

FILED

STATE OF FLORIDA 08 MAY 30 PM 1:26
FLORIDA ELECTIONS COMMISSION
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ELECTIONS COMMISSION

FLORIDA ELECTIONS COMMISSION,
PETITIONER,

v.
MICHELLE SPENCE-JONES,
RESPONDENT.

AGENCY CASE No.: FEC 06-014
F.O.NO.: DOSFEC 08-014

CONSENT FINAL ORDER

The Respondent, Michelle Spence-Jones, and the Florida Elections Commission (Commission) agree that this Consent Order resolves all of the issues between the parties in this case. The parties jointly stipulate to the following facts, conclusions of law, and order:

FINDINGS OF FACT

1. The Respondent was elected to a seat on the Miami City Commission in a run-off election on November 29, 2005.
2. On July 20, 2006, the staff drafted a Staff Recommendation recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated.
3. On September 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 28, 2005, Respondent violated Section 106.12(3), *Florida Statutes*, prohibiting a person from spending petty cash on unauthorized items, when Respondent spent \$22,910 to pay campaign workers with cash.

Count 2:

On or about November 28, 2005, Respondent violated Section

when Respondent spent \$1,090.75 cash for food and other supplies to several vendors.

Count 3:

Between November 23 and November 29, 2005, Respondent violated Section 106.143(1)(a), *Florida Statutes*, by failing to mark prominently the political advertisement with the correct disclaimer, when she published the ad “Will a man rob God?” on the radio without the proper disclaimer.

Count 4:

Between November 23 and November 29, 2005, Respondent violated Section 106.143(1)(a), *Florida Statutes*, by failing to mark prominently the political advertisement with the correct disclaimer, when she published the ad “Michelle Spence-Jones is a strong black woman...” on the radio without the proper disclaimer.

Count 5:

On or about November 26, 2005, Respondent violated Section 106.143(1)(a), *Florida Statutes*, by failing to mark prominently the political advertisement with the correct disclaimer, when she published the flyer “Don’t Gamble on Rev. Richard Dunn” without the proper disclaimer. (Exhibit 15 attached to Report of Investigation).

Count 6:

Between November 23 and November 29, 2005, Respondent violated Section 106.1439(1), *Florida Statutes*, by failing to mark prominently the electioneering communication with the correct disclaimer, when she published the ad stating, “... Again, I’m Michelle Spence-Jones, candidate for City of Miami Commission District Five. Happy Thanksgiving. May God continue to bless you and keep you well...” without any disclaimer.

Count 7:

Between November 23 and November 29, 2005, Respondent violated Section 106.1439(1), *Florida Statutes*, by failing to mark prominently the electioneering communication with the correct disclaimer, when she published the ad stating, “...I’m Michelle Spence-Jones, candidate for City of Miami Commission District Five. As we recover from this year’s hurricane season, we were encouraged by the kindness of others who have given to their neighbors in their time of need...” without any disclaimer.

Count 8:

On or about November 28, 2005, Respondent violated Section 106.19(1)(d),

Florida Statutes, by making or authorizing an expenditure prohibited by Chapter 106, *Florida Statutes*, when Respondent authorized her campaign treasurer to spend \$24,000 to pay campaign workers and to purchase food with cash and subsequently ratified those cash expenditures by signing the 2005 termination report.

4. On September 6, 2006, the Respondent was served by certified mail with a copy of the Order of Probable Cause.

5. The Respondent requested a hearing before the Division of Administrative Hearings within 30 days of receiving the Order of Probable Cause.

6. The Respondent and the staff stipulate to the following facts:

a. Complainant, Richard P. Dunn, II, was Respondent's opponent in the November 29, 2005 run-off election.

b. Respondent received and read a copy of Chapter 106, *Florida Statutes*, and the *2004 Candidate and Campaign Treasurer Handbook* published by the Florida Division of Elections.

c. Respondent's 2005 termination report listed a November 28, 2005, expenditure in the amount of \$15,000 for election day payroll and food. The report also listed a November 29, 2005, expenditure in the amount of \$9,000 for election day payroll. The expenditure checks were made payable to Thelma Campbell.

d. After cashing the checks, Respondent's treasurer placed the poll workers' money in individual envelopes. The envelopes were given to Mr. and Mrs. Hardeman, who distributed the envelopes to the workers.

e. Respondent reported paying campaign workers between \$40 and \$300 each. Poll workers were required to sign their name on a ledger at the time they were paid.

g. During the campaign, Respondent made petty cash expenditures that were not for travel related expenses, office supplies, or other necessities.¹

i. Respondent ran two radio advertisements that expressly advocated her election to the Miami City Commission. Respondent also distributed a political advertisement flyer to voters. These advertisements did not have the required disclaimer

k. Respondent ran two radio commercials during her campaign that did not expressly advocate her election. These radio spots did not contain an electioneering communication disclaimer.

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. The Commission staff and the Respondent stipulate that all elements of the violations charged in the Order of Probable Cause can be proven by clear and convincing evidence.

ORDER

9. The Respondent and the staff of the Commission have entered into this Consent Order voluntarily and upon advice of counsel.

10. The Respondent shall bear her own attorney fees and costs that are in any way associated with this case.

11. The Respondent understands that before the Consent Order becomes final

¹ The Florida Division of Elections defined the term “other necessities,” in DE 06-10 as follows:

Applying the definitions of the words “necessities” and “necessary” noted above in the context used by the Legislature, a reasonable conclusion would be that the term “necessities” was intended to refer to an item costing no more than \$99.99 which is purchased to meet an essential, urgent need that is unavoidable due to conditions or circumstances.

agency action, the Commission must approve it at a public meeting. The Commission will consider the Consent Order at its next available meeting.

12. The Respondent voluntarily waives the right to any further proceedings under Chapters 104, 106, and 120, *Florida Statutes*, and the right to appeal the Consent Order.

13. Counts 3, 4, and 5 of the Order of Probable Cause shall be combined and renumbered as Count 3. Counts 6 and 7 of the Order of Probable Cause shall be combined and renumbered as Count 4. Count 9 in the Order of Probable Cause shall be renumbered as Count 5.

14. This Consent Order is enforceable under Sections 106.265 and 120.69, *Florida Statutes*. The Respondent expressly waives any venue privileges and agrees that if enforcement of this Consent Order is necessary, venue shall be in Leon County, Florida, and Respondent shall be responsible for all reasonable fees and costs associated with enforcement.

15. If the Commission does not receive the signed Consent Order and the agreed upon civil penalty in its offices by the close of business on Tuesday, January 22, 2008, the staff withdraws this offer of settlement and will proceed with the case.

16. Payment of the civil penalty in certified funds (money order, cashier's check, bank check) is a condition precedent to the Commission's consideration of the Consent Order.

PENALTY

WHEREFORE, based upon the foregoing facts and conclusions of law, the Commission finds that the Respondent has violated the following provisions of Chapter 106, *Florida Statutes*, and imposes the following fines:

A. Respondent violated Section 106.12(3), *Florida Statutes*, for spending petty cash on unauthorized items for which Respondent is fined a total of \$2000.

B. Respondent violated Section 106.143(1)(a), *Florida Statutes*, for failing to mark prominently her political advertisements with the correct disclaimer for which Respondent is fined a total of \$1,500.

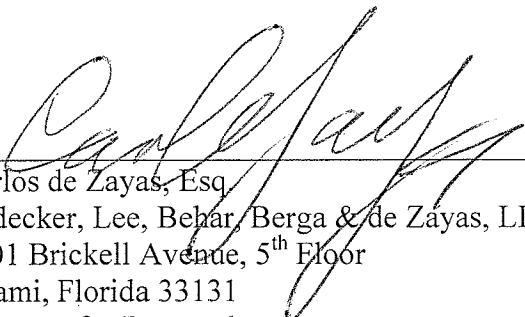
C. Respondent violated Section 106.1439(1), *Florida Statutes*, for failing to mark prominently her electioneering communications with a correct disclaimer, for which Respondent is fined a total of \$1000

D. Respondent has violated Section 106.19(1)(d), *Florida Statutes*, for making or authorizing an expenditure prohibited by Chapter 106, *Florida Statutes*. Respondent is fined \$3000 for that count.

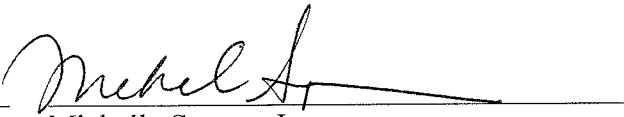
E. Respondent shall reimburse the Commission \$501.18 for costs incurred in connection with Respondent's deposition scheduled on October 17, 2007. Therefore it is

ORDERED that the Respondent shall remit to the Commission a civil penalty in the amount of \$8001.18, inclusive of fees and costs. The civil penalty shall be paid to the Florida Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida, 32399-1050.

The **Respondent** hereby agrees and consents to the terms of this Order on January 11, 2008.



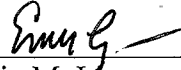
Carlos de Zayas, Esq.
Lydecker, Lee, Behar, Berga & de Zayas, LLC
1201 Brickell Avenue, 5th Floor
Miami, Florida 33131
Attorney for Respondent



Michelle Spence-Jones
829 NW 55 Street
Miami, Florida 33127

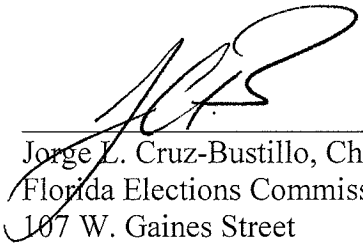
The **Commission staff** hereby agrees and consents to the terms of this Consent Order on

January 18, 2008.



Eric M. Lipman
Assistant General Counsel
Florida Elections Commission
107 W. Gaines Streets
Collins Building, Suite 224
Tallahassee, FL 32399-1050

Approved by the Florida Elections Commission at its regularly scheduled meeting held on ~~February~~
May 15 & 16
~~& 13~~, 2008 at Tallahassee, Florida and filed with the Clerk of the Commission
May 30, 2008, in Tallahassee, Florida.



Jorge L. Cruz-Bustillo, Chairman
Florida Elections Commission
107 W. Gaines Street
Collins Building 224
Tallahassee, FL 32399-1050

Copies furnished to:

Eric M. Lipman, Assistant General Counsel
Carlos de Zayas, Attorney for Respondent