

**BEFORE THE ETHICS COMMISSION FOR THE STATE OF TENNESSEE
AT NASHVILLE**

In re:) No. 2009-003
)
Belew Group LLC,)
)
Respondent.)

CONDITIONAL ORDER

This matter came on to be heard by the Tennessee Ethics Commission ("Commission") on April 6, 2009, at its regularly scheduled public meeting for informal consideration whether to impose civil penalties on Belew Group LLC (Respondent) for a violation of the Tennessee Comprehensive Governmental Ethics Reform Act of 2006 ("Act"), and upon due consideration of the records of the Commission showing that Respondent failed to file an employer disclosure report ("semi-annual lobbying expenditure report") for the six month period ending September 30, 2008 as required by Tenn. Code Ann. § 3-6-303(a). This report was due to be filed no later than November 14, 2008.

FINDINGS OF FACT

Based on the entire record in this matter, the Commission finds as follows:

1. Registration. Respondent, Belew Group LLC, registered as an employer of a lobbyist on March 20, 2008.
2. Semi-annual lobbying expenditure report. Belew Group LLC had a duty under the Tennessee Comprehensive Governmental Ethics Reform Act of 2006 ("Act") to file an employer disclosure report ("semi-annual lobbying expenditure report") for the six month period ending September 30, 2008. This report was due to be filed no later than November 14, 2008.
3. On February 9, 2009, the Commission sent Respondent an Assessment Letter ("Assessment Letter") by certified mail, return receipt requested. The Assessment Letter stated the Commission intended to consider, at its March 10, 2009 meeting, an assessment of civil penalties against Respondent for failure to timely file the semi-annual Lobbying Expenditure Report as required by Tenn. Code Ann. § 3-6-303(a).
4. The Assessment Letter set forth the allegations, the maximum amount of civil penalties that could be assessed, and the date, place, and time of the informal hearing. The Assessment Letter also stated that Respondent could participate in the in the hearing either by appearing personally or by submitting a sworn statement and any supporting documents.

5. The Assessment Letter sent to Respondent by certified mail was received by Respondent on February 12, 2009.
6. Respondent filed the Lobbying Expenditure Report on February 12, 2009
7. Respondent did not appear at the hearing, nor did they submit a written statement

CONCLUSIONS OF LAW

1. Jurisdiction. The Act authorizes the Commission to administratively assess a civil penalty of not more than twenty-five dollars (\$25) per day up to a maximum of seven hundred fifty (\$750) if an employer of a lobbyist fails, without good cause, to timely file an employer disclosure report. Tenn. Code Ann. § 3-6-306(a)(1)(A)(iii)
2. Violation. The Commission concludes that Belew Group LLC had an obligation under the Act to file a semi-annual Lobbying Expenditure Report for the six months period ending September 14, 2008, failed to do so, and had no "good cause" for such failure to file.
3. Penalty Range. Pursuant to Tenn. Code Ann. § 3-6-(a)(1)(A)(iii), the Commission has authority to assess civil penalty of not more than twenty-five dollars (\$25) per day up to a maximum of seven hundred fifty (\$750) if an employer of a lobbyist fails, without good cause, to timely file an employer disclosure report.
4. Informal Penalty Amount. The Commission finds that under the facts and circumstances of this case, a civil penalty of five hundred twenty five dollars (\$525) is appropriate in this case. The Commission considers in mitigation, the fact that Respondent cured its mistake by filing the semi-annual lobbying expenditure report on the day of receipt of Commission's notice, February 9, 2009. However an aggravating factor is that Respondent had been previously fined by the Commission for failing to timely submit an earlier lobbyist expenditure report. The Commission considers Respondent's lack of response to the first warning concerning the failure to file the report to be significant. The Commission has taken steps through training, website postings, and notices to help employers of lobbyist to come into compliance with the Act.

ORDER

For the reasons set forth above, the Commission conditionally ORDERS that a CIVIL PENALTY in the amount of five hundred twenty five dollars (\$525) is imposed against Respondent for failure to timely file semi-annual Lobbying Expenditure Report.

The Commission further ORDERS that:

1. The Executive Director shall issue this Order on behalf of the Commission, and cause a copy of this Order to be provided to the Respondent, by either personal service, certified mail, return receipt requested, or overnight delivery, along with a notice of Respondent's rights described below.
2. Pursuant to Tenn. Code Ann. §§ 3-6-107(8) and 3-6-308(a)(10), no penalty imposed by the Commission may become final until after the Respondent is given notice and an opportunity to be heard as provided by the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101- 4- 5-325. This conditional Order will not become final until after Respondent has been afforded an opportunity to request a contested case proceeding.
3. Respondent may obtain a contested case hearing by filing, within thirty (30) days of this order, a written request with the Commission. By timely filing such a request, Respondent will be entitled to all rights afforded to participants in a contested case proceeding as provided by the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101- 4- 5-325.
4. In the alternative, and without waiving the right to timely request a contested case proceeding at a later time, Respondent may ask the Commission to reconsider this Informal Assessment Order by filing a petition for reconsideration with the Commission within fifteen (15) days of receipt of this Order. If Respondent timely files a petition for reconsideration and it is denied, Respondent will have an additional thirty (30) days from receipt of the Order of denial within which to file a request for a contested case proceeding
5. If Respondent does not timely file a request for a contested case proceeding, either within thirty (30) days of receipt of this order, or with ten (10) days of the receipt of an order denying a timely motion for reconsideration, the right to a contested case proceeding will be waived, and this Order shall become final.
6. If this Order becomes final, the finding of a violation may be considered an aggravating factor by the Commission in making penalty determinations as to any future violations of the Ethics Reform Act by Respondent.

SO ORDERED

Issued this 16th day of April 2009.

TENNESSEE ETHICS COMMISSION

By: 
Bruce A. Androphy
Executive Director