

**STATE OF ILLINOIS
COUNTY OF COOK**

**BEFORE THE STATE BOARD OF ELECTIONS
OF THE STATE OF ILLINOIS**

David Lifsics
Complainant

Vs. Board File # 11 CD 004

Concerned Citizens of the 50th Ward
Respondent

REPORT OF EXAMINER

This hearing was held as a result of a Complaint filed pursuant to “An Act to Regulate Campaign Financing” (Illinois Compiled Statutes, 10 ILCS 5/9-1, et seq. (hereafter referred to as the Act) alleging that the Respondent violated 10 ILCS 5/9-10 and 9-1.14. Specifically, Respondent failed to report contributions and expenditures of \$1,000 or more. *David Lifsics v Concerned Citizens of the 50th Ward*, see attached.

STATES EXHIBITS

To be made a part of this report, a copy of the D-4, Complaint for Violation of the Campaign Disclosure Act, filed on February 18, 2011, at the Board’s Chicago office, 100 W. Randolph St., Ste. 14-100, Chicago, IL 60601; Notice and Summons regarding the Complaint; Notice of the Closed Preliminary Hearing to be conducted in the matter, Thursday, March 3, 2011, at 10:00 a.m., at the Illinois State Board of Elections Office, 100 W. Randolph St., Ste 14-100, Chicago, IL, 60601.

COMPLAINANTS CASE –IN-CHIEF

The Complainant by and through counsel James Nally alleges the political action committee Concerned Citizens of the 50th Ward (hereafter referred to as the Committee) created and distributed election materials supporting Alderman Bernard Stone in the February 22, 2011 election and failed to file certain reports of contributions and expenditures in excess of \$1,000. Mr. Nally presented Complainant’s exhibits (1) through (14) which consisted of the following: Exhibit (1) Committee’s D-1 Statement of Organization, (2) Committee’s Schedule A-1 filed 2/23/11; (3) Committee’s Schedule A-1 filed 2/28/11; and (4) Committee’s letter of correspondence filed on 2/23/11. Exhibits (5),(6),(7),(8),(9) consisted of separate pieces of double-sided printed literature and brochures; (10) Door hanger; (11) Audio tape recording of four robo-calls; (12) Lawn sign; (13) Eight separate affidavits; and (14) Price estimate memorandum regarding the cost of the election material that is the subject of this complaint from a 3rd party, Diversified Direct Inc.

Testimony given by David Lifsics, the Complainant was in reference to Complainant’s exhibits (5) through (14). Mr. Lifsics testified he received several mailers, robo-calls, delivered door hangers attributed to the Concerned Citizens of the 50th Ward, encouraging voters to elect Bernard Stone for Alderman while opposing Debra Silverstein, a candidate for the same office. Lifsics believes that including Complainant’s exhibits, more than 13,500 households received various communications from the Concerned Citizens of the 50th Ward. Based upon the estimate from Diversified Direct Inc. (Exhibit 14), the Complainant estimated the Committee received contributions and spent \$35,000 to \$40,000 prior to the February 22nd primary election without filing disclosure reports.

Mr. Nally questioned the Respondent, the Committee's Treasurer/Chairman, Mr. Erik Avila and an assistant to the committee, Mr. Adam Quader, regarding the committee's operations. Through testimony provided by Mr. Avila and Mr. Quader, it was established Concerned Citizens of the 50th Ward is an independent committee not formed to support any specific candidates. The Complainant further alleges that the Respondent filed conflicting Schedule A-1 reports, conducted transactions without a bank account, conducted business in cash instead of traceable documents, and attributed the Concerned Citizens of the 50th Ward as responsible for communications when evidence presented hearing suggests that the Bernard L. Stone Campaign Committee paid the bill.

RESPONDENTS CASE-IN-CHIEF

Mr. Avila indicated he formed the Concerned Citizens of the 50th Ward, a non-partisan committee, to inform citizens of candidates within the ward. Per the D-1 and Mr. Avila, the Committee operates independently and does not support or oppose any specific candidates. The Committee's bank account was not opened until a week prior to the closed preliminary hearing. Mr. Avila testified that the Committee was created after receiving an in-kind contribution from the Bernard L. Stone Campaign Committee valued at \$3,000 on February 11th and spent over \$1,000 on February 16th. Mr. Avila indicated the Schedule A-1 filed on 2/23/11 (Exhibit 2), showing in-kind contributions from three individuals each of \$2,826.21; a total of \$8,478.63, was in error. He stated the Bernard L. Stone Campaign Committee paid TC Marketing for pamphlets that were sent on 2/11, 2/15 and 2/16 using cash that was converted into money orders. The three individuals listed on Schedule A-1 dated 2/23/11 (Exhibit 2) were responsible for delivering those money orders. The Schedule A-1 filed on 2/28/11 (Exhibit 3) was to correct the errors and to show the Bernard L Stone Campaign Committee as the source of the funds. Mr. Avila stated Mr. Adam Quader, Bernard Stone's campaign manager, coordinated and authorized the committee's activities. Mr. Quader testified that parts of the materials produced and distributed were paid for by in-kind contributions from the Bernard L. Stone Campaign Committee and other portions have been billed by vendors but have not been paid. He indicated that the total cost was much less than the Complainant estimated and all contributions received of \$1,000 or more have been reported on Schedule A-1 reports.

The Respondent, represented by attorney Adam Lasker, admits the Committee made mistakes in disclosing financial information and believes the complaint was filed on justifiable grounds. Mr. Lasker however states the matter should not proceed to a public hearing and instead the parties should agree to a settlement. In support of his request, Mr. Lasker stated the Respondent acknowledges in-kind contributions were not properly reported, addressed the Complainant's allegations and has amended the Schedule A-1 report. Mr. Lasker referenced another matter heard by the Board as a reason for this case not to proceed to a public hearing. In Board file number 10 CD 075, Nancy Shepherdson vs. Citizens for Tom Morrison, the Board encouraged the parties to settle, given that the Respondent was willing to produce documents to address the concerns of the complainant. Mr. Lasker asserts that the cases are similar and in this matter, the Respondent is offering to tender their financial records prior to the next board meeting.

ANALYSIS

Mr. Lasker cited Shepherdson vs. Morrison and upon review of the complaint and the Hearing Officer's report, I would not concur that they are similar cases. It is the opinion of this Hearing Officer that in this matter a settlement would not address the Complainant's concerns. I believe the case presented by the Complainant warrants a public hearing to further investigate the operations of the Concerned Citizens of the 50th Ward. Specifically a public hearing would address additional issues that were not addressed in the written complaint but were discovered during the closed preliminary hearing.

The complaint specifically alleges the committee violated "*5/9-10 failure to report contributions and expenditures in excess of \$1,000*". However, in the hearing, it becomes apparent to this Hearing Officer, that there were other violations not addressed in the written complaint.

Respondent failed to report contributions and expenditures in excess of \$1,000

The Respondent admits to accepting contributions without filing Schedule A-1 reports. Mr. Avila stated he filed the Schedule A-1 reports in response to the filing of this complaint. Mr. Nally points out the two Schedule A-1 reports filed by the Committee are conflicting. The A-1 filed on 2/23/11 (Exhibit 2) indicates three individuals making in-kind contributions. Five days later the committee filed a second A-1 (Exhibit 3), to which the committee asserts is a replacement for the A-1 filed in error on 2/23/11. I agree with Mr. Nally that the explanation regarding the A-1s is confusing. There is no correlation between the amounts and dates of the transactions in either report. It is my opinion that the intent of the Schedule A-1 filings remains unclear and that this allegation was filed on justifiable grounds and should proceed to public hearing.

Establishing a committee without a bank account and the use of money orders

Mr. Nally stated that it is unorthodox for a committee to pay vendors with money orders. Though this may be unusual, there is no prohibition allowing committees to use a money order as a method of payment as long as a record is maintained and the activity is reported properly. The record shows the Bernard L Stone Campaign Committee issued the money orders to pay the vendors, not the Respondent's Committee. As to the Committee operating without a bank account, it is odd that an organization would establish a political committee and accept contributions without a means to write checks, particularly when Mr. Avila was aware several communications were being produced and ordered just prior to an election. However, I don't believe this allegation constitutes a violation and therefore it should not be found to have been filed upon justifiable grounds.

Stated purpose of the D-1 conflicts with the activities of the committee

At the time the complaint was filed, the Committee had only filed two D-1 Statement of Organizations which indicated the committee was established to "Raise citizen awareness of candidates in the 50th Ward Aldermanic Race" however it failed to list any specific candidate. Since the filing of the complaint, the Committee filed two Schedule A-1 reports, specifically reporting \$12,000 in contributions from the Bernard L. Stone Campaign Committee. Mr. Avila testified that the committee is non-partisan and does not support any candidates for election. From the testimony and exhibits presented in the hearing, it is my opinion that the Respondent's actions are in complete contradiction of this statement. Not only was the Committee in its communications explicitly advocating for aldermanic candidate Bernard Stone but it was also expressly opposing the opponent Debra Silverstein. Additionally, it is apparent that the Committee's principal source of funding was from the Stone Committee. This hardly indicates the Committee functioned independently. Therefore, I believe this allegation was filed on justifiable grounds and should proceed to public hearing.

Attribution of source conflicts with the Respondent's testimony

Mr. Avila and Mr. Quader admitted that at least part of the communications distributed was paid by the Bernard L. Stone Campaign Committee and that other debts remain that the Respondent intends to pay. It is concerning to the Hearing Officer that, in light of this testimony each exhibit only attributes the Concerned Citizens for the 50th Ward having paid for the communications while nothing is attributed to Bernard Stone's committee.

It is a concern of this Hearing Officer that the Respondent was not acting independently. It appears the Concerned Citizens of the 50th Ward only qualified as a political action committee due to the efforts of the Bernard L. Stone Campaign Committee. It is peculiar that Mr. Stone's committee through its campaign manager ordered and purchased campaign materials clearly supporting the candidacy of Bernard L Stone and attributed the source to the Concerned Citizens of the 50th Ward. In the hearing the Respondent did not address any of the Complainant's additional allegations; they simply stated they were willing to produce records. Also, the Respondent did not explain why these communications were attributed to their Committee when they testified the Concerned Citizens of the 50th Ward is not in support of any specific candidates. Additionally I question whether this Committee may be an extension of Bernard Stone's candidate political committee. Therefore, I believe this allegation was filed on justifiable grounds and should proceed to public hearing.

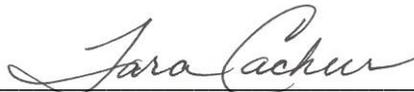
CONCLUSIONS AND RECOMMENDATIONS

The Closed Preliminary Hearing was held on March 3, 2011. The D-4 alleges that Respondent failed to report contributions and expenditures of \$1,000 or more.

The Respondent expressed an interest in a settlement. If the Complainant and Respondent choose to settle, I recommend the parties submit in writing the proposed agreement to the Board for approval prior to the March 21, 2011 Board meeting.

It is my opinion that although the Respondent filed disclosure reports, a public hearing is required to examine whether or not the reports on file are accurate, whether additional reports need to be filed and to determine if the attributed source of the mailings were correctly identified.

I recommend that the Board find the complaint was filed on justifiable grounds and that this matter proceeds to a public hearing.

A handwritten signature in cursive script that reads "Tara Cachur". The signature is written in black ink and is positioned above a horizontal line.

Tara Cachur – Hearing Officer
March 10, 2010