



Summary of Final Board Determination

John Whitehead

Candidate, 2013, Council District 42

Program participant: \$65,364 in public funds received

1. Failing to provide bank statements No Penalty

Campaigns are required to provide copies of all bank and merchant account statements for accounts used for each election. *See* Admin. Code §§ 3-703(1)(d), (g), (11); Board Rule 4-01(f).

The Campaign did not provide statements for its bank account from January or February 2014.

The Board did not assess a penalty for this violation.

2. Failing to report transactions \$258

Campaigns are required to properly report all financial transactions to the Board. *See* Admin. Code §§ 3-703(1)(d), (g), (6), (11), (12); Board Rules 1-09, 3-03(c), (d), (e), 4-01. Creditors who extend credit beyond 90 days are considered to have made a contribution equal to the credit extended, unless the creditor continues to seek payment of the debt. Outstanding liabilities that are forgiven or settled for less than the amount owed are also considered contributions. *See* Board Rules 1-04(g)(4), (5).

The Campaign failed to report transactions totaling \$2,912.51 that appear on its bank statements.

The Campaign provided documentation for a fundraiser held on July 9, 2013. The fundraiser documentation states, "Cigars provided by Brooklyn Smokes." The Campaign did not report receiving an in-kind contribution from Brooklyn Smokes.

The Campaign provided an invoice for DJ service from Sideray Williams for a Campaign fundraising event on September 10, 2013, the day of the primary, at the Brooklyn Sheraton Sky Bar. The Campaign did not report any other costs related to this event. Accordingly, these costs appear to have been covered by a third party, which constitute an unreported in-kind contribution to the Campaign.

The Board assessed total penalties of \$258 for these violations.



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3. Failing to demonstrate compliance with cash receipts reporting and documentation requirements \$108

Campaigns are required to report all cash receipts, deposit them into the bank account listed on the candidate's filer registration and/or certification, and provide the deposit slips for the account to the Board. *See* Admin. Code §§ 3-703(1)(d), (g), (6), (10), (11), (12); Board Rules 1-04(a), (b), 2-06(a), 3-03(c), 4-01(a), (b)(1), (3), (f).

The Campaign reported total cash receipts of \$8,499, but submitted deposit slips totaling \$8,934, resulting in a cash reporting variance of \$435 (5%).

The Board assessed a penalty of \$108 for this violation.

4. Accepting contributions from corporations, limited liability companies, or partnerships \$2,450

Campaigns may not accept, either directly or by transfer, a campaign contribution or loan, or guarantee or other security for such loan, from any corporation, limited liability company (LLC), or partnership. *See* N.Y.C. Charter § 1052(a)(13); Admin. Code §§ 3-702(8), 3-703(1)(l); Board Rules 1-04(c)(1), (e), (g), 1-05. Creditors who extend credit beyond 90 days are considered to have made a contribution equal to the credit extended, unless the creditor continues to seek payment of the debt. Outstanding liabilities that are forgiven or settled for less than the amount owed are also considered contributions. *See* Board Rules 1-04(g)(4), (5).

The Campaign accepted a \$1,200 check from Therapy Wine Bar, a corporation, on May 10, 2013. The Campaign submitted a copy of a check as documentation of an expenditure refund for this contribution, but did not provide documentation detailing the basis for the refund.

Per the Campaign's lease agreement, the Campaign agreed to pay \$1,500 per month to NBO Realty Inc. from May 15, 2013 to September 30, 2013. Therefore, for the term of four and a half months, the total amount owed was \$6,750 (\$1,500 x 4.5). However, the Campaign only paid \$6,000, resulting in a \$750 in-kind contribution.

The Board assessed total penalties of \$2,450 for these violations.

5. Accepting contributions from unregistered political committees \$500

Campaigns may not accept a contribution from a political committee unless the political committee is registered with the CFB or registers with the CFB within 10 days of receipt of the contribution (participants and limited participants only). *See* Admin. Code §§ 3-702(11), 3-703(1)(k), 3-707; Board Rules 1-04(c)(1), (d), (g), 1-05.



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The Campaign accepted a \$250 contribution from Teamsters Union Local No. 456 on August 27, 2013. A copy of the contribution check indicates that it was drawn on the union's Political Action Fund, which was not registered with the CFB. In its response to the Penalty Notice, the Campaign stated it mistakenly believed that Teamsters Union Local No. 456 was a registered political committee. However, it is the responsibility of campaigns to confirm that a committee is registered before accepting a contribution.

The Board assessed a penalty of \$500 for this violation.

6. Failing to document transactions \$200

Campaigns are required to document all financial transactions, including loans, in-kind contributions, and joint expenditures. *See* Admin. Code §§ 3-703(1)(d), (g), (11), (12), 3-715; Board Rules 1-09, 4-01(a), (c), (g), (k), 4-03.

The Campaign submitted a copy of a palm card featuring the Candidate, William C. Thompson, Jr., Scott Stringer, Letitia James, and Charles "Joe" Hynes. The Campaign stated that it shared the costs of palm cards and primary election day workers with Letitia James's campaign, and explained that the expenditures totaled \$18,710 for primary election day workers and \$707.69 for palm cards, \$2,500 of which (\$1,500 for workers, \$1,000 for palm cards) was paid by the James campaign. The Campaign provided a list of all primary day workers included in the shared costs and an invoice from Triboro Printing for the cost of the palm cards. Because the Campaign failed to provide a methodology for the cost allocations of each campaign's share, the Campaign appears to have overpaid for its share of the workers and underpaid for its share of the palm cards, resulting in, respectively, an undocumented in-kind contribution to the James campaign in the amount of \$7,855 (($\$18,710/2$)-\$1,500) and an undocumented in-kind contribution from the James campaign in the amount of \$207.69 ($\$707.69-(\$1,000/2)$).

The Board assessed total penalties of \$200 for these violations.



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7. Making cash expenditures greater than \$100 \$1,210

Campaigns are prohibited from making an expenditure greater than \$100 using cash. *See* Board Rules 1-08(i), 4-01(e)(2).

The Campaign made individual cash expenditures exceeding \$100 that totaled \$1,400. Additionally, the Campaign made the cash withdrawals listed below, which resulted in cash expenditures in excess of \$100 to the payees listed.

Name	Date	Amount
Pitta Bishop	09/13/13	\$3,700
Daniel Simonette	09/10/13	\$2,500
Murray, Leslie A	09/10/13	\$4,500

The Board assessed a penalty of \$1,210 for this violation.

8. Maintaining a petty cash fund greater than \$500 \$50

Campaigns are prohibited from maintaining more than \$500 in a petty cash fund. *See* Board Rule 4-01(e)(2).

An \$800 debit on June 14, 2013 was identified from the Campaign's bank statements, but was not reported on a disclosure statement.

The Board assessed a penalty of \$50 for this violation.

9. Failing to demonstrate that spending was in furtherance of the campaign \$1,845

Campaigns are required to demonstrate that all spending was in furtherance of the campaign. *See* Admin. Code §§ 3-702(21)(a), (b); 3-703(1)(d), (g), (6), (11); Board Rules 1-03(a), 4-01(e).

The Campaign made expenditures totaling \$7,382.71, which, based on the reporting and documentation, appear to be non-campaign related.

The Board assessed a penalty of \$1,845 for this violation.



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10. Making impermissible post-election expenditures \$820

After an election and before repaying leftover campaign funds to the Board, participants may spend campaign funds only to pay campaign-related expenses incurred in the preceding election and for “routine activities involving nominal cost associated with winding up a campaign and responding to the post-election audit.” *See* Admin. Code §§ 3-702(21)(a)(8), 3-703(1)(d), (g), (6), (11), 3-710(2)(c); Board Rules 1-03(a), 1-08(b), 5-03(e)(2).

The Campaign made post-election expenditures totaling \$3,280 that were impermissible due to the timing, amount, and/or purpose reported by the Campaign or identified from a review of Campaign bank statements and/or documentation.

The Board assessed a penalty of \$820 for this violation.

11. Late response to audit documentation and information requests \$1,307

Campaigns are required to maintain records, such as copies of checks, invoices, and bank records, to verify financial transactions reported in disclosure statements, and campaigns are required to provide such records to the Board upon request and to respond to specific questions regarding compliance with the Act and Rules. *See* Admin. Code §§ 3-703(1)(d), (g), (6), (11), (12), 3-708(5), 3-710(1); Board Rules 1-09(a), 4-01, 4-05(a). Candidates who fail to respond to the Draft Audit Report may be subject to a penalty of up to 10% of total public funds received. *See* Admin. Code § 3-711(2)(b).

The Campaign’s Draft Audit Report (“DAR”) was sent August 28, 2014 with a response due date of September 29, 2014. The Campaign was granted two extensions, with a final deadline of November 12, 2014. The Campaign did not respond to the DAR. However, the Campaign submitted a substantive response to the Penalty Notice on May 7, 2015, which is considered a late response to the DAR.

The Board assessed a penalty of \$1,307 for this violation.

12. Accepting an over-the-limit contribution \$7,780

Campaigns are prohibited from accepting contributions in excess of the applicable contribution limit. *See* Admin. Code §§ 3-702(8), 3-703(1)(f), (11); Board Rules 1-04(c)(1), (h), 1-07(c).

The Campaign accepted an over-the-limit contribution as detailed below.



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NAME	TRANSACTION TYPE	DATE	AMOUNT
Simonette, Daniel	Contribution	07/09/13	\$30
Daniel Simonette	In-kind Contribution	N/A	\$9,000
	Office Limit		(\$2,750)
	Amount Over-the-Limit		\$6,280

Per the contract provided by the Campaign, the Campaign agreed to pay Daniel Simonette \$6,500 as an initial retainer fee for legal counseling and representation and \$7,500 for the filing and defense of petitions. Therefore, the total amount owed was \$14,000 (\$6,500 + \$7,500). However, the Campaign only made two \$2,500 payments on May 7, 2013 and September 10, 2013 for a total of \$5,000, resulting in a discount of \$9,000. The Campaign had previously accepted a \$30 contribution from Simonette on July 9, 2013, for total contributions of \$9,030 (\$6,280 over the limit).

The Board assessed a penalty of \$7,780 for this violation.