

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

In Re: **Howard Fein**

Case No.: **FEC 16-855**

TO: Howard Fein
2461 SE Sapelo Avenue
Port St. Lucie, FL 34952

St. Lucie County Supervisor of Elections
4132 Okeechobee Road
Ft. Pierce, FL 34947

NOTICE OF HEARING (AUTOMATIC FINE)

A hearing will be held in this case before the Florida Elections Commission on, **May 17, 2017 at 8:30 am, or as soon thereafter as the parties can be heard**, at the following location: **Augustus B. Turnbull Conference Center, 555 West Pensacola Street, Room 214, Tallahassee, Florida 32301**

Failure to appear in accordance with this notice will constitute a waiver of your right to participate in the hearing. Continuances will be granted only upon a showing of good cause.

This hearing will be conducted pursuant to Section 106.25, Florida Statutes, which governs your participation as follows:

If you are the Respondent, you may attend the hearing, and you or your attorney will have *5 minutes* to present your case to the Commission. However, some cases (including those in which consent orders or recommendations for no probable cause are being considered) may be decided by an *en masse* vote and, unless you request to be heard or the Commission requests that your case be considered separately on the day of the hearing, your case will *not* be individually heard.

If you are the Complainant, you may attend the hearing, but you will *not* be permitted to address the Commission. In addition, some cases (including those in which consent orders or recommendations for no probable cause are being considered) may be decided by an *en masse* vote and, unless the Respondent requests to be heard or the Commission requests that the case be considered separately on the day of the hearing, the case will *not* be individually heard.

If you are an Appellant, and you have requested a hearing, you may attend the hearing, and you or your attorney will have *5 minutes* to present your case to the Commission.

Please be advised that both confidential and public cases are scheduled to be heard by the Florida Elections Commission on this date. As an Appellant, Respondent or Complainant in one case, you will *not* be permitted to attend the hearings on other confidential cases.

The Commission will electronically record the meeting. Although the Commission's recording is considered the official record of the hearing, the Respondent may provide, at his own expense, a certified court reporter to also record the hearing.

If you require an accommodation due to a disability, contact Donna Ann Malphurs at (850) 922-4539 or by mail at 107 West Gaines Street, The Collins Building, Suite 224, Tallahassee, Florida 32399, at least 5 days before the hearing.

See further instructions on the reverse side.

Amy McKeever Toman
Executive Director
Florida Elections Commission
May 1, 2017

Please refer to the information below for further instructions related to your particular hearing:

If this is a hearing to consider **an appeal from an automatic fine**, the Filing Officer has imposed a fine on you for your failure to file a campaign treasurer's report on the designated due date and, by filing an appeal, you have asked the Commission to consider either (1) that the report was in fact timely filed; or (2) that there were unusual circumstances that excused the failure to file the report timely. You are required to prove your case. If the Commission finds that the report was filed timely or that there were unusual circumstances that excused the failure, it may waive the fine, in whole or in part. The Commission may reduce a fine after considering the factors in Section 106.265, Florida Statutes. If the Commission finds that the report was not timely filed and there were no unusual circumstances, the fine will be upheld.

If this is a hearing to consider a **consent order before a determination of probable cause has been made**, the Commission will decide whether to accept or reject the consent order. If the Commission accepts the consent order, the case will be closed and become public. If the Commission rejects the consent order or does not make a decision to accept or deny the consent order, the case will remain confidential, unless confidentiality has been waived.

If this is a hearing to consider a **consent order after a determination of probable cause has been made**, the Commission will decide whether to accept or reject the consent order. If the Commission accepts the consent order, the case will be closed. If the Commission rejects the consent order or does not make a decision to accept or deny the consent order, the Respondent will be entitled to another hearing to determine if the Respondent committed the violation(s) alleged.

If this is a **probable cause hearing**, the Commission will decide if there is probable cause to believe that the Respondent committed a violation of Florida's election laws. Respondent should be prepared to explain how the staff in its recommendation incorrectly applied the law to the facts of the case. *Respondent may not testify, call others to testify, or introduce any documentary or other evidence at the probable cause hearing.* The Commission will only decide whether Respondent should be *charged* with a violation and, before the Commission determines whether a violation has occurred or a fine should be imposed, Respondent will have an opportunity for another hearing at which evidence may be introduced.

If this is an **informal hearing**, it will be conducted pursuant Sections 120.569 and 120.57(2), Florida Statutes; Chapter 28 and Commission Rule 2B-1.004, Florida Administrative Code. At the hearing, the Commission will decide whether the Respondent committed the violation(s) charged in the Order of Probable Cause. The Respondent will be permitted to testify. However, the Respondent may not call witnesses to testify.

Respondent may argue why the established facts in the Staff Recommendation do not support the violations charged in the Order of Probable Cause. At Respondent's request, the Commission may determine whether Respondent's actions in the case were willful. The Respondent may also address the appropriateness of the recommended fine. If Respondent claims that his limited resources make him unable to pay the statutory fine, *he must provide the Commission with written proof of his financial resources* at the hearing. A financial affidavit form is available from the Commission Clerk.

**FLORIDA ELECTIONS COMMISSION
CASE REPORT**

Case Number: FEC-16-855

NAME: **HOWARD FEIN**

DATE APPEAL RECEIVED: 11/22/16

DATE REPORT DUE: 10/7/16 (2016 G3)

DATE OF ELECTRONIC RECEIPT: 10/8/16

DATE FILING OFFICER RECEIVED REPORT: 10/8/16

NUMBER OF DAYS LATE: 1

AMOUNT OF FINE: \$50.00

FINE BASED ON: (X) NUMBER OF DAYS (..) 25% OF RECEIPTS (..) 25% OF EXPENDITURES

TOTAL RECEIPTS FOR REPORTING PERIOD: \$110.00

TOTAL EXPENDITURES FOR REPORTING PERIOD: \$379.50

DATE FIRST NOTIFICATION SENT: 10/12/16

| | |
|---------------------|--------------|
| CANDIDATE [X] | STATE [] |
| PC [] | DISTRICT [] |
| CCE [] | COUNTY [X] |
| POLITICAL PARTY [] | CITY [] |

SUMMARY: Mr. Howard Fein was a candidate for County Commissioner, District 3 in the 2016 elections. Mr. Michael Loeb was his treasurer.

Mr. Fein is appealing the fine claiming that unusual circumstances existed that caused the 2016 G3 Report to be untimely filed. According to Mr. Fein, "There was a hurricane named Matthew that impacted our area on October 6th and 7th that caused many thousands in our area to lose power and I was one of them. This prohibited me from having access to the online financial reporting system. As soon as power came back on by the 8th of October, I filed the report one day late as it was due on the 7th".

- The 2016 G3 Report covers the time period from 9/17/16 through 9/30/16.
- Respondent reported receiving 2 contributions, while making 3 expenditures during this reporting period.
- Respondent reported receiving his last contribution on 9/19/16.

PRIOR CASES: None.

November 22, 2016

State of Florida Election's Committee
107 West Gaines Street Suite 224, Collins Building Tallahassee, FL 32399-1050.

RE: Howard Fein
2461 se sapelo ave, port st lucie, fl 34952

Subject: Campaign Finance Report Fine Dismissal for Late Filing on the 8th of October – G3

To whom it may concern,

There was a hurricane named Matthew that impacted our area on October 6th and 7th that caused many thousands in our area to lose power and I was one of them. This prohibited me from having access to the online financial reporting system. As soon as power came back on by the 8th of October, I filed the report one day late as it was due on the 7th.

I have included a screen shot showing the dates of the storm and the thousands of people out of power as reported by the Tc palm Newspaper.

Thank you for handling this matter.

Howard Fein

The screenshot shows a web browser window with the URL www.tcpalm.com/story/weather/hurricanes/2016/10/14/hurricane-matthew-numbers/9207264/. The page is titled "ST. LUCIE COUNTY" and displays the following weather data:

- 58 mph**: Max sustained wind speed
- 68 mph**: Max wind gusts
- Not available***: Rain total Oct. 6-7
- Not available***: Storm surge
- 2**: Injuries
- 2**: Deaths
- 59,240**: FPL power outages

On the right side of the page, there is an advertisement for smart thermostats with the text: "Cool fact: Smart thermostats can save about 1% on your energy use each year." Below the ad is a "START SAVING" button and the FPL logo.

The browser's taskbar at the bottom shows several open files: "Com002+Complai...pdf", "msg0002 (1).WAV", "Satisfaction of Mor...p...", "Satisfaction of Mor...p...", "Settlement Agree...pdf", and "20161115_221632.jpg".



Howard Fein - Request dismissal of fine - Candidate Report G4 - Oct 7th

Howie Fine

to:

Fec

11/22/2016 02:38 PM

Cc:

Judith Durogene

Hide Details

From: Howie Fine <hmfein@gmail.com>

To: Fec@myfloridalegal.com

Cc: Judith Durogene <jdurogene@slcelections.com>

1 Attachment



Fein-howard-financial-report-fine-dismissal-request.pdf

I am requesting a dismissal of a \$50 fine for filing one day late on the 8th for Report G4 that was due on the 7th. Please see attached file for full information. Thank you. Howard Fein 772-202-8675

ps. please respond that you have received this at the State

Judith Durogene

From: Judith Durogene
Sent: Tuesday, November 15, 2016 12:01 PM
To: 'Howie Fine'
Cc: Annie Clark-Mobley; Gertrude Walker
Subject: Late Fine Notice - 2nd Request / Payment due

Importance: High

Dear Mr. Fein,

Please be advised that the campaign financial report for the period of September 17, 2016 to September 30, 2016 was due on October 7, but was not submitted until October 8, 2016 and as a result you owe a late fine penalty of \$50.00. This is our second attempt to contact you regarding this matter as we sent a letter to you via certified mail on October 12, 2016 but per tracking it is being returned to our office as of November 12, 2016.

Please remit the aforementioned late fee within 20 days of this notice addressed to the Supervisor of Elections from your personal account as it is not permissible to pay with campaign funds. If you have any questions, please contact me as soon as possible. Thank you and have a wonderful day.

Judith Durogene

*Candidate & Purchasing Coordinator for
Gertrude Walker, Supervisor of Elections*

St. Lucie County

4132 Okeechobee Rd.

Ft. Pierce, FL 34947

Phone: (772) 462-1504

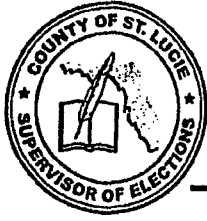
email: jdurogene@slcelections.com

website: www.slcelections.com



2011 - 2014





Gertrude Walker
Supervisor of Elections
St. Lucie County

4132 Okeechobee Road • Fort Pierce, FL 34947-5412 • (772) 462-1500 • Fax (772) 462-1439

Notice of Campaign Finance Report Late Filing – Payment Due

October 12, 2016

Howard Fein
643 SE Ron Rico Terrace
Port St Lucie, FL 34983

Dear Mr. Fein,

Please be advised that the Campaign Financial Report for the reporting period of September 17, 2016 to September 30, 2016 was due on October 7, 2016 but was not submitted until October 8, 2016 and as a result you owe a late fine penalty of \$50.00. The Supervisor of Elections is required to assess the penalty for late reports and have no discretion in the amount imposed and can not authorize an extension to the deadline.

Please see the following excerpt from Florida Statutes 106.702 (7)(a) which provides additional detail regarding late filing. In addition, we have included the Calculation of Late Fines worksheet for your review.

“A reporting individual who fails to file a report on the designated due date is subject to a fine, and such fine shall be paid only from personal funds of the reporting individual. The fine shall be \$50 per day for the first 3 days late and, thereafter, \$500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater.....”

In reference to your request for an extension due to Hurricane Matthew, please see the excerpt listed below from Florida Statutes 106.702 (7)(c) for information on the appeals process:

“A reporting individual may appeal or dispute the fine, based upon, but not limited to, unusual circumstances surrounding the failure to file on the designated due date, and may request and is entitled to a hearing before the Florida Elections Commission, which has the authority to waive the fine in whole or in part. The Florida Elections Commission must consider the mitigating and aggravating circumstances contained in s. 106.265(2) when determining the amount of a fine, if any, to be waived. Any such request shall be made within 20 days after receipt of the notice of payment due. In such case, the reporting individual must, within 20 days after receipt of the notice, notify the supervisor in writing of his or her intention to bring the matter before the commission.”

Please remit the penalty fee of \$50.00 addressed to the Supervisor of Elections from your personal account within 20 days of the receipt of this notice. If you have any questions, please contact Judith Durogene, Candidate Coordinator at 772-462-1504. Thank you and have a wonderful day.

Sincerely,


Gertrude Walker

250 NW Country Club Drive • Port St. Lucie, Florida 34986 • (772) 871-5410 • Fax (772) 871-5323
1664 SE Walton Road • Port St. Lucie, Florida 34952 • (772) 337-5623 • Fax (772) 337-5626
www.slcelections.com • e-mail: elections@slcelections.com

CAMPAIGN TREASURER'S REPORT SUMMARY

(1) Howard Fein
 Name
 (2) 643 SE Ron Rico Terrace
 Address (number and street)
Port St. Lucie, FL 34983
 City, State, Zip Code

OFFICE USE ONLY
ONLINE SUBMISSION
 [1129642]

Submitted on:
 10/8/2016 08:30:56 (eastern)

Check here if address has changed

(3) ID Number: 291

(4) Check appropriate box(es):

- Candidate Office Sought: County Commissioner, District 3
- Political Committee (PC)
- Electioneering Communications Org. (ECO) Check here if PC or ECO has disbanded
- Party Executive Committee (PTY) Check here if PTY has disbanded
- Independent Expenditure (IE) (also covers an individual making electioneering communications) Check here if no other IE or EC reports will be filed

(5) Report Identifiers

Cover Period: From 9 / 17 / 2016 To 9 / 30 / 2016 Report Type: G3

Original Amendment Special Election Report

(6) Contributions This Report

Cash & Checks \$, , 110 . 00

Loans \$, , 0 . 00

Total Monetary \$, , 110 . 00

In-Kind \$, , 0 . 00

(7) Expenditures This Report

Monetary Expenditures \$, , 379 . 50

Transfers to Office Account \$, , 0 . 00

Total Monetary \$, , 379 . 50

(8) Other Distributions

\$, , 0 . 00

(9) TOTAL Monetary Contributions To Date

\$, 25 , 676 . 00

(10) TOTAL Monetary Expenditures To Date

\$, 7 , 588 . 61

(11) Certification

It is a first degree misdemeanor for any person to falsify a public record (ss. 839.13, F.S.)

I certify that I have examined this report and it is true, correct, and complete:

(Type name)

Individual (only for IE or electioneering comm.) Treasurer Deputy Treasurer

X

Signature

(Type name)

Candidate Chairperson (only for PC and PTY)

X

Signature

CAMPAIGN TREASURER'S REPORT - ITEMIZED CONTRIBUTIONS

(1) Name Howard Fein (2) I.D. Number 291

9/17/2016 through 9/30/2016

(3) Cover Period 9/17/2016 through 9/30/2016 (4) Page 1 of 1

| (5) Date | (7) Full Name (Last, Suffix, First, Middle) Street Address & City, State, Zip Code | (8) Contributor | | (9) Contribution Type | (10) In-kind Description | (11) Amendment | (12) Amount |
|---------------------------|--|--------------------|------------|-----------------------------|--------------------------------|-------------------|----------------|
| (6) Sequence Number | | Type | Occupation | | | | |
| 9/19/2016 <i>f l</i> | Iden, Marilyn 3088 se overbrooke dr psl, fl 34952 | I | | CH | | | \$100.00 |
| 1 | | | | | | | |
| 9/19/2016 <i>f l</i> | Roy, Renee 10520 sw stephanie way #204 psl, fl 34987 | I | | CH | | | \$10.00 |
| 2 | | | | | | | |
| <i>f l</i> | | | | | | | |
| <i>f l</i> | | | | | | | |
| <i>f l</i> | | | | | | | |
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| <i>f l</i> | | | | | | | |
| <i>f l</i> | | | | | | | |

CAMPAIGN TREASURER'S REPORT - ITEMIZED EXPENDITURES

(1) Name Howard Fein (2) I.D. Number 291
 9/17/2016 through 9/30/2016
 (3) Cover Period / / through / / (4) Page 1 of 1

| (5) Date | (7) Full Name (Last, Suffix, First, Middle) Street Address & City, State, Zip Code | (8) Purpose (add office sought if contribution to a candidate) | (9) Expenditure Type | (10) Amendment | (11) Amount |
|-----------------------|--|--|----------------------------|-------------------|----------------|
| 9/29/2016 / / 1 | Facebook, 1 Hacker Way Menlo Park, Ca 94025 | advertising | MO | | \$104.50 |
| 9/21/2016 / / 2 | City of PSL, 121 SW PSL Blvd PSL, FL 34984 | sign permit | MO | | \$25.00 |
| 9/21/2016 / / 3 | City of PSL, 121 SW PSL Blvd PSL, FL 34984 | sign deposit | MO | | \$250.00 |
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