



New York City Campaign Finance Board

100 Church Street, 12th Floor, New York, NY 10007
212.409.1800 | www.nycffb.info

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Via C-Access
February 9, 2016

Camille Harriott
John Burnett 2013



Dear Camille Harriott:

Please find attached the New York City Campaign Finance Board's ("CFB" or "Board") Final Audit Report for the 2013 campaign of John L. Burnett (the "Campaign"). CFB staff prepared the report based on a review of the Campaign's financial disclosure statements and documentation submitted by the Campaign.

The report concludes that the Campaign demonstrated substantial compliance with the Campaign Finance Act (the "Act") and the Board Rules (the "Rules"), with exceptions as detailed in the report.

The January 15, 2014 disclosure statement (#16) was the last disclosure statement the Campaign was required to file with the CFB for the 2013 elections. If the Campaign raises additional contributions to pay outstanding liabilities, please note that all 2013 election requirements, including contribution limits, remain in effect. The Campaign is required to maintain its records for six years after the election, and the CFB may require the Campaign to demonstrate ongoing compliance. *See* Rules 3-02(b)(3), 4-01(a), and 4-03. In addition, please contact the New York State Board of Elections for information concerning its filing requirements.


The CFB appreciates the Campaign's cooperation during the 2013 election cycle. Please contact the Audit Unit at 212-409-1800 or AuditMail@nyccfb.info with any questions about the enclosed report.


Sincerely,

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signature on
original

Jonnathon Kline, CFE
Director of Auditing and Accounting

c: John L. Burnett
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John Burnett 2013
A black rectangular redaction box covering the name of the sender.

Attachments



EC2013 Final Audit Report

John Burnett 2013

February 2016

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RESULTS IN BRIEF

The results of the New York City Campaign Finance Board’s (“CFB” or “Board”) review of the reporting and documentation of the 2013 campaign of John L. Burnett (the “Campaign”) indicate findings of non-compliance with the Campaign Finance Act (the “Act”) and Board Rules (the “Rules”) as detailed below:

Contribution Findings

All campaigns are required to abide by contribution limits and adhere to the ban on contributions from prohibited sources. Further, campaigns are required to properly disclose and document all contributions. Findings in this section relate to the Campaign’s failure to comply with the requirements for contributions under the Act and Rules.

- The Campaign accepted aggregate contributions exceeding the \$4,950 contribution limit for the 2013 election cycle (see Finding #1).

Other Findings

- The Campaign did not respond timely to the Draft Audit Report (see Finding #2).

BACKGROUND

The Campaign Finance Act of 1988, which changed the way election campaigns are financed in New York City, created the voluntary Campaign Finance Program. The Program increases the information available to the public about elections and candidates' campaign finances, and reduces the potential for actual or perceived corruption by matching up to \$175 of contributions from individual New York City residents. In exchange, candidates agree to strict spending limits. Those who receive funds are required to spend the money for purposes that advance their campaign.

The CFB is the nonpartisan, independent city agency that administers the Campaign Finance Program for elections to the five offices covered by the Act: Mayor, Public Advocate, Comptroller, Borough President, and City Council member. All candidates are required to disclose all campaign activity to the CFB. This information is made available via the CFB's online searchable database, increasing the information available to the public about candidates for office and their campaign finances.

All candidates must adhere to strict contribution limits and are banned from accepting contributions from corporations, partnerships, and limited liability companies. Additionally, participating candidates are prohibited from accepting contributions from unregistered political committees. Campaigns must register with the CFB, and must file periodic disclosure statements reporting all financial activity. The CFB reviews these statements after they are filed and provides feedback to the campaigns.

The table below provides detailed information about the Campaign:

Name: John L. Burnett	Contribution Limit:
ID: 1776	\$4,950
Office Sought: Comptroller	
	Expenditure Limit:
	2010–2012: N/A
Committee Name: John Burnett 2013	2013 Primary: N/A
Classification: Participant	2013 General: \$4,018,000
Certification Date: June 6, 2013	
	Public Funds:
Ballot Status: General	Received: \$0
General Election Date: November 5, 2013	Returned: N/A
Party: Conservative, Republican, School Choice	
	Campaign Finance Summary:
	http://bit.ly/1k8BCJT

SCOPE AND METHODOLOGY

Pursuant to Admin. Code § 3-710(1), the CFB conducted this audit to determine whether the Campaign complied with the Act and Rules. Specifically, we evaluated whether the Campaign:

1. Accurately reported financial transactions and maintained adequate books and records.
2. Adhered to contribution limits and prohibitions.
3. Disbursed funds in accordance with the Act and Rules.
4. Complied with expenditure limits.
5. Received the correct amount of public funds, or whether additional funds are due to the Campaign or must be returned.

Prior to the election, we performed preliminary reviews of the Campaign's compliance with the Act and Rules. We evaluated the eligibility of each contribution for which the Campaign claimed matching funds, based on the Campaign's reporting and supporting documentation. We also determined the Candidate's eligibility for public funds by ensuring the Candidate was on the ballot for an election, was opposed by another candidate on the ballot, and met the two-part threshold for receiving public funds. After the election, we performed an audit of all financial disclosure statements submitted for the election (see summary of activity reported in these statements at Appendix #1).

To verify that the Campaign accurately reported and documented all financial transactions, we requested all of the Campaign's bank statements and reconciled the financial activity on the bank statements to the financial activity reported on the Campaign's disclosure statements. We identified unreported, misreported, and duplicate disbursements, as well as reported disbursements that did not appear on the Campaign's bank statements. We also calculated debit and credit variances by comparing the total reported debits and credits to the total debits and credits amounts appearing on the bank statements. Because the Campaign reported that more than 25% of the dollar amount of its total contributions were in the form of credit card contributions—or had a variance between the total credit card contributions reported and the credits on its merchant account statements of more than 4%—we reconciled the transfers on the submitted merchant account statements to the deposits on the bank account statements.

As part of our reconciliation of reported activity to the bank statements the Campaign provided, we determined whether the Campaign properly disclosed all bank accounts. We also determined if the Campaign filed disclosure statements timely and reported required activity daily during the two weeks before the election. Finally, we reviewed the Campaign's reporting to ensure it disclosed required information related to contribution and expenditure transactions, such as intermediaries and subcontractors.

To determine if the Campaign adhered to contribution limits and prohibitions, we conducted a comprehensive review of the financial transactions reported in the Campaign's disclosure statements. Based on the Campaign's reported contributions, we assessed the total amount contributed by any one source and determined if it exceeded the applicable limit. We also determined if any of the contribution sources were prohibited. We reviewed literature and other documentation to determine if the Campaign accounted for joint activity with other campaigns.

To ensure that the Campaign disbursed funds in accordance with the Act and Rules, we reviewed the Campaign's reported expenditures and obtained documentation to assess whether funds were spent in furtherance of the Candidate's nomination or election. We also reviewed information from the New York State Board of Elections and the Federal Election Commission to determine if the Candidate had other political committees active during the 2013 election cycle. We determined if the Campaign properly disclosed these committees, and considered all relevant expenditures made by such committees in the assessment of the Campaign's total expenditures.

We also reviewed the Campaign's activity to ensure that it complied with the applicable expenditure limits. We reviewed reporting and documentation to ensure that all expenditures—including those not reported, or misreported—were attributed to the period in which the good or service was received, used, or rendered. We also reviewed expenditures made after the election to determine if they were for routine activities involving nominal costs associated with winding up a campaign and responding to the post-election audit.

To ensure that the Campaign received the correct amount of public funds, and to determine if the Campaign must return public funds or was due additional public funds, we reviewed the Campaign's eligibility for public matching funds, and ensured that all contributions claimed for match by the Campaign were in compliance with the Act and Rules. We determined if the Campaign's activity subsequent to the pre-election reviews affected its eligibility for payment. We also compared the amount of valid matching claims to the amount of public funds paid pre-election and determined if the Campaign was overpaid, or if it had sufficient matching claims, qualified expenditures, and outstanding liabilities to receive a post-election payment. As part of this review, we identified any deductions from public funds required under Rule 5-01(n).

We determined if the Campaign met its mandatory training requirement based on records of training attendance kept throughout the 2013 election cycle. Finally, we determined if the Campaign submitted timely responses to post-election audit requests sent by the CFB.

Following an election, campaigns may only make limited winding up expenditures and are not going concerns. Because the activity occurring after the post-election audit is extremely limited, the audit focused on substantive testing of the entire universe of past transactions. The results of the substantive testing served to establish the existence and efficacy of internal controls. The CFB also publishes and provides to all campaigns guidance regarding best practices for internal controls.

To determine if contributors were prohibited sources, we compared them to entities listed in the New York State Department of State's Corporation/Business Entity Database. Because this was

the only source of such information, because it was neither practical nor cost effective to test the completeness of the information, and because candidates could provide information to dispute the Department of State data, we did not perform data reliability testing. To determine if reported addresses were residential or commercially zoned within New York City, we compared them to a database of addresses maintained by the New York City Department of Finance. Because this was the only source of such data available, because it was not cost effective to test the completeness of the information, and because campaigns had the opportunity to dispute residential/commercial designations by providing documentation, we did not perform data reliability testing.

In the course of our reviews, we determined that during the 2013 election cycle a programming error affected C-SMART, the application created and maintained by the CFB for campaigns to disclose their activity. Although the error was subsequently fixed, we determined that certain specific data had been inadvertently deleted when campaigns amended their disclosure statements and was not subsequently restored after the error was corrected. We were able to identify these instances and did not cite exceptions that were the result of the missing data or recommend violations to the Board. The possibility exists, however, that we were unable to identify all data deleted as a result of this error.

The CFB's Special Compliance Unit investigated any complaints filed against the Campaign that alleged a specific violation of the Act or Rules. The Campaign was sent a copy of all formal complaints made against it, as well as relevant informal complaints, and was given an opportunity to submit a response.

The Campaign was provided with a preliminary draft of this audit report and was asked to provide a response to the findings. The Campaign responded, and the CFB evaluated any additional documentation provided and/or amendments to reporting made by the Campaign in response. The Campaign was subsequently informed of its alleged violations, and was asked to respond. The Campaign responded and the CFB evaluated any additional information provided by the Campaign. After reviewing the Campaign's response(s), CFB staff determined that the total recommended penalties for the Campaign's violations did not exceed \$500, and as a result the staff chose not to recommend enforcement action to the Board. The Board's actions are summarized as a part of each Finding in the Audit Results section. The finding numbers and exhibit numbers, as well as the number of transactions included in the findings, may have changed from the Draft Audit Report to the Final Audit Report.

AUDIT RESULTS

Contribution Findings

1. Prohibited Contributions – Contributions Over the Limit

Campaigns may not accept contributions, either directly or by transfer, from any single source in excess of the applicable contribution limit for the entire election cycle. A single source includes, but is not limited to, any person or entity who or which establishes, maintains, or controls another entity and every entity so established, maintained, or controlled. *See* Rule 1-04(h). Cumulative contributions from a single source may include monetary contributions, in-kind contributions, and outstanding loans or advances, etc.

Candidates participating in the Program may contribute up to three times the contribution limit to their own campaign. *See* Admin. Code § 3-703(1)(h). Non-participating candidates are not limited in the amount they can contribute to their own campaign from their own money. *See* Admin. Code § 3-719(2)(b).

A loan not repaid by the day of the election is considered a contribution subject to the contribution limit. Loans that are forgiven or settled for less than the amount owed are also considered contributions. *See* Admin. Code § 3-702(8); Rules 1-05(a), (j).

The Campaign accepted contributions in excess of the contribution limit in the instances detailed in Exhibit I.

Previously Provided Recommendation

The Campaign must address each outstanding contribution limit violation:

- The Campaign must refund the over-the-limit portion of each contribution by bank or certified check and provide the CFB with copies of the refund check or pay the New York City Election Campaign Fund (the “Public Fund”) an amount equal to the amount of the overage.
- If the Campaign disagrees with this finding, it must provide an explanation and documentation to demonstrate that it did not accept contributions in excess of the limit.
- For loans, the Campaign may provide copies of the front and back of cancelled loan repayment checks showing that the Campaign repaid the loan before the date of the election.

Even if the portion of the contribution in excess of the limit is refunded, accepting a contribution in excess of the limit may result in a finding of violation and the assessment of a penalty.

Campaign's Response

In response to the Draft Audit Report, the Campaign stated that the contributions were loans made by the Candidate to the Campaign. The Campaign provided a schedule of repayments. The Campaign noted that, the Candidate exceeded the contribution limit by \$1,349.15. The Candidate stated that he tried to pay himself back but that he needed to pay salaried workers, and paid them before reimbursing himself. After paying the salaries there was not enough money in the Campaign account to refund his loans to the Campaign.

In response to the Notice of Alleged Violations, the Campaign stated that it would raise additional funds in order to refund the over-the-limit amount of \$1,349.15 to the Candidate. Subsequently, the Campaign submitted a copy of a contribution check for \$1,349.15 from Wayne P. Elmore, along with the contribution card, deposit slip, and bank statement showing the contribution was deposited in the Committee's bank account. The Campaign submitted a copy of the front of the refund check addressed to the Candidate, and provided and a bank statement showing that the check cleared the Campaign's account in penalties.

Board Action

The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board.

2. Failure to Respond Timely

Campaigns are required to respond timely to requests from the CFB. *See* Admin. Code § 3-703(1)(d); Rules 1-09, 4-01.

The Campaign failed to submit, by the due date, a response to the following:

REQUEST	DUE DATE	DATE SUBMITTED	# DAYS LATE	NOTE
Draft Audit Report	04/03/15	05/04/15	45	(1)

(1) The Campaign received an extension on 03/20/15 giving it until 04/03/15 to respond to the Draft Audit Report.

Previously Provided Recommendation

This finding was identified as a result of the Campaign's response, dated May 4, 2015, to the Draft Audit Report.

Campaign's Response

In response to the Notice of Alleged Violations, the Campaign confirmed its late response. Additionally, the Campaign stated that it was unreasonable for the CFB to require a response to the DAR within two weeks during the holiday season. However, the DAR was sent November 13, 2014 and due one month later on December 15, 2014. Additionally, the Campaign requested and received extensions, with a final due date of April 6, 2015. The Campaign then submitted a response on May 4, 2015, nearly six months after it received the Draft Audit Report.

Board Action

The Board has taken no further action on this matter other than to make this a part of the Candidate's record with the Board.

We performed this audit in accordance with the audit responsibilities of the CFB as set forth in Admin. Code § 3-710. We limited our review to the areas specified in this report's audit scope.

Respectfully submitted,

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signature on original

Jonnathon Kline, CFE

Director of Auditing and Accounting

Date: February 9, 2016

Staff: Hannah Golden

Erin Burns, CFE

**New York City Campaign Finance Board
Campaign Finance Information System
Transaction Summary Report
Appendix 1**

Candidate: Burnett, John L (ID:1776-P)**Office:** 3 (Comptroller)**Election:** 2013

1. Opening cash balance (All committees)		\$0.00
2. Total itemized monetary contributions (Sch ABC)		\$39,990.64
3. Total unitemized monetary contributions		\$0.00
4. Total in-kind contributions (Sch D)		\$15,066.43
5. Total unitemized in-kind contributions		\$0.00
6. Total other receipts (Sch E - excluding CFB payments)		\$0.00
7. Total unitemized other receipts		\$0.00
8. Total itemized expenditures (Sch F)		\$52,518.62
Expenditure payments	\$52,420.62	
Advance repayments	\$98.00	
9. Total unitemized expenditures		\$0.00
10. Total transfers-In (Sch G)		\$0.00
Type 1	\$0.00	
Type 2a	\$0.00	
Type 2b	\$0.00	
11. Total transfers-out (Sch H)		\$0.00
Type 1	\$0.00	
Type 2a	\$0.00	
Type 2b	\$0.00	
12. Total loans received (Sch I)		\$21,000.00
13. Total loan repayments (Sch J)		\$8,550.00
14. Total loans forgiven (Sch K)		\$0.00
15. Total liabilities forgiven (Sch K)		\$0.00
16. Total expenditures refunded (Sch L)		\$160.62
17. Total receipts adjustment (Sch M - excluding CFB repayments)		\$0.00
18. Total outstanding liabilities (Sch N - last statement submitted)		\$5,522.67
Outstanding Bills	\$2,048.00	
Outstanding Advances	\$3,474.67	
19. Total advanced amount (Sch X)		\$0.00
20. Net public fund payments from CFB		\$0.00
Total public funds payment	\$0.00	
Total public funds returned	\$0.00	
21. Total Valid Matchable Claims		\$2,300.00
22. Total Invalid Matchable Claims		\$7,480.00
23. Total Amount of Penalties Assessed		N/A
24. Total Amount of Penalty Payments		\$0.00
25. Total Amount of Penalties Withheld		\$0.00

Exhibit 1
John Burnett 2013
Contributions Over the Limit
(see Finding #1)

Name	Statement/Schedule/ Transaction ID	Transaction Type	Incurred/ Received/ Refunded Date	Amount	Notes
Burnett, John L	16/ABC/R0000719	Monetary Contribution	12/03/13	\$24.48	
Burnett, John L	15/J/R0000683	Loan Repayment	11/15/13	(\$1,800.00)	(1), (2)
Burnett, John L	15/J/R0000645	Loan Repayment	11/05/13	(\$750.00)	(1)
Burnett, John L	9/I/R0000026	Loan	07/04/13	\$15,000.00	
Burnett, John L	10/Y/R0000728	Candidate Personal Contribution	06/12/13	\$250.00	
Burnett, John L	9/P/R0000022	Outstanding Advance	05/31/13	\$500.00	
Burnett, John L	9/P/R0000021	Outstanding Advance	05/27/13	\$9.34	
Burnett, John L	9/P/R0000015	Outstanding Advance	05/27/13	\$59.88	
Burnett, John L	9/P/R0000017	Outstanding Advance	05/24/13	\$353.85	
Burnett, John L	9/P/R0000020	Outstanding Advance	05/20/13	\$2,500.00	
Burnett, John L	9/P/R0000014	Outstanding Advance	05/17/13	\$51.60	
Burnett, John L	N/A	Contribution Refund	10/09/15	(\$1,349.15)	(1)
Total				\$14,850.00	
Candidate Contribution Limit				(\$14,850.00)	(3)
Amount Over the Limit				<u>\$0.00</u>	

Notes:

- (1) This repayment or refund has been deducted from the total loan amount and is reflected in the calculation.
- (2) This loan repayment was made after the election. After the election and prior to its repayment, this amount counted towards the Candidate's contribution limit.
- (3) The Candidate may contribute up to three times the contribution limit of \$4,950 to his own campaign.