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**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

**Florida Elections Commission,
Petitioner,**

v.

**Agency Case No.: FEC 10-215
F.O. No.: FOFEC 11-175W**

**John De Vries,
Respondent.**

FINAL ORDER

THIS CAUSE came on to be heard at an informal hearing held before the Florida Elections Commission (Commission) on November 15, 2011.

APPEARANCES

For Commission	Eric M. Lipman General Counsel 107 W. Gaines Street Collins Building, Suite 224 Tallahassee, FL 32399
For Respondent	No appearance

STATEMENT OF THE ISSUE

Whether Respondent violated Section 106.11(4), Florida Statutes, when he wrote a check for \$1,781.82 to the Division of Elections on for his qualifying fee and did not have sufficient funds on deposit in his primary depository account to pay the full amount of the check.

PRELIMINARY STATEMENT

On September 23, 2010, the Commission received a sworn complaint alleging violations of Florida's election laws. 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.

On July 1, 2011, staff drafted a Staff Recommendation recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated. On August 24, 2011, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with the following violation::

Count 1:

On or about June 15, 2010, Respondent violated Section 106.11(4), Florida Statutes, when he wrote a check for \$1,781.82 drawn on his campaign account, when he did not have sufficient funds on deposit in his primary depository account to pay the full amount of the authorized expense, to honor all other checks drawn on the account that are outstanding, and meet all expenses authorized but not yet paid.

Respondent did not elect to have a formal or informal hearing conducted before the commission, and did not elect to settle the case with a consent order within 30 days after the filing of the Commission's allegations. Therefore, an informal hearing was scheduled, and Respondent was noticed to appear before the Commission on November 15, 2011. At the informal hearing, staff presented the undisputed facts contained in the Staff Recommendation. Respondent did not attend the hearing.

FINDINGS OF FACT

1. John DeVries was a candidate for State Representative, District 34, during the 2010 election cycle. Respondent was defeated in the November 2, 2010 general election.
2. Respondent filed his Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates on June 17, 2010. Respondent was his own campaign treasurer. Respondent filed his Statement of Candidate form indicating that he had received, read, and understood Chapter 106 with the Division on the same day.
3. The Division of Elections ("Division") sent Respondent a letter acknowledging receipt of his DS-DE 9 form on June 18, 2010. The letter advised Respondent to print a copy of

the *2010 Candidate and Campaign Treasurer Handbook* (“Handbook”) from the Division of Elections’ website.

4. Respondent wrote a check for \$1,781.82 to the Division of Elections on for his qualifying fee on June 15, 2010, when he did not have sufficient funds on deposit in his primary depository account to pay the full amount of the check.

5. Page 29 of the January 2010 Handbook states,

IMPORTANT: *No candidate, campaign manager, treasurer, deputy treasurer, or any person acting on behalf of the following, shall authorize any expenses, unless there are sufficient funds on deposit in the primary depository account of the candidate to pay the full amount of the authorized expense, to honor all other checks draw[n] on such account, which checks are outstanding, and to meet all anticipated charges during a billing period.*

Sufficient funds means that the funds at issue have been delivered for deposit to the financial institution at which such account is maintained and not that such funds are available for withdrawal in accordance with the deposit rules or the funds availability policy of such financial institution.

6. Respondent’s conduct was willful. Respondent committed the acts while knowing that, or showing reckless disregard for whether, the acts were prohibited or failed to commit an act while knowing that, or showing reckless disregard for whether, the acts were required.

CONCLUSIONS OF LAW

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

8. Respondent’s conduct was willful.

9. The Respondent committed one count of violating Section 106.11(4), Florida Statutes, when he wrote a check for \$1,781.82 to the Division of Elections for his qualifying fee on June 15, 2010, and did not have sufficient funds on deposit in his primary depository account

to pay the full amount of the check.

10. In determining the amount of the civil penalty, the Commission considered the mitigating and aggravating circumstances set forth in Section 106.265, Florida Statutes.

ORDER

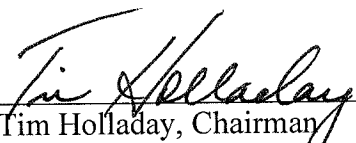
WHEREFORE the Commission finds that Respondent has violated Section 106.11(4), Florida Statutes, on one occasion and fines the Respondent \$250 for the violation.

Therefore, it is

ORDERED AND ADJUDGED that Respondent shall remit a civil penalty in the amount of \$250. The civil penalty shall be paid by cashier's check, money order, or attorney's trust account check and be sent 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 Respondent.

DONE AND ORDERED by the Florida Elections Commission on

11-30, 2011.



Tim Holladay, Chairman
Florida Elections Commission

NOTICE OF RIGHT TO APPEAL

This order is final agency action. Any party who is adversely affected by this order has the right to seek judicial review pursuant to Section 120.68, Florida Statutes, by filing a notice of administrative appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Florida Elections Commission at 107 West Gaines Street, Suite 224, Collins Building, Tallahassee, Florida 32399-1050, and by filing a copy of the notice of appeal with the appropriate district court of appeal. The party must attach to the notice of appeal a copy of this

order and include with the notice of appeal filed with the district court of appeal the applicable filing fees. **The notice of administrative appeal must be filed within 30 days of the date of this order is filed with the Commission.** The date this order was filed appears in the upper right-hand corner of the first page of the order.

Copies furnished to:

Eric M. Lipman, General Counsel
Frederic O'Neal, Attorney for Respondent (certified mail)
Juan-Carlos Planas, Complainant
Florida Division of Elections, Filing Officer