

**CITY OF PITTSBURGH  
ETHICS HEARING BOARD**

IN RE:

GARY McBURNEY,

Respondent.

No.: 01-CFO-2017

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
FINAL ORDER

FILED ON BEHALF OF:

City of Pittsburgh  
Ethics Hearing Board

COMPLAINANT:

Linda A. King, Executive Manager

COUNSEL FOR COMPLAINT:

Peter J. Halesey, Esquire  
Falco Muscante, Esquire

RESPONDENT:

Gary McBurney, *Pro Se*

HEARING OFFICER:

William F. Ward, Esquire

## **FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER**

AND NOW comes the CITY OF PITTSBURGH ETHICS HEARING BOARD, (“the Ethics Hearing Board”), having conducted a Public Hearing on September 25, 2017, pursuant to Pittsburgh Ordinance 38-2015, Title I, Article XI, Chapter 198 of the Pittsburgh Code (the “Ordinance”), and issues the following Findings of Fact, Conclusions of Law, and Final Order as hereinafter set forth:

### **I. FINDINGS OF FACT**

1. Gary McBurney, Respondent, is an adult individual residing at 1309 Princess Avenue, Pittsburgh, PA 15216.

2. Linda A. King, Complainant, is the Executive Manager of the Ethics Hearing Board, located at 328 City-County Building, 414 Grant Street, Pittsburgh, PA 15219.

3. Respondent testified that he began circulating nominating petitions on February 21, 2017 identifying himself as a candidate for Member of Council, District 4.

4. On March 7, 2017, Respondent filed his nominating petitions with the Allegheny County Department of Administrative Services, Elections Division.

5. The earliest date which appears on the nominating petitions filed by Respondent is February 21, 2017.

6. On March 20, 2017, Complainant, acting on behalf of the Ethics Hearing Board, sent Respondent a letter advising him of the need to file Campaign Finance Reports with the Ethics Hearing Board pursuant to the Ordinance.

7. On March 21, 2017, Respondent filed a Candidate's Withdrawal Notice and voluntarily withdrew his candidacy for City elected office.

8. Following an investigation conducted by the Office of the Ethics Hearing Board, it was preliminarily determined that Respondent had failed to file the required Campaign Finance Report.

9. By letter dated May 12, 2017, the Ethics Hearing Board notified Respondent of his non-compliance with the Ordinance and issued a tentative fine of up to \$1,000.00.

10. On May 23, 2017, Respondent objected in writing to the imposition of the tentative fine. Accordingly, the Ethics Hearing Board scheduled a Public Hearing for September 25, 2017.

11. On September 25, 2017, at the Public Hearing, Respondent admitted that he had received the March 20, 2017 letter.

12. Respondent also admitted that he did not file any Campaign Finance Reports after receiving the March 20, 2017 letter.

13. Respondent testified that he had not raised any campaign funds.

14. As of the date of the issuance of these Findings of Fact, Conclusions of Law and Final Order, Respondent has not filed the Campaign Finance Report required by the Ordinance.

15. In determining the penalty to be imposed, the Ethics Hearing Board is taking into consideration that: a) Respondent admits receiving the March 20, 2017 letter, b) Respondent withdrew from the election on March 21, 2017 and c) Respondent testified under oath that he had not raised any campaign funds.

### **CONCLUSIONS OF LAW**

16. Respondent was a candidate for City elected office, as defined by the Ordinance. (“The offices of Mayor, City Controller and City Council” are defined by Section 198.01(a) as City Elected Offices.).

17. The Ethics Hearing Board does not need to decide for purposes of this Order whether Respondent became a candidate on February 21, 2017, when he began circulating nominating petitions, or on March 7, 2017, when he filed his nominating petitions with the Allegheny County Department of Administrative Services, Elections Division, and thus it does not.

18. Respondent was obligated under Section 198.05(a) of the Ordinance to provide a Campaign Finance Report in the form mandated by the regular Allegheny County Board of Elections pre-primary reporting forms and procedures to the Ethics Hearing Board on the first business day of each of the five months prior to election day during which he was a candidate for City elected office.

19. Notwithstanding Respondent’s Withdrawal Notice, he was still required to file at least one Campaign Finance Report.

### **III. FINAL ORDER**

Following consideration by the Ethics Hearing Board of the sworn testimony heard and evidence admitted during the Public Hearing convened on September 25, 2017, to examine whether Respondent had complied with the Ordinance, the Ethics Hearing Board finds unanimously, based on clear and convincing evidence, in favor of

Complainant and against Respondent that Respondent failed to comply with the requirements of the Ordinance. The Ethics Hearing Board further determines:

1. Respondent must now comply with the requirements of the Ordinance by filing with the Ethics Hearing Board a Campaign Finance Report in the form mandated by the regular Allegheny County Board of Elections pre-primary reporting forms and procedures. Said Campaign Finance Report shall be filed within 20 days from the date of this decision.

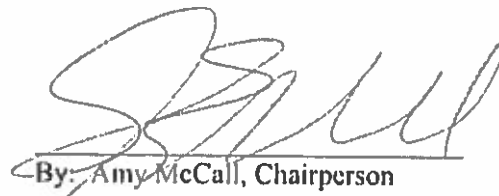
2. If Respondent properly files his Campaign Finance Report within 20 days as set forth in Paragraph 1, Respondent's fine shall be reduced to One Hundred Dollars (\$100.00) due to the considerations set forth in Paragraph 15. However, payment of this fine is stayed pending further notice from the Ethics Hearing Board.

3. If Respondent does not properly file his Campaign Finance Report within the 20 day period set out in Paragraph 1, then Respondent's fine shall be in the amount of One Thousand Dollars (\$1,000.00) as originally determined. In the event the fine set out in this Paragraph is triggered, payment of the fine is stayed pending further notice from the Ethics Hearing Board.

Respectfully submitted,

CITY OF PITTSBURGH  
ETHICS HEARING BOARD

12 October 17  
Dated

  
By: Amy McCall, Chairperson