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STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

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FLORIDA ELECTIONS COMMISSION,
PETITIONER,

v.

AGENCY CASE No.: FEC 04-416
F.O. No.: DOSFEC 05-176

BANYAN CONSTRUCTION AND DEVELOPMENT, INC.,
RESPONDENT.

_____ /

FINAL ORDER OF DEFAULT

THIS CAUSE came on to be heard before the Florida Elections Commission (Commission) at its regularly scheduled meeting held on August 19, 2005, in Tallahassee, Florida.

FINDINGS OF FACT

1. The Respondent is Respondent Banyan Construction and Development, Inc., is a for-profit corporation with its headquarters in Mobile, Alabama and an office in Clermont, Florida. Respondent's Senior Vice-President, Frank Gammon is in charge of Banyan's day-to-day business operation at its Clermont office. Respondent opposed a proposed amendment to the City of Groveland's Charter that appeared on the November 2, 2004 ballot.

2. The Complainant was the treasurer of Citizens Coalition of Lake County (CCLC), a political committee registered with the Lake County Supervisor of Elections Office. CCLC supported the City of Groveland Charter Amendment.

3. On April 26, 2005, the staff of the Commission drafted a Staff Recommendations recommending to the Commission that there was probable cause to believe that the Respondent committed violations of The Florida Election Code.

4. On June 3, 2005, the Commission entered an Order of Probable Cause finding

that there was probable cause to charge the Respondent with the following violations:

Count 1:

On or about October 29, 2004, Respondent violated Section 106.07(1), Florida Statutes, when Respondent failed to file with the filing office a report due on October 29, 2004, listing all expenditures Respondent made in opposition to the City of Groveland's proposed Charter Amendment appearing on the November 2, 2004 ballot.

Count 2:

On or about October 20, 2004, Respondent violated Section 106.071(2), Florida Statutes, by failing to prominently mark a political advertisement paid for by an independent expenditure with the correct disclaimer, when Respondent failed to include a proper disclaimer on 4' x 4' signs it purchased from Tamjo Signs.

Count 3:

On or about October 27, 2004, Respondent violated Section 106.071(2), Florida Statutes, by failing to prominently mark a political advertisement paid for by an independent expenditure with the correct disclaimer, when Respondent failed to include any type of disclaimer on 50 signs it purchased from Charles Townsend Corp., L.L.C.

5. On June 13, 2005, Respondent's attorney was served by certified mail with a copy of the Commission's Order of Probable Cause to which the Staff Recommendations was attached and incorporated by reference.

6. The Respondent failed to request a hearing before the Commission within 30 days of receiving the Order of Probable Cause, thereby waiving the right to a hearing.

7. On July 19, 2005, the staff filed a Motion for Default that was served on the Respondent by U. S. mail. On August 1, 2005, the Commission issued a Notice of Hearing on the Motion for Default notifying the Respondent that the Commission would hear the Motion for Default on August 19, 2005 at 1:00 p.m., in Tallahassee, Florida.

8. Neither the Respondent nor anyone on Respondent's behalf responded to the motion or appeared at the Commission's meeting.

CONCLUSIONS OF LAW

9. The Commission has jurisdiction over the parties to and subject matter of this cause, pursuant to Section 106.26, Florida Statutes.

10. The Respondent committed one count of violating Section 106.071(1), Florida Statutes, when it failed to file a report with the filing officer on October 29, 2004 listing its expenditures in opposing an issue on the November 2, 2004 ballot; and two counts of violating Section 106.071(2), Florida Statutes, for failing to prominently mark two political advertisement signs with a proper disclaimer.

ORDER

Based upon the foregoing facts and conclusions of law, the Commission finds that the Respondent committed one count of violating Section 106.071(1), Florida Statutes; and committed two counts of violating Section 106.071(2), Florida Statutes. Therefore, it is

ORDERED that the Respondent shall remit a civil penalty in the amount of \$3000. The penalty shall be paid to the Florida Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida, 32399-1050, within 30 days of the date this Final Order is received by the Respondent.

DONE AND ENTERED by the Florida Elections Commission and filed with the Clerk of the Commission on August 26, 2005, in Tallahassee, Florida.



Chance Irvine, Chairman
Florida Elections Commission
107 W. Gaines Street
Collins Building, Suite 224
Tallahassee, FL 32399-1050

NOTICE OF RIGHT TO APPEAL

Pursuant to Section 120.68, Florida Statutes, the Respondent may appeal the Commission's Final Order to the appropriate district court of appeal by filing a notice of appeal both with the Clerk of the Florida Elections Commission and the Clerk of the district court of appeal. The notice must be filed within 30 days of the date this Final Order was filed and must be accompanied by the appropriate filing fee.

Copies furnished to:

Eric M. Lipman, Assistant General Counsel
Richard Langley, Attorney for Respondent (certified mail)
Margaret S. Cox, Complainant
Groveland Hills City Clerk, Filing Officer