

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into between the Board of Ethics of the City of Philadelphia, Otis Hightower, Verna Tyner, and Tyner for Council, jointly referred to as “the Parties.”

RECITALS

- A. The Board of Ethics of the City of Philadelphia is a five-member, independent board established by ordinance, approved by Philadelphia voters in May 2006, and installed on November 27, 2006. Pursuant to section 4-1100 of the Home Rule Charter, the Board is charged with, among other things, enforcing the City’s campaign finance law which is found at Chapter 20-1000 of the Philadelphia Code.
- B. Tyner for Council is the authorized candidate political committee of Verna Tyner, a candidate for Philadelphia City Council in 2011.
- C. Otis Hightower is the treasurer of Tyner for Council.
- D. On March 8, 2011, Verna Tyner filed a nomination petition to be placed on the ballot as a candidate for Philadelphia City Council
- E. Because Ms. Tyner was a candidate for City of Philadelphia elective office, both she and her authorized candidate committee were subject to Philadelphia’s campaign finance law.
- F. Pursuant to Philadelphia Code § 20-1006(1)(a) and Regulation No. 1 Paragraph 1.42:

Whenever a candidate for City elective office (or such a candidate’s treasurer or agent) files a campaign finance report with the City Commissioners or the Secretary of State pursuant to the Pennsylvania Election Code, he or she shall file electronically a copy of that report with the Board, through the Department of Records.

G. Pursuant to Philadelphia Code § 20-1006(1)(a) and Regulation No. 1 Paragraph 1.43:

Whenever a political committee (or a political committee's treasurer or agent), files a campaign finance report with the City Commissioners or the Secretary of State, the political committee shall file electronically a copy of that report with the Board, through the Department of Records, if the report filed with the City Commissioners or Secretary of State discloses, or should disclose, any contributions or expenditures made to influence the outcome of a covered election, including contributions from or expenditures to a candidate for City elective office.

H. Pursuant to Philadelphia Code § 20-1006(4):

The failure to file information as required by this Section, or the making of material misstatements or omissions in any filing required by this Section, shall be deemed to be a violation of Chapter 20-1300 (Penalties for Campaign Finance-Related and Ethics-Related Violations) and subject to enforcement and the imposition of penalties under that Chapter.

- I. Pursuant to Code § 20-1301(2), the penalty for failure to file a campaign finance report in electronic format as required is civil penalty of \$250. Each day the report remains unfiled is a separate offense for which an additional civil penalty of \$250 may be imposed, provided that the penalty that may be imposed for failure to file a particular report shall not exceed \$2,000 for the first thirty days the report remains unfiled, plus \$1,000 for each additional thirty day period (or part thereof) the report remains unfiled.
- J. Pursuant to the Pennsylvania Election Code (25 P.S. 3248), in 2011, all candidates for Philadelphia municipal office, and their authorized candidate committees, were required to file pre-primary campaign finance reports (cycle 2) with the City Commissioners by May 6, 2011. Pursuant to the City's campaign finance law, authorized candidate committees were also required to electronically file those reports with the Board. In such a pre-primary report, a candidate committee should have disclosed all of its receipts and expenditures for the time period January 1 – May 2, 2011, including all contributions received by the committee.
- K. In order to ensure that the public has access to information about large contributions received by candidates before the primary, but after the close of the pre-primary reporting period, the Pennsylvania Election Code further requires that candidates' committees disclose any contributions of \$500 received in that time period within 24 hours of receipt.

- L. Therefore, in 2011, if a City candidate's authorized committee received a contribution of \$500 or more from May 3rd through May 17th, the committee should have filed a campaign finance report with the City Commissioners disclosing that contribution within 24 hours of receipt. Pursuant to the City's campaign finance law, the committee should also have electronically filed such a report with the Board.
- M. In addition, any contribution that should have been disclosed in a 24 hour report, should also have been disclosed in the post-primary report. In 2011, post-primary reports disclosed financial activity for the time period May 3rd – June 6th, 2011.
- N. On May 4th, as a courtesy, Board enforcement staff sent an email to the campaigns and treasurers of candidates for City office reminding them of the requirement to electronically file 24 hour reports with the Ethics Board disclosing all contributions of \$500 or more received from May 3rd through May 17th.
- O. According to the post-primary report Tyner for Council filed with the Board on June 17, 2011, Tyner for Council received the following 14 contributions totaling \$23,000 during the 2011 pre-primary 24 hour reporting period:
1. May 6, \$2,500 from Martin Coleman for Judge;
 2. May 6, \$1,000 from Atticus Rice;
 3. May 11, \$1,500 from Cohen for Council;
 4. May 11, \$1,500 from the Committee to Elect Drew Aldinger;
 5. May 11, \$500 from Liberty Bell Beverage PAC
 6. May 13, \$500 from Daniel F. Gordon;
 7. May 13, \$2500 from Committee to Elect Charles Ehrlich Judge;
 8. May 13, \$1,500 from Ladov for Court of Common Pleas;
 9. May 13, \$500 from Ken Powell for Judge;
 10. May 16, \$1,500 from Green for Philadelphia;
 11. May 16, \$3,000 from 20th Ward;
 12. May 16, \$3,00 from Greenlee for Council-at-large;
 13. May 16, \$2,500 from Friends of Leanna Washington; and
 14. May 16, \$1,000 from Ladov for Court of Common Pleas.
- P. Pursuant to the City's campaign finance law, Tyner for Council should have filed at least four campaign finance reports with the Ethics Board disclosing contributions received during the 2011 pre-primary 24 hour reporting period. The reports should have been filed on the following dates: May 7th, May 12th, May 14th, and May 17th.
- Q. However, Tyner for Council did not file reports with the Board on the dates identified in Paragraph P.

- R. On June 30th, having noted that many candidate committees had not filed required 24 hour reports with the Board, as a courtesy, Board enforcement staff sent an email to the campaigns and treasurers of candidates for City reminding them of the requirement to electronically file pre-primary 24 hour reports with the Board. The email stated, in part:

If you or your candidate committee received any contributions of \$500 or more between May 3 and May 17, then your committee should have filed 24 hour reports disclosing those contributions. If you or your committee received a contribution of \$500 or more from May 3 to May 17 and you did not file 24 hour report with the Ethics Board disclosing that contribution, you are still required to file that report, even though it is late. If you (or your committee) file all required 24 hour reports electronically with the Ethics Board by **July 8**, we will not pursue enforcement of the failure to file.

- S. However, notwithstanding this notice and additional time to file reports without penalty Tyner for Council did not file their outstanding 24 hour report with the Board by July 8th.
- T. On August 2nd, the Board's Executive Director served a Notice of Administrative Enforcement Proceeding on Hightower and Tyner for Council alleging a violation of Code § 20-1006(1)(a) for the failure of Tyner for Council to electronically file required campaign finance reports with the Board on May 7th, May 12th, May 14th, and May 17th.
- U. After receiving the Notice, Tyner for Council filed its outstanding reports with the Board on August 4, 2011.
- V. During the six months she was running for City office, Verna Tyner was unemployed.
- W. The Parties desire to enter into this Agreement in order to resolve the issues described herein.

AGREEMENT


The Parties agree that:

1. Tyner for Council's failure to electronically file a campaign finance reports with the Board on May 7th, May 12th, May 14th, and May 17th violated §20-1006(1)(a) of the Philadelphia Code.
2. The failure to electronically file campaign finance reports May 7th, May 12th, May 14th, and May 17th, shall be subject to a civil penalty of \$2,000. However, in recognition of Ms. Tyner's financial hardship caused by unemployment, the civil penalty is reduced to \$1,500.
3. Verna Tyner shall make payment on the following schedule:
 - 3.1. \$500 by October 31, 2011;
 - 3.2. \$500 by February 29, 2012; and
 - 3.3. \$500 by June 30, 2012.
4. Payment shall be made by check made out to the City of Philadelphia and delivered to the offices of the Board.
5. Tyner for Council, Hightower, and Tyner release and hold harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's investigation, enforcement, and settlement of the violations described in the Agreement.
6. In consideration of the above and in exchange for Tyner for Council's, Hightower's, and Tyner's compliance with all of the terms of the Agreement, the Board waives any further penalties or fines against them for the violations described in the Agreement.
7. The Parties will not make any public statements that are inconsistent with the terms of the Agreement.
8. If the Board is forced to seek judicial enforcement of the Agreement, Tyner for Council, Hightower, and Tyner shall be jointly and severally liable for attorneys' fees and costs reasonably expended in enforcing compliance with this Agreement. Fees for time spent by Board staff attorneys shall be calculated based upon standard and customary billing rates in Philadelphia for attorneys with similar experience.
9. The Agreement contains the entire agreement between the Parties.
10. The Parties will submit a signed copy of the Agreement to the Board for approval.
11. The Agreement shall become effective upon approval by the Board.

12. If the Board rejects the proposed Agreement, presentation to and consideration of the Agreement by the Board shall not preclude the Board or its staff from further participation, consideration, or resolution of the pending Administrative adjudication of these matter described in the Agreement.

Dated: 8/11/11


By the Executive Director of the Board of Ethics:



J. Shane Creamer, Jr., Esquire

Dated: 8/10/11

By Tyner for Council:



Otis Hightower, Treasurer


Dated: 8/10/11

By Otis Hightower:




Dated: 8/9/11

By Verna Tyner:



Approved by the Board of Ethics:

Dated: 9/21/2011



Richard Glazer, Esquire
Chair