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STATE OF FLORIDA
ELECTIONS COMMISSION

**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

**FLORIDA ELECTIONS COMMISSION,
PETITIONER,**

V.

**AGENCY CASE No.: FEC 05-257
F.O. No.: DOSFEC 06-088W**

**DENNIS E. MULDER,
RESPONDENT.**

FINAL ORDER

THIS CAUSE came on to be heard at an informal hearing held before the Florida Elections Commission (Commission) on August 17, 2006, in Tallahassee, Florida.

APPEARANCES

For Commission	Charles A. Finkel General Counsel 107 W. Gaines Street Collins Building, Suite 224 Tallahassee, FL 32399
For Respondent	Dennis E. Mulder, Pro Se 1199 Page Court Deltona, FL 32725

STATEMENT OF THE ISSUE

Whether the Respondent violated Section 106.07(5), Florida Statutes, when he certified to the correctness of a campaign treasurer's report that was incorrect, false, or incomplete; Section 106.11(4), Florida Statutes, when he authorized or incurred expenses for the purchase of goods or services without sufficient funds on deposit in the primary depository account; Section 106.143(1)(a), Florida Statutes, when he made an expenditure for a political advertisement and failed to mark prominently the political advertisement with the required disclaimer; Section 106.19(1)(a), Florida Statutes, when he accepted a contribution in excess of the legal limits; and

Section 106.19(1)(b), Florida Statutes, when he failed to report contributions required to be reported by Chapter 106, Florida Statutes.

PRELIMINARY STATEMENT

On October 11, 2005, the Commission received a sworn complaint alleging violations of Florida's election laws. Staff of the Commission conducted an investigation to determine whether the facts alleged in the complaint constituted probable cause to believe that the Respondent violated The Florida Election Code.

On April 24, 2006, staff drafted a Staff Recommendation recommending to the Commission that there was probable cause to believe that The Florida Election Code was violated. On May 26, 2006, the Commission entered an Order of Probable Cause finding that there was probable cause to charge the Respondent with the following violations:

Count 1:

On or about October 7, 2005, Respondent violated Section 106.07(5), Florida Statutes, by certifying to the correctness of his 2005 F3 CTR that was incorrect, false, or incomplete, when he incorrectly reported four contributions, two loans from himself, and three expenditures, and failed to report a \$300 contribution.

Count 2:

On or about September 20, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$8.75 to Volusia County Elections to be paid from the campaign depository account.

Count 3:

On or about September 20, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$562.85 to Diane Obremski to be paid from the campaign depository account.

Count 4:

On or about September 22, 2005, Respondent violated Section

106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$632.80 to Lighthouse Mailings to be paid from the campaign depository account.

Count 5:

On or about September 22, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$3,666.41 to Lighthouse Mailings to be paid from the campaign depository account.

Count 6:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$83.34 to Market Concepts to be paid from the campaign depository account.

Count 7:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Marc Klein to be paid from the campaign depository account.

Count 8:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Motor Cars of CF to be paid from the campaign depository account.

Count 9:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Bill Klein to be paid from the campaign depository account.

Count 10:

On or about September 30, 2005, Respondent violated Section

106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$75 to Stone Island Home Owner's Association to be paid from the campaign depository account.

Count 11:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$190 to Max Klein to be paid from the campaign depository account.

Count 12:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Chelsea Wallace to be paid from the campaign depository account.

Count 13:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Keith Wallace to be paid from the campaign depository account.

Count 14:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Jayne Vance to be paid from the campaign depository account.

Count 15:

On or about September 30, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Tyler Vance to be paid from the campaign depository account.

Count 16:

On or about September 30, 2005, Respondent violated Section

106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$400 to Charles Vance to be paid from the campaign depository account.

Count 17:

On or about October 2, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$1,000 to Derek Brett to be paid from the campaign depository account.

Count 18:

On or about October 2, 2005, Respondent violated Section 106.11(4), Florida Statutes, by authorizing an expense from the primary depository account without sufficient funds on deposit in the account, when he authorized and signed a temporary check for \$300 to *Best of Volusia* to be paid from the campaign depository account.

Count 19:

On or about October 4, 2005, Respondent violated Section 106.143(1)(a), Florida Statutes, by failing to mark prominently the political advertisement with the correct disclaimer, when he published the advertisement "This Will Be The Most important Election in City History" that failed to contain the following disclaimer: "Political advertisement paid for and approved by Dennis Mulder for Mayor of Deltona."

Count 20:

On or about July 18, July 22, August 31, and September 30, 2005, Respondent violated Section 106.19(1)(a), Florida Statutes, by accepting a contribution in excess of the legal limit, when he accepted four contributions totaling \$522 from Diane Obremski.

Count 21:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he accepted an in-kind contribution in the amount of \$22 from Diane Obremski and failed to report it on his 2005 F3 CTR.

Count 22:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he

accepted an in-kind contribution in the amount of \$100 from Diane Obremski and failed to report it on his 2005 F3 CTR.

Count 23:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he accepted an in-kind contribution in the amount of \$800 from himself and failed to report it on his 2005 F3 CTR.

Count 24:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he used his personal credit card and accepted an in-kind contribution in the amount of \$1,648.42 from himself and failed to report it on his 2005 F3 CTR.

Count 25:

On or about October 7, 2005, Respondent violated Section 106.19(1)(b), Florida Statutes, by failing to report a contribution required to be reported by Chapter 106, Florida Statutes, when he accepted a cash contribution in the amount of \$300 from Diane Obremski and failed to report it on his 2005 F3 CTR.

Respondent timely requested an informal hearing and was noticed to appear before the Commission on August 17, 2006. At the informal hearing, staff presented the undisputed facts contained in the Staff Recommendation. Respondent appeared at the hearing.

FINDINGS OF FACT

1. The Respondent was a first-time, successful candidate for Mayor for the City of Deltona, in the general election held on November 8, 2005. His campaign manager was Diane Obremski. Although he did not appoint himself treasurer or deputy treasurer, Respondent acted as his own treasurer during the campaign. Respondent is a registered agent or officer of the following active corporations registered with the State of Florida: Deltona Tennis Association, Inc., Mulder Investment Child Care Centers, Inc., Dennis Mulder Investments, Inc., d/b/a Motor Cars of Central Florida, and DTA Academy, Inc.

2. The Complainant, Jeffrey P. Ensimer, is a computer consultant and a

concerned citizen of the City of Deltona. He is an active registered voter in Volusia County, having voted most recently in the 2005 general election. Complainant was also a supporter of Respondent's opponent, Doug Horn, having made two \$150 contributions through his corporation.

3. Table 1 compares the information on Respondent's campaign treasurer's reports with the bank records from his campaign account.

TABLE 1: COMPARISON OF RESPONDENT'S CTRs WITH BANK RECORDS			
Date Filed	Reporting Period	Information on CTR	Information from bank
10/07/05	09/17/05 to 10/06/05 2005 (F3) - Original Report	<ul style="list-style-type: none"> • \$6,948.42 Loan from Respondent • \$3,765.00 Loan from Respondent • \$400.00 contribution from Tyler Vance • \$75.00 contribution from Stone Island Home Owner's Association • \$400.00 contribution from Marc Klein reported as a check • \$190.00 contribution from Max Klein reported as a check • \$800.00 expenditure to Deltona Skate Rink • \$1,648.42 expenditure to Designer Graphics • \$4,299.21 expenditure to Lighthouse Mailing 	<ul style="list-style-type: none"> • \$4,500.00 Loan from Respondent • \$3,465.00 Loan from Respondent • \$400.00 check from Jayne, Inc., authorized by Jayne Vance • \$75.00 check from Frederick C. Phillips • \$400.00 money order from Marc Klein • \$190.00 money order from Max Klein • No bank record found • No bank record found • \$3,666.41 and \$632.80 expenditures to Lighthouse Mailing

4. Table 2 summarizes the errors that Respondent made on his reports.

TABLE 2: MISSING AND INCORRECT INFORMATION ON RESPONDENT'S CTRs			
Date Filed	Reporting Period	Missing Information	Incorrect Information
10/07/05	09/17/05 to 10/06/05 2005 F3 Original Report	<ul style="list-style-type: none"> Failed to report \$300 contribution from Diane Obremski 	<ul style="list-style-type: none"> Reported a \$6,948.42 loan from Respondent instead of \$4,500. Reported a \$3,765 Loan from Respondent instead of \$3,465. \$400 contribution from Tyler Vance instead of Jayne, Inc. \$75.00 contribution from Stone Island Home Owner's Association instead of Fred Phillips \$400.00 check contribution from Marc Klein instead of cash \$190.00 check contribution from Max Klein instead of cash Reported an \$800.00 expenditure to Deltona Skate Rink; was an in-kind contribution by Respondent paid with personal checking account Reported an \$1,648.42 expenditure to Designer Graphics; was an in-kind contribution by Respondent paid by personal credit card Reported a \$4,299.21 expenditure to Lighthouse Mailing instead of two expenditures, one in the amount of \$3,666.41 and the other in the amount of \$632.80

5. Table 3 reflects the expenditures Respondent authorized without sufficient funds on deposit in the campaign account. The date in the table is the date that Respondent authorized payment to each vendor.

TABLE 3: FUNDS IN CAMPAIGN ACCOUNT WHEN RESPONDENT AUTHORIZED EXPENSE				
Transaction Date	Check #	Description of Transaction	Amount	Funds Available to Campaign
09/14/05	Amount of funds Available to Campaign.			(\$5,257.68) ¹
09/20/05	Temp Check	Volusia County Elections	(\$8.75)	(\$5,248.93)
09/20/05	Temp Check	Diane Obremski	(\$562.85)	(\$5,811.78)

¹ Beginning balance brought forward from the ending balance in Case FEC 05-253.

09/22/05	Deposit		\$4,500.00	(\$1,311.78)
09/22/05	Temp Check	Lighthouse Mailings	(\$632.80)	(\$1,944.58)
09/22/05	Temp Check	Lighthouse Mailings	(\$3,666.41)	(\$5,610.99)
09/30/05	Deposit		\$3,765.00	(\$1,845.99)
09/30/05	Temp Check	Market Concepts	(\$83.34)	(\$1,929.33)
09/30/05	Temp Check	Marc Klein	(\$400.00)	(\$2,329.33)
09/30/05	Temp Check	Motor Cars of CF	(\$400.00)	(\$2,729.33)
09/30/05	Temp Check	Bill Klein	(\$400.00)	(\$3,129.33)
09/30/05	Temp Check	Stone Island Home Owner's Association	(\$75.00)	(\$3,204.33)
09/30/05	Temp Check	Max Klein	(\$190.00)	(\$3,394.33)
09/30/05	Temp Check	Chelsea Wallace	(\$400.00)	(\$3,794.33)
09/30/05	Temp Check	Keith Wallace	(\$400.00)	(\$4,194.33)
09/30/05	Temp Check	Jayne Vance	(\$400.00)	(\$4,594.33)
09/30/05	Temp Check	Tyler Vance	(\$400.00)	(\$4,994.33)
09/30/05	Temp Check	Charles Vance	(\$400.00)	(\$5,394.33)
10/02/05	Temp Check	Derek Brett	(\$1,000.00)	(\$6,394.33)
10/02/05	Temp Check	<i>Best of Volusia</i>	(\$300.00)	(\$6,694.33)
10/04/05	Deposit		\$1,000.00	(\$5,694.33)
10/06/05	Deposit		\$3,465.00	(\$2,229.33)
10/07/05	Deposit		\$850.00	(\$1,379.33)

6. On August 31, 2005, Diane Obremski, Respondent's campaign manager, authorized the purchase of a political advertisement from the *Best of Volusia*. Ms. Obremski approved the proof for the advertisement, signed a one-time contract authorizing the *Best of Volusia* to run this advertisement in a coupon mailer on October 4, 2005, and paid a deposit of \$100. The advertisement did not include the proper disclaimer.

7. A proper disclaimer is:

Political advertisement paid for and approved by Dennis Mulder for Mayor of Deltona.

8. Table 4 reflects the excessive contributions allegedly accepted by Respondent before the primary election held on October 11, 2005.

TABLE 4: CONTRIBUTIONS REPORTED BY RESPONDENT			
Date Accepted	Contributor	Amount Reported	Total
07/01/05	Chelsea Wallace	\$500.00	\$500.00
10/02/05		\$400.00	
07/18/05	Diane Obremski	\$100.00	\$522.00
07/22/05		\$22.00	
08/31/05		\$100.00	
09/30/05		\$300.00	

9. Respondent received an excessive cash contribution for \$500 from Ms. Wallace and reported it on his 2005 F1 CTR. On October 1, 2005, Respondent wrote a check to Ms. Wallace from his campaign account refunding \$400. Ms. Wallace then wrote a \$400 check to Respondent, which he reported receiving on October 2, 2005. The bank records for the campaign account reflect a \$400 check from Ms. Wallace was deposited in Respondent's campaign account on October 6, 2005.

10. In a telephone interview, Respondent stated, "I mistakenly refunded her an excessive contribution," because he thought Ms. Wallace's original contribution was cash. This contribution was investigated in FEC 05-253, and it was determined that Ms. Wallace's contribution was by cash, not a check.

11. Respondent accepted contributions totaling \$522 from Diane Obremski, his campaign manager, before the October 11, 2005 primary. In his 2005 F1 report, Respondent misreported the contribution from Ms. Obremski on July 18, 2005 for \$100 as a check contribution for \$400. Respondent accepted a \$300 contribution from Ms. Obremski on

September 30, 2005, which he did not report.

12. On July 22, 2005, Ms. Obremski paid \$22 for an occupation license for Respondent's campaign. On August 31, 2005, Ms. Obremski gave the *Best of Volusia* a \$100 deposit to publish the political advertisement discussed above.

13. In an affidavit, Ms. Obremski stated that she was reimbursed for the \$100 deposit to the *Best of Volusia* by a campaign check from Respondent on September 19, 2005. Bank records indicate Respondent issued a check to his campaign manager for \$562.85 on September 20, 2005 for a "food supply and fun day." However, there is no evidence that this reimbursement covered the occupational license fee and or the advertising deposit paid by Ms. Obremski.

14. On December 30, 2005, the investigator attempted to verify the reimbursement to Respondent's campaign manager, but she refused to speak with her and hung-up the telephone. A follow-up letter was mailed to Ms. Obremski requesting that she provide a copy of her receipts and a listing of the expenditures covered by the reimbursement of \$562.85 from Respondent. As of April 7, 2006, a response has not been received from Respondent's campaign manager.

15. Table 5 lists Respondent's five unreported contributions.

TABLE 5: UNREPORTED CONTRIBUTIONS ACCEPTED BY RESPONDENT				
Date Accepted	CONTRIBUTOR	Contribution Type	AMOUNT	SOURCE
07/22/05	Diane Obremski	In-kind	\$22.00	Occupational License
08/31/05	Diane Obremski	In-kind	\$100.00	Advertising deposit to <i>Best of Volusia</i>
09/18/05	Deltona Skate Rink	In-kind	\$800.00	Joint personal checking account

09/19/05	Designer Graphics	In-kind	\$1,648.42	Personal credit card
09/30/05	Diane Obremski	Check	\$300.00	Check to Respondent's campaign
TOTAL			\$2,870.42	

16. Respondent stated that he did not willfully violate the laws. However, he admitted that he made some mistakes in the handling of his campaign. Respondent stated that throughout his campaign he chose to use his personal credit cards to pay some expenses and he treated the expenditures as loans because he needed to report them. Respondent further stated that he has learned a lot through experience in how to properly manage his campaign.

17. In an affidavit, Respondent stated he received a copy of *Chapters 104 and 106, Florida Statutes*, and a copy of the *2004 Candidate Handbook*. Although Respondent indicated that he has not read *Chapters 104 and 106, Florida Statutes*, he did indicate that he has browsed through the *Handbook for Candidates*. Respondent signed his Statement of Candidate form on April 11, 2005, indicating that he read and understood Chapter 106, Florida Statutes.

CONCLUSIONS OF LAW

18. The Commission has jurisdiction over the parties to and subject matter of this cause, pursuant to Section 106.26, Florida Statutes.

19. The Respondent committed one count of violating Section 106.07(5), Florida Statutes, when he certified to the correctness of his 2005 F3 CTR that was incorrect; committed 17 counts of violating Section 106.11(4), Florida Statutes, when he incurred expenses for the purchase of goods or services without sufficient funds on deposit in the primary depository account; committed one count of violating Section 106.143(1)(a), Florida Statutes, by making an expenditure for a political advertisement and failing to mark prominently the political advertisement with the required disclaimer; committed one count of violating Section

106.19(1)(a), Florida Statutes, when he accepted a contribution in excess of the legal limits, and committed five counts of violating Section 106.19(1)(b), Florida Statutes, when he failed to report five contributions required to be reported by Chapter 106, Florida Statutes.

20. Respondent's conduct was willful. Respondent committed the acts while knowing that, or showing reckless disregard for whether, the acts were prohibited or failed to commit an act while knowing that, or showing reckless disregard for whether, the acts were required.

21. In determining the amount of the civil penalty, the Commission considered the mitigating and aggravating circumstances set forth in Section 106.265, Florida Statutes.

22. The Commission finds that Respondent has sufficient financial resources to pay the fine imposed by the Commission.

ORDER

WHEREFORE the Commission finds that Respondent has violated the following provisions of Chapter 106, Florida Statutes, and imposes the following fines, inclusive of fees and costs:

A) Respondent violated Section 106.07(5), Florida Statutes, on one occasion. Respondent is fined \$10 for this count.

B) Respondent violated Section 106.11(4), Florida Statutes, on 17 occasions. Respondent is fined \$10 for each of the 17 counts for a total of \$170.

C) Respondent violated Section 106.143(1)(a), Florida Statutes, on one occasion. Respondent is fined \$10 for this count.

D) Respondent violated Section 106.19(1)(a), Florida Statutes, on one occasion. Respondent is fined \$10 for this count.

E) Respondent violated Section 106.19(1)(b), Florida Statutes, on five

occasions. Respondent is fined \$10 for each of the five counts for a total of \$50.

Therefore, it is

ORDERED that Respondent shall remit a civil penalty in the amount of \$250. The civil penalty shall be paid to the Florida Elections Commission, 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida, 32399-1050, within 30 days of the date this Final Order is received by Respondent.

DONE AND ENTERED by the Florida Elections Commission and filed with the Clerk of the Commission on September 1, 2006, in Tallahassee, Florida.



Chance Irvine, Chairman
Florida Elections Commission

NOTICE OF RIGHT TO APPEAL

Pursuant to Section 120.68, Florida Statutes, the Respondent may appeal the Commission's Final Order to the appropriate district court of appeal by filing a notice of appeal both with the Clerk of the Florida Elections Commission and the Clerk of the district court of appeal. The notice must be filed within 30 days of the date this Final Order was filed and must be accompanied by the appropriate filing fee.

Copies furnished to:

Charles A. Finkel, General Counsel
Dennis E. Mulder, Respondent (certified mail)
Jeffrey P. Ensminger, Complainant
City Clerk, City of Deltona, Filing Officer