



**New York City Campaign Finance Board**  
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October 23, 2015

**By First Class Mail and C-ACCESS**

John Whitehead  


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903 Drew Street, #410  
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**FINAL BOARD DETERMINATION – EC2013 CAMPAIGN**

The New York City Campaign Finance Board (“Board”), at a meeting held on October 23, 2015, made the following final determination concerning the John Whitehead 2013 Campaign (“Campaign”):

**Violations and Penalties**

The Board determined that the Candidate, the Treasurer, and the Committee named above violated the New York City Campaign Finance Act (“Act”) and Board Rules and are jointly and severally liable for paying \$16,528 in penalties as follows:

1. A violation, no penalty for failing to provide bank statements. *See* Admin. Code §§ 3-703(1)(d), (g), (11); Board Rule 4-01(f). The Campaign failed to provide statements from its bank account from January and February 2014. The penalty was reduced from the Board’s published penalty guidelines because the Board has reason to believe that there was little to no activity on the account during that time period.

**Candidate ID Number: 802-P**

2. A penalty of \$258 for failing to report transactions. *See* Admin. Code §§ 3-703(1)(d), (g), (6), (11), (12); Board Rules 1-04(g)(4), (5), 1-09, 3-03(c), (d), (e), 4-01.

The Campaign failed to report transactions totaling \$2,912.51 that appear on its bank statements.

The Campaign provided documentation for a fundraiser held on July 9, 2013. The fundraiser documentation states, "Cigars provided by Brooklyn Smokes." The Campaign did not report receiving an in-kind contribution from Brooklyn Smokes.

The Campaign provided an invoice for DJ service from Sideray Williams for a Campaign fundraising event on September 10, 2013, the day of the primary, at the Brooklyn Sheraton Sky Bar. The Campaign did not report any other costs related to this event. Accordingly, these costs may have been covered by a third party, which would constitute an unreported in-kind contribution to the Campaign.

The Board assessed a penalty of 2% of all transactions exceeding \$50.

3. A penalty of \$108 for failing to demonstrate compliance with cash receipts reporting and documentation requirements. *See* Admin. Code §§ 3-703(1)(d), (g), (6), (10), (11), (12); Board Rules 1-04(a), (b), 2-06(a), 3-03(c), 4-01(a), (b)(1), (3), (f). The Campaign reported total cash receipts of \$8,499, but submitted deposit slips totaling \$8,934, resulting in a cash reporting variance of \$435 (5%). The Board assessed a penalty of 25% of the amount of the variance.

4. A penalty of \$2,450 for accepting contributions from corporations, limited liability companies, or partnerships. *See* N.Y.C. Charter § 1052(a)(13); Admin. Code §§ 3-702(8), 3-703(1)(l); Board Rules 1-04(c)(1), (e), (g), 1-05.

The Campaign accepted a \$1,200 check from Therapy Wine Bar, a corporation, on May 10, 2013. The Campaign submitted a copy of a check as documentation of an expenditure refund for this contribution, but did not provide documentation detailing the basis for the refund.

Per the Campaign's lease agreement, the Campaign agreed to pay \$1,500 per month to NBO Realty Inc. from May 15, 2013 to September 30, 2013. Therefore, for the term of four and a half months, the total amount owed was \$6,750 (\$1,500 x 4.5). However, the Campaign only paid \$6,000, resulting in a \$750 in-kind contribution.

The Board assessed penalties of \$1,450 for Therapy Wine Bar and \$1,000 for NBO Realty, in each instance representing \$250 plus the amount of the contribution.

5. A penalty of \$500 for accepting a contribution from an unregistered political committee. *See* Admin. Code §§ 3-702(11), 3-703(1)(k), 3-707; Board Rules 1-04(c)(1), (d), (g), 1-05. The Campaign accepted a \$250 contribution from Teamsters Union Local No. 456 on August 27, 2013. A copy of the contribution check indicates that

it was drawn on the union's Political Action Fund, which was not registered with the CFB. The Board assessed a penalty of \$250 plus the amount of the contribution.

6. A penalty of \$200 for failing to document transactions. *See* Admin. Code §§ 3-703(1)(d), (g), (11), (12), 3-715; Board Rules 1-09, 4-01(a), (c), (g), (k), 4-03. The Campaign submitted a copy of a palm card featuring the Candidate, William C. Thompson, Jr., Scott Stringer, Letitia James, and Charles "Joe" Hynes. The Campaign stated that it shared the costs of palm cards and primary election day workers with Letitia James's campaign. The Campaign further explained that the expenditures totaled \$18,710 for primary election day workers and \$707.69 for palm cards, \$2,500 of which (\$1,500 for workers, \$1,000 for palm cards) was paid by the James campaign. The Campaign provided a list of all primary day workers included in the shared costs and an invoice from Triboro Printing for the cost of the palm cards. Because the Campaign failed to provide a methodology for the cost allocations of each campaign's share, the Campaign appears to have overpaid for its share of the workers and underpaid for its share of the palm cards, resulting in, respectively, an undocumented in-kind contribution to the James campaign in the amount of \$7,855 ( $(\$18,710/2) - \$1,500$ ) and an undocumented in-kind contribution from the James campaign in the amount of \$207.69 ( $\$707.69 - (\$1,000/2)$ ). The Board assessed a penalty of \$100 for the palm cards and \$100 for the Election Day workers.

7. A penalty of \$1,210 for making cash expenditures greater than \$100. *See* Board Rules 1-08(i), 4-01(e)(2). The Campaign made individual cash expenditures exceeding \$100 that totaled \$1,400. Additionally, the Campaign made three cash withdrawals that resulted in cash expenditures in excess of \$100 to three payees. The Board assessed a penalty of 10% of the amount of the expenditures.

8. A penalty of \$50 for maintaining a petty cash fund greater than \$500. *See* Board Rule 4-01(e)(2). An \$800 debit on June 14, 2013 was identified from the Campaign's bank statements, but was not reported on a disclosure statement.

9. A penalty of \$1,845 for failing to demonstrate that spending was in furtherance of the campaign. *See* Admin. Code §§ 3-702(21)(a), (b); 3-703(1)(d), (g), (6), (11); Board Rules 1-03(a), 4-01(e). The Campaign made expenditures totaling \$7,382.71 which, based on the reporting and documentation, appear to be non-campaign related. The Board assessed a penalty of 25% of the amount of the expenditures.

10. A penalty of \$820 for making impermissible post-election expenditures. *See* Admin. Code §§ 3-702(21)(a)(8), 3-703(1)(d), (g), (6), (11), 3-710(2)(c); Board Rules 1-03(a), 1-08(b), 5-03(e)(2). The Campaign made post-election expenditures totaling \$3,280 that were impermissible due to the timing, amount, and/or purpose reported by the Campaign or identified from a review of Campaign bank statements and/or documentation. The Board assessed a penalty of 25% of the amount of the expenditures.

11. A penalty of \$1,307 for late response to audit documentation and information requests. *See* Admin. Code §§ 3-703(1)(d), (g), (6), (11), (12), 3-708(5), 3-710(1), 3-711(2)(b); Board Rules 1-09(a), 4-01, 4-05(a). The Campaign’s Draft Audit Report (“DAR”) was sent August 28, 2014 with a response due date of September 29, 2014. Although the Campaign was granted two extensions, it did not respond to the DAR. However, the Campaign submitted a substantive response to the Penalty Notice on May 7, 2015, which is considered a late response to the DAR. The Board assessed a penalty of 2% of public funds received.

12. A penalty of \$7,780 for accepting an over-the-limit contribution. *See* Admin. Code §§ 3-702(8), 3-703(1)(f), (11); Board Rules 1-04(c)(1), (h), 1-07(c). Per a contract provided by the Campaign, the Campaign agreed to pay Daniel Simonette \$6,500 as an initial retainer fee for legal counseling and representation and \$7,500 for the filing and defense of petitions. Therefore, the total amount owed was \$14,000 (\$6,500 + \$7,500). However, the Campaign only made two \$2,500 payments on May 7, 2013 and September 10, 2013 for a total of \$5,000, resulting in a discount of \$9,000. The Campaign had previously accepted a \$30 contribution of Simonette, bringing his total contributions to \$9,030 (\$6,280 over the limit). The Board assessed a penalty of \$1,500 plus the amount of the overage.

**Public Funds Calculation**

Type of Repayment <sup>1</sup>	Amount
<b>1. Overpayment of Public Funds Based on Valid Matching Claims</b>	<b>\$29,770</b>
2. Qualified Expenditure Deficit	\$21,097
3. Final Bank Balance	Not Applicable <sup>2</sup>

The Overpayment of Public Funds Amount of \$29,770 is the largest Amount. Accordingly, the Campaign/Committee named above will be responsible for repaying \$29,770, of which the Candidate will be jointly and severally liable for \$16,335, representing a portion of the Qualified Expenditure Deficit.<sup>3</sup>

**The Board determined that the amount due is \$46,298 (\$16,528 in penalties and \$29,770 in public funds).**

On May 7, 2015, the Campaign paid \$50.63, the remaining balance in its bank account as of March 2014. \$46,298 remains due.

You must pay to the Board the full amount due of \$46,298 no later than **November 7, 2016**. Checks should be made payable to the “New York City Election

<sup>1</sup> For explanations of the types of repayments, see the Public Funds Notice sent to the Campaign on June 3, 2015.

<sup>2</sup> This Amount is not applicable because the Campaign’s bank account has a zero balance.

<sup>3</sup> The Board collects public funds repayments in whole dollar amounts.

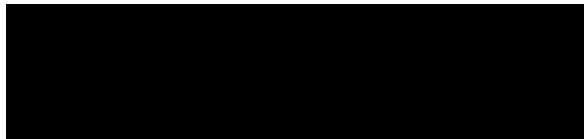
Campaign Finance Fund,” and mailed to the attention of Bethany M. Perskie, Senior Associate Counsel, New York City Campaign Finance Board, 100 Church Street, 12<sup>th</sup> Floor, New York, NY 10007 or delivered to the offices of the Board.

If the Board is not in receipt of the full \$46,298 by **November 7, 2016**, the candidate’s name and the unpaid amount will be posted on the Board’s Website and the Board may initiate a civil action against the Candidate, the Treasurer and the Committee for the penalty amount and the Committee and the Candidate for the public funds amount. In addition, you will be ineligible for public funds in any future election until this debt is paid in full.

You may challenge a public funds calculation in a petition for Board reconsideration within thirty days of the date of the Final Audit Report as set forth in Board Rule 5-02(a). However, the Board will not consider the petition unless the Campaign submits new information and/or documentation and shows good cause for its previous failure to provide this information or documentation.

You may also challenge this final determination, within four months, in the New York State Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

If you need additional time to pay this amount or if you have any questions concerning this Final Board Determination, please contact Bethany M. Perskie, Senior Associate Counsel, at (212) 409-1861 or [bperskie@nyccfb.info](mailto:bperskie@nyccfb.info).



Signature on  
original

Sue Ellen Dodell  
General Counsel

**NEW YORK CITY  
CAMPAIGN FINANCE BOARD**

SED/BMP