

I am contacting to request a virtual attendance due to my grandfather still being in urologist. I had planned on having him bring me as I personally have a suspended license due to traffic ticket and wouldn't want to risk that.

If a virtual hearing is not possible then I want to make sure that it is noted that this is not something that I am fighting. I have to take responsibility for my youthful actions and learn from them. I'm constantly reminded of my late grandmothers words to avoid being too smart for your own good. This is a case where I have been my own worst enemy. The campaign was a publicity stunt to turn attention to the issues I cared about and out of frustration with the Democratic Party leadership. It was verified by media that no one actually donated to the campaign and \$0 were raised. The donors list was made up of family members, family friends, and neighbors none of which donated.

I take responsibility once again as I have continued to since and I accept what comes along with that. All talent needs cultivation. It is my hope that other young people look to me as an example to seek out help and mentorship before jumping into the arena of politics alone because it will eat you alive if you are unprepared.

cooperate with the Commission’s investigation, (2) his knowledge of the reporting requirements, as evidenced by his timely-filed report in February 2018, (3) the failure to file required reports, as opposed to late filing, (4) the level of office and how much money was involved, and (5) Mr. Stephens’ public acknowledgement that the reported contributions in prior filings were fictitious. The Commission did not refer the Court to any Board orders to consider as precedent in determining the appropriate penalty.

III. CONCLUSIONS OF LAW

1.

The Commission bears the burden of proof. OSAH Rule 616-1-2-.07(1). The standard of proof is preponderance of the evidence. OSAH Rule 616-1-2-.21(4).

2.

The Act was adopted by the General Assembly to “protect the integrity of the democratic process and to ensure fair elections...” O.C.G.A. § 21-5-2. To accomplish this goal, the Act establishes a requirement for public disclosure of campaign contributions and expenditures for candidates seeking publicly-elected office, including county offices. Id. See also O.C.G.A. § 21-5-3(22)(F). Specifically, the Act requires candidates for municipal office to file CCDRs with the municipal clerk in their respective municipality or with the county election superintendent. O.C.G.A. § 21-5-34(a)(4). If a candidate declares his intention to accept campaign contributions, but does not qualify to run for office, the Commission rules in effect in 2018 required that the candidate file CCDRs on June 30, 2018 and January 31, 2019, as well as December 31 for every year thereafter until all contributions are expended. See Ga. Comp. R. & Regs. R. 189-3-.01(4)(a) (2018).

3.

The Commission proved by a preponderance of the evidence that Mr. Stephens violated the requirements of the Act by failing to file required CCDRs on June 30, 2018 and January 31, 2019. However, the Court concludes that the Commission failed to prove by a preponderance of evidence that Mr. Stephens was required to file a supplemental CCDR on December 31, 2019. That is, the evidence in the record was insufficient to prove that Mr. Stephens had excess contributions as of December 31, 2019, which is the condition that triggers a non-qualifying candidate's obligation to file a supplemental CCDR. In reaching this conclusion, the Court has considered the evidence that the February 2018 CCDR stated that Mr. Stephens had over \$88,000 in contributions in hand as of that date and that he later withdrew from the race without disclosing how he spent such funds. On the other hand, the Commission relied upon published reports, as well as Mr. Stephens' own statements to the Court, that the contributions listed in the February 2018 CCDR were fictitious, and that his campaign, in fact, had received no contributions. Under the specific facts of this case, the Court concludes that the evidence is insufficient to prove that Mr. Stephens had excess contributions as of December 31, 2019, and that his failure to file a CCDR on that date violated the Act.

4.

With respect to Mr. Stephens' failure to file the June 30, 2018 and the January 31, 2019 CCDRs, the Commission has the authority to issue orders directing compliance with the Act or prohibiting conduct that violates the Act. See O.C.G.A. § 21-5-6(b)(14)(C)(i). The Commission may also assess a civil penalty not to exceed \$1,000 per violation for a first occurrence, up to \$10,000 for a second occurrence of a violation of the same provision, and up to \$25,000 for any third or subsequent violation of the same provision. The Commission has the discretion under

the Act to waive or suspend a penalty if the penalty would impose an undue hardship on the person required to pay the penalty or when there were no items required to be reported in a missing or late CCDR. Id.

5.

The Commission has not adopted a formal schedule of penalties for violation of the Act. Compare 11 CF.R. §§ 111.30, 111.34.⁴ The only guidance in the Act on this question is the requirement that the Commission post all of its orders on the Commission’s website and the provision that “such orders shall serve as precedent for all future orders and opinions of the commission.” O.C.G.A. § 21-5-6(14)(C)(v). Under *Reheis v. Drexel Chemical Co.*, the Georgia Court of Appeals held that “[w]hen deciding whether to impose a civil penalty and, if so, in what dollar amount, the ALJ was required to take into account any factors it found relevant, including, but not limited to those specified in the statute.” 237 Ga. App. 87, 90 (1999) (reversing the superior court, which struck the ALJ’s imposition of a civil penalty for the violation of the Georgia Air Quality Act). In this matter, the Court has considered the following factors in determining an appropriate civil penalty for Mr. Stephens’ violations of the Act. First, the Court has considered that the two missing CCFRs were not “election-sensitive” because Mr. Stephens did not qualify for the race and thus did not deny the public access to information prior to casting their votes. On the other hand, Mr. Stephens, by his own admission, “made up” contributions on his February 2018 CCDR in order to gain publicity, an intentional violation of the Act and a

⁴ Under the Federal Election Campaign Act of 1971, as amended, the Federal Election Commission has established a schedule of administrative fines and penalties for violation of the federal election reporting requirements. See 11 C.F.R. § 111.43. The amount of the civil penalty for reporting violations is calculated pursuant to certain formulas that take into account four factors: (1) the election sensitivity of the report (for example the October reports are considered sensitive during an election year, but the year end reports are not), (2) whether the report was late (and, if so, how late) or not filed, (3) the level of activity on the account, and (4) the number of prior violations. Id.

deliberate falsification of an official government report. The Court has also considered that Mr. Stephens failed to respond or participate in proceedings before the Commission and has never filed either an amended February 2018 CCDR or the required June 30, 2018 and January 31, 2019 CCDRs. Finally, because he did not participate in the administrative hearing, he presented no evidence of undue hardship arising out of imposition of civil penalties as a consequence for his violations of the Act.

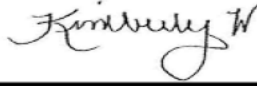

6.

After weighing these considerations, the Court concludes that the maximum civil penalties are justified in this case. That is, for the first violation of failing to file a required Report on June 30, 2018, the appropriate civil penalty is \$1,000.00. For the second violation on January 31, 2019, the appropriate civil penalty is \$10,000.00. Accordingly, the total civil penalty imposed for violations of the Act in this matter is \$11,000.00.

IV. DECISION

Mr. Stephens is **ORDERED** to make payment of \$11,000.00 in civil penalties from his personal funds and not from campaign funds or government funds. Such payment shall be made through periodic payments at the times and under the conditions agreed to by the Commission. Mr. Stephens is also **ORDERED** to **CEASE** and **DESIST** from any further violations of the Act and to comply with all provisions thereof.

SO ORDERED, this 27th day of November, 2023.



Kimberly W. Schroer
Administrative Law Judge