

**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

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STATE OF FLORIDA
ELECTIONS COMMISSION

**FLORIDA ELECTIONS COMMISSION,
PETITIONER,**

V.

**AGENCY CASE No.: FEC 06-090
F.O. No.: DOSFEC 07-186**

**RODERICK HARVEY,
RESPONDENT.**

FINAL ORDER

THIS CAUSE came on to be heard for an informal hearing on Counts 1 through 9, and for review of the Administrative Law Judge's Recommended Order on Counts 10 & 11, before the Florida Elections Commission (Commission) on November 14, 2007, in Tallahassee, Florida.

APPEARANCES

For Commission	Eric M. Lipman Assistant General Counsel 107 W. Gaines Street Collins Building, Suite 224 Tallahassee, FL 32399
For Respondent	Mark Herron, Esq. Messer, Caparello, & Self, P.A. Post Office Box 15579 Tallahassee, FL 32317

STATEMENT OF THE ISSUE

Whether the Respondent violated Sections 106.07(2)(b), 106.07(5), and 106.11(4), Florida Statutes, as charged in the Commissions' December 1, 2006 Order of Probable Cause.

PRELIMINARY STATEMENT

1. On March 31, 2006, the Commission received a sworn complaint alleging violations of Florida's election laws. The staff of the Commission conducted an investigation to

determine whether the facts alleged in the complaint constituted probable cause to believe that the Respondent violated The Florida Election Code.

2. On October 19, 2006, the staff drafted a Staff Recommendations recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated. On December 1, 2006, 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 November 29, 2005, Respondent violated Section 106.07(2)(b), Florida Statutes, by failing to file an addendum to an incomplete report after receiving notice from the filing officer, when Respondent received a letter on November 25, 2005, directing him to file an amendment to Richard Dunn's 2005 G3-2 CTR within three days and he failed to do so.

Count 2:

On or about December 3, 2005, Respondent violated Section 106.07(2)(b), Florida Statutes, by failing to file an addendum to an incomplete report after receiving notice from the filing officer, when Respondent received a second letter on November 29, 2005, directing him to file an amendment to Richard Dunn's 2005 G3-2 CTR within three days and he failed to do so.

Count 3:

On or about December 9, 2005, Respondent violated Section 106.07(2)(b), Florida Statutes, by failing to file an addendum to an incomplete report after receiving notice from the filing officer, when Respondent received a letter on December 5, 2005, directing him to file an amendment to Richard Dunn's amended 2005 G2 CTR within three days and he failed to do so.

Count 4:

On or about December 9, 2005, Respondent violated Section 106.07(2)(b), Florida Statutes, by failing to file an addendum to an incomplete report after receiving notice from the filing officer, when Respondent received a letter on December 5, 2005, directing him to file an amendment to Richard Dunn's 2005 R1 CTR within

three days and he failed to do so.

Count 5:

On or about March 12, 2006, Respondent violated Section 106.07(2)(b), Florida Statutes, by failing to file an addendum to an incomplete report after receiving notice from the filing officer, when Respondent received a letter on March 8, 2006, directing him to file an amendment to Richard Dunn's TR CTR within three days and he failed to do so.

Count 6:

On or about October 17, 2005, Respondent violated Section 106.07(5), Florida Statutes, by certifying to the correctness of Richard Dunn's 2005 G2 CTR that was incorrect, false, or incomplete, when he failed to report 33 contributions and five expenditures and incorrectly listed a cashier's check as a \$500 check from James Wright.

Count 7:

On or about November 15, 2005, Respondent violated Section 106.07(5), Florida Statutes, by certifying to the correctness of Richard Dunn's 2005 G3 CTR that was incorrect, false, or incomplete, when five contribution entries contained incomplete addresses, four expenditure entries contained incomplete addresses, nine contributions over \$100 did not list the occupation of the contributor, and he failed to list 48 contributions and bank fees totaling \$698.72. Also, a \$100 contribution from Elmore Johnson was listed as from Elmore Jackson, a \$250 contribution from Michael Kosnitzky was listed from Suzanne Kosnitzky, a \$1,200 expenditure to Karen Jackson was listed as Karen Johnson, four contributions should have been reported in the previous reporting period, and total expenditures to date on the summary page were greater than the total contributions to date.

Count 8:

On or about November 30, 2005, Respondent violated Section 106.07(5), Florida Statutes, by certifying to the correctness of Richard Dunn's 2005 R1 CTR that was incorrect, false, or incomplete, when he failed to list three \$50 contributions, a \$500 contribution from Grisel Carbajal, bank fees totaling \$70, 178 contributions (reported in the TR), 44 expenditures (reported in the TR), two contribution entries contained incomplete addresses, and total expenditures to date on the summary page were greater than the total contributions to date. Also, the CTR disclosed a \$100 cash contribution from Mildred Smith when the bank records

showed the contribution was made by check, and the CTR showed a \$20 contribution from Reggie Duran when the bank records showed a \$50 contribution.

Count 9:

On or about March 1, 2006, Respondent violated Section 106.07(5), Florida Statutes, by certifying to the correctness of Richard Dunn's TR CTR that was incorrect, false, or incomplete, when he failed to list bank fees totaling \$326.84, the purpose for eight expenditures, the 178 contributions and 44 expenditures listed have dates that fall within the previous reporting period, and the total contributions to date listed on the summary page are less than the total expenditures to date. Also, the CTR showed a \$100 contribution from Jose Estevanell when the bank records showed a \$25 contribution.

Count 10:

On or about October 27, 2005, Respondent violated Section 106.11(4), Florida Statutes, by signing a check drawn on the campaign account without sufficient funds on deposit in the account, when he signed a check for \$3,625.63 to the *Miami Times*.

Count 11:

On or about November 22, 2005, Respondent violated Section 106.11(4), Florida Statutes, by signing a check drawn on the campaign account without sufficient funds on deposit in the account, when he signed a check for \$2,000 to the WMBM

3. Respondent disputed the facts contained in the Staff Recommendation as to Counts 10 and 11 and timely requested a formal administrative hearing before the Division of Administrative Hearings on those two allegations. The Commission conducted an Informal Hearing on Counts 1-9 at its November 14, 2007 meeting.

Counts 1-9

FINDINGS OF FACTS

4. The Respondent is Roderick Harvey. Respondent served as Richard Dunn's campaign treasurer for Dunn's unsuccessful campaign for a seat on the Miami City Commission in November 2005.

5. Section 106.07(2)(b), Florida Statutes, requires that the campaign treasurer file an addendum to the CTR within 3 days of receipt of notice from the filing officer that the report is incomplete.

6. Richard Dunn's campaign (Campaign) filed periodic reports (Report) of its receipts and expenditures with the Miami City Clerk's (Clerk) office. The City Clerk's office reviewed candidates' reports upon filing. If the report contained any facial defects, the Clerk sent a letter to the candidate requesting that the mistakes be corrected and an amended report be filed.

7. The Clerk's office sent Respondent five separate letters requesting Respondent to make corrections and file amended reports. Table 1 below lists the notification letters the filing officer mailed to Respondent, the report involved and the date Respondent received the notification.

TABLE 1: LETTERS FROM FILING OFFICER		
Date of Letter	Description of Letter	Date Respondent Received Letter
11/21/05	1 st Request to Amend the G3-2 report	11/25/05
11/28/05	2 nd Request to Amend the G3-2 report	11/29/05
12/01/05	Request to Amend the G2 amended report	12/05/05
12/02/05	Request to Amend the R1 report	12/05/05
03/06/05	Request to Amend the TR report	03/08/06

8. Respondent did not file amendments to Mr. Dunn's TR, R1, G3-2, and the G2 reports, after receiving notice from the filing officer that the reports were deficient.

9. Respondent complied with the City Clerk's initial request to amend the G2 report. However, Patricia Thompson, the Miami City Clerk, also noted deficiencies in the amended

report and mailed a letter to Respondent regarding those deficiencies. On December 5, 2005, Respondent received a letter from the filing officer advising him that the total expenditures listed on the summary page of the amended G2 report exceeded the total contributions.

10. Respondent filed Dunn's amended reports on August 14, 2006—five months after the complaint was filed.

11. When Respondent filed Dunn's campaign Reports, Respondent certified the reports were true, correct, and complete. However, Respondent's G2, G3-2, R1, and TR were missing information and contained incorrect information as listed in Table 2.

TABLE 2: MISSING AND INCORRECT INFORMATION ON RESPONDENT'S REPORTS			
Date Filed	Reporting Period	Missing Information	Incorrect Information
10/17/05	09/24/05 to 10/07/05 G2 Original	<ul style="list-style-type: none"> • 33 contributions were not listed (four are contained in the next report) • 5 expenditures not listed 	<ul style="list-style-type: none"> • CTR list \$500 check from James Wright but bank records show the contribution was a cashier's check.
11/15/05	10/08/05 to 11/10/05 G3-2 Original	<ul style="list-style-type: none"> • 5 contribution entries contained incomplete addresses • 9 contributions over \$100 did not list the occupation • 4 expenditure entries contained incomplete addresses • Did not list 48 contributions • Did not list bank fees totaling \$698.72 	<ul style="list-style-type: none"> • \$100 contribution from Elmore Johnson is listed on the CTR as Elmore Jackson • \$250 contribution from Michael Kosnitzy is listed on the CTR as Suzanne Kosnitzy • \$1200 expenditure to Karen Jackson is listed on the CTR as Karen Johnson • Total expenditures to date on the summary page are greater than the total contributions to date. • Four contributions should have been reported in the previous reporting period.

11/30/05	11/11/05 to 11/24/05 R1 Original	<ul style="list-style-type: none"> • \$50 contribution from Ronald Hines • \$50 contribution from Willie Pearl Porter • \$50 contribution from Laurestine E. Porter • \$500 contribution from Grisel Carbajal • 2 contribution entries contain incomplete addresses • Did not list bank fees totaling \$70.00 • All (178) the contributions listed on the TR report have dates that fall within this reporting period • 44 expenditures not listed in report but listed in TR report 	<ul style="list-style-type: none"> • CTR discloses a \$100 cash contribution from Mildred Smith—bank records show the contribution was made by check • CTR shows \$20 contribution from Reggie Duran—bank shows \$50 contribution • Total expenditures to date on the summary page are greater than the total contributions to date.
03/01/06	11/25/05 to 02/27/06 TR Original	<ul style="list-style-type: none"> • Eight expenditure entries do not list the “purpose” • Did not list bank fees totaling \$326.84 	<ul style="list-style-type: none"> • CTR shows a \$100 contribution from Jose Estevanell—bank records show a \$25 contribution • All (178) the contributions listed on the TR report have dates that fall within the previous reporting period • 44 expenditures listed in TR should have been disclosed in the previous report with the dates of the previous reporting period. • Total contributions to date listed on the summary page are less than the total expenditures to date.

12. Respondent received a copy of the *2004 Candidate and Campaign Treasurer Handbook* and Chapter 106, Florida Statutes, which Respondent acknowledged. Respondent stated that he did not read the publications.

13. Respondent knew there were problems because the campaign staff continued to write checks after Respondent made several requests for all checkbooks to be turned over to his office

14. Respondent stated that he also tried to set up a procedure where the candidate would consult with him before issuing a check, but campaign staff did not follow the procedure. Respondent never gained full control of the campaign's books and records.

Counts 10-11

15. The evidentiary hearing on Counts 10 and 11 was conducted by videoconference in Tallahassee, Florida, on May 21, 2007. The parties, attorneys for the parties, witnesses, and court reporter participated by videoconference in Miami, Florida.

16. On August 21, 2007, the Administrative Law Judge (ALJ) recommended that the Commission enter a final order finding Respondent guilty of two counts of violating Section 106.11(4), Florida Statutes, and imposing a civil penalty of \$500. Neither of the parties filed exceptions to the ALJ's Recommended Order.

17. The findings of fact set forth in the Recommended Order as to Counts 10 and 11 are approved and adopted by the Commission, and incorporated herein by reference.

18. There is competent substantial evidence to support the ALJ's findings of fact.

CONCLUSIONS OF LAW

19. The Commission has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 106, Florida Statutes.

20. As to Counts 1 through 9 of the Order of Probable Cause, the Respondent committed 5 counts of violating Section 106.07(2)(b), Florida Statutes, by failing to file addendums to five incomplete reports after receiving notice from the filing officer on November 25, 2005 (G3-2 Report 1st Request), November 29, 2005 (G3-2 Report, 2nd Request), December

5, 2005 (G2 Report), December 5, 2005 (R1 Report) and March 8, 2006 (TR Report); and committed 4 violations of Section 106.07(5) for certifying that Richard Dunn's G2, G3, R1, and TR reports were true, correct and complete when they were not.

21. The conclusions of law set forth in the ALJ's Recommended Order as to Counts 10 and 11 are approved, adopted, and incorporated herein by reference.

DISPOSITION AND ORDER

22. Upon a complete review of the record on Counts 10 and 11, the Commission accepts the disposition recommended by the Administrative Law Judge for the two violations.

WHEREFORE the Commission finds that Respondent has violated the following provisions of Chapter 106, Florida Statutes, and imposes the following fines:

A. Respondent violated Section 106.07(2)(b), Florida Statutes, on 5 occasions for failing to file an addendum to an incomplete report after receiving notice from the filing officer. Respondent is fined \$50 each for Counts 1-5, for a total of \$250

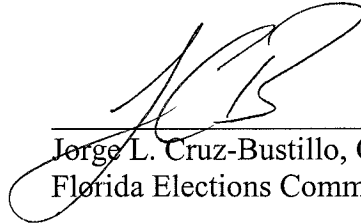
B. Respondent violated Section 106.07(5), Florida Statutes, on 4 occasions for certifying that Richard Dunn's campaign treasurer's reports were true, correct, and complete when they were not. Respondent is fined \$25 each for Counts 6-8, and \$50 for Count 9, for a total of \$125.

C. That Respondent violated Section 106.11(4), Florida Statutes, on 2 occasions by signing a check drawn on the campaign account without sufficient funds on deposit in the account. Respondent is fined \$250 for each of the 2 counts for a total of \$500. Therefore it is

ORDERED that the Respondent shall remit a civil penalty in the amount of \$875, inclusive of fees and costs. The civil penalty shall be paid to the Florida Elections Commission, the Collins Building, Suite 224, 107 W. Gaines Street, Tallahassee, Florida 32399-0250, 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 November 30, 2007, in Tallahassee, Florida.



Jorge L. Cruz-Bustillo, Chairman
Florida Elections Commission.

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
Roderick Harvey, Respondent (certified mail)
Mark Herron, Attorney for Respondent (certified mail)
Priscilla Thompson, Complainant
Miami City Clerk's Office, Filing Officer