

# ***Office of the City Clerk v. 72 Poplar Street LLC***

OATH Index No. 532/10 (Sept. 14, 2009)

Lobbyist client failed to file a client annual report and is liable for \$2,050 in late fees and a \$20,000 penalty, with the penalty amount reduced if the report is filed within 60 days to one year.

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## **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**OFFICE OF THE CITY CLERK**  
*Petitioner*  
*- against -*  
**72 POPLAR STREET LLC**  
*Respondent*

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### **REPORT AND RECOMMENDATION**

**JOHN B. SPOONER**, *Administrative Law Judge*

Petitioner, the Office of the City Clerk, brought this civil penalty proceeding under chapter 2, title 3 of the New York City Administrative Code (“Lobbying Law”) and chapter 1, title 51 of the Rules of the City of New York (“RCNY”). Petitioner alleged that respondent, 72 Poplar Street LLC, a client of a lobbyist registered with the City Clerk’s Lobbying Bureau, failed to timely file a client annual report in violation of section 3-217(b) (Pet. Ex. A).

Petitioner commenced this proceeding by serving respondent with a petition on August 17, 2009. Respondent did not answer the petition and did not appear on September 10, 2009, the scheduled hearing date. Upon reviewing petitioner’s proof that the petition and notice of hearing had been served upon respondent by regular and certified mail, I declared respondent in default and held an inquest.

For the reasons below, I find that respondent has failed to file its report to date and recommend that respondent be assessed late fees in the amount of \$2,050 and a penalty of \$20,000, with possibility of reduction.

### ANALYSIS

The Lobbying Law, as amended in 2006, requires that any individual or organizational client retaining a lobbyist for an amount in excess of \$2,000 file an annual report with the City Clerk's Office. Admin. Code § 3-217(a)(2). The annual report must be filed with the City Clerk by the 15<sup>th</sup> of January following the year for which the report is made. Admin. Code § 3-217(c); 51 RCNY § 1-03(b)(1)(iv)(D). The annual report must include the client's name, address, and telephone number, as well as the names, addresses, and telephone numbers of all retained lobbyists, a description of the subject matter on which such lobbyists were retained, the persons or agencies before which the lobbyists lobbied, and a summary of the compensation paid or owed to each lobbyist. Admin. Code § 3-217(c).

In support of the petition, petitioner submitted copies of a lobbyist statement of registration filed on August 5, 2008, showing that Sheldon Lobel, P. C. registered with the City Clerk to lobby on behalf of respondent (Pet. Ex. A). A copy of Sheldon Lobel's periodic report for 2008 (Pet. Ex. C) shows that respondent paid compensation in the amount of \$4,100 to Sheldon Lobel for lobbying work performed in the 2008 calendar year (Pet. Ex. B).

The deadline for filing 2008 reports was extended from January 15 to February 17 due to problems with the online filing application. According to petitioner's counsel, respondent had not filed its report as of the date of the hearing. Respondent's failure to answer the petition is also deemed an admission of all allegations in the petition, including its failure to file the report by the required deadline. 51 RCNY § 1-06(h)(3). I therefore find the proof sufficient to show that respondent, having failed to submit its client annual report as of the September 10 hearing, is in violation of section 3-217(b) of the Administrative Code.

Under the Lobbying Law, a client who fails to file its annual report in a timely manner is subject to late filing penalties. If the missed filing was the client's first filing under the Lobbying Law, the City Clerk's rules establish a late filing fee of \$10.00 per day. 51 RCNY § 1-03(b)(1)(iv)(A). If the client previously filed or registered pursuant to the Lobbying Law, the late filing fee is \$25.00 per day. 51 RCNY § 1-03(b)(1)(iv)(B). Respondent, not having filed a prior client annual report, should be assessed \$10.00 per day for its late filing, or \$2,050 as of the date of the hearing.

In addition, when a lobbying client fails to timely file its annual report, a penalty may be assessed after the City Clerk notifies the delinquent filer, by certified mail, of the nature of its

noncompliance and that compliance must be made within 14 business days of the mailing of the notice. Admin. Code § 3-223(c); 51 RCNY § 1-03(a)(5). Pursuant to the Lobbying Law and the Clerk's rules, a client's failure to then file the required report within 14 business days of the mailing of the notice to cure constitutes a class A misdemeanor and subjects the client to a civil penalty of up to \$20,000. Admin. Code § 3-223(c); 51 RCNY § 1-03(b)(1)(iii). In this case, respondent was served on May 20, 2009, by regular and certified mail with a notice (Pet. Ex. B) to file its report and pay late filing fees within 14 business days. According to petitioner, no report had been filed by respondent as of the hearing date, over three months beyond the deadline given in the notice. Because respondent failed to appear at the hearing, there is no mitigation to consider. *See* 51 R.C.N.Y. § 1-03 (b) (2).

In past lobbyist cases, the Clerk has assessed penalties of from \$2,000 to \$5,000 for filing reports after the notice to cure deadline, depending upon how late the report was filed. *Office of the City Clerk v. Pioneer Management & Realty, LLC*, OATH Index No. 128/09 (July 17, 2008), *modified on penalty*, City Clerk's decision (Sept. 3, 2008) (\$2,000 for report filed 87 days after service of notice to cure); *Office of the City Clerk v. New York Software Industry Association*, OATH Index No. 162/09 (July 21, 2008) (\$3,500 for report filed 112 days after service of notice to cure); *Office of the City Clerk v. West Side Markets*, OATH Index No. 117/09 (July 16, 2008) (\$2,000 for report filed 75 days after service of notice to cure); *Office of the City Clerk v. Safra Bank*, OATH Index No. 125/09 (July 16, 2008) (\$2,000 for report filed 61 days after service of notice to cure); *Office of the City Clerk v. Coney Island Land Owners Assoc.*, OATH Index No. 493/08 (Nov. 27, 2007) (\$5,000 for report filed 251 days after service of notice to cure); *Office of the City Clerk v. One York Street Assoc., LLC*, OATH Index No. 419/08 (Oct. 30, 2007) (\$2,500 penalty for report filed 53 days after service of notice to cure); *Office of the City Clerk v. New York Outdoor Operators, LLC*, OATH Index No. 504/08 (Oct. 29, 2007) (\$4,500 penalty for report filed 230 days after service of initial notice to cure and 155 days after service of notice by certified mail).

In the instant case, respondent had not filed a report as of the date of the hearing, leaving in doubt exactly how late the report will be. There are few previous cases under the Lobbying Law where penalties were assessed without any report being filed. *See New York Outdoor Operators, LLC*, OATH 504/08. There are past cases involving other reporting violations where no reports were filed and graduated penalties were imposed, in an effort to impel prompt

compliance. In one such set of cases, this tribunal recommended variable penalties for City employees who failed to file required financial disclosure reports. *Conflicts of Interest Board v. Two Respondents*, OATH Index Nos. 1624, 1634/98 (Sept. 2, 1998); *Conflicts of Interest Board v. Four City Employees*, OATH Index Nos. 142, 147, 150, 157/97 (Aug. 15, 1996). In these cases, the maximum penalty of \$10,000 was assessed, reduced to \$1,500 if the employee filed within 60 days, to \$2,500 if the employee filed within six months, to \$5,000 if the employee filed within nine months, and to \$7,500 if the employee filed within a year after the Board order was issued. In this way, those who complied promptly after being served with the agency order received relatively minor penalties, while the maximum penalty was reserved for those individuals who defied the filing requirement over an extended period of time.

A similar approach seems warranted here, with a maximum fine being assessed and graduated reductions according to when the client report is ultimately filed. In determining the reduced fine amounts, I have been guided by the past decisions, where the fines ranged from an average of \$2,000 for reports filed some 75 to 90 days after the notice to cure was sent to fines of approximately \$5,000 for reports filed more than 200 days after the notice.

I therefore recommend that respondent here be assessed a penalty of \$20,000. This penalty may be reduced to \$2,000 if respondent files the required client report within 60 days of the Clerk's order, to \$5,000 if respondent files within 90 days of the order, and to \$10,000 if respondent files within six months of the order. Any filing later than six months would result in the full \$20,000 penalty being assessed.

### **FINDINGS AND CONCLUSIONS**

1. Respondent was properly served with the petition and notice of hearing and failed to appear at the September 10, 2009 hearing.
2. Petitioner established that respondent, a "client" as defined in section 3-211(b) of the Lobbying Law, failed to timely submit its 2008 annual report, which was due on February 17, 2009, and that respondent may be assessed a late fee of \$10.00 per day for a total of \$2,050.
3. Petitioner also established that respondent failed to file its annual report in violation of Administrative Code section 3-223 (b), (c) and 51 RCNY section 1-03(b)(1)(iv)(D) and is

therefore subject to a civil penalty of \$20,000. This penalty may be reduced to \$2,000 if respondent files the required client report within 60 days of the Clerk's order, to \$5,000 if respondent files within 90 days of the order, and to \$10,000 if respondent files within six months of the order.

John B. Spooner  
Administrative Law Judge

September 14, 2009

SUBMITTED TO:

**MICHAEL MCSWEENEY**  
*City Clerk*

APPEARANCES:

**ARNIE WOLSKY, ESQ.**  
*Attorney for Petitioner*

*No Appearance by Respondent*