

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION
JOHN LINDBACK
DIRECTOR
141 STATE CAPITOL
SALEM, OREGON 97310-0722
ELECTIONS—(503) 986-1518

BEFORE THE SECRETARY OF STATE
OF THE
STATE OF OREGON

In the matter of a Late Contribution and Expenditure Report)
by Yes on 34, David Moskowitz, Treasurer, for the First) Final Order by Default
Supplement to the Second Pre-Election for the)
November 2, 2004, General Election) Case No. L8178
)

April 27, 2005

Yes on 34 (004721)
David Moskowitz, Treasurer
721 NW Ninth Ave #290
Portland, OR 97209

Dear Mr. Moskowitz:

This is a Final Order by Default issued by the Secretary of State (secretary) for your failure to file a complete first supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election.

On March 24, 2005, the secretary notified Yes on 34 (committee), pursuant to ORS 260.232(2), that it had failed to file the complete report and that the secretary may impose a civil penalty. An opportunity for a hearing was provided in that notice; however, no request for a hearing was received by the secretary within the time permitted in the notice. Accordingly, after consideration of the records and files of the secretary regarding this matter, the secretary is entering the following Order.

FINDINGS OF FACT

1. The committee's Statement of Organization (SEL 221), applicable during the reporting period, was filed with the secretary on August 2, 2004. The statement reported David Moskowitz as the treasurer and 555 NW Park Ave #109, Portland, OR 97209 as the address to which all committee correspondence was to be sent.
2. The committee submitted a complete first supplement to the second pre-election report on October 25, 2004. However, an additional contribution (\$712.00 from the Democratic Party of Oregon) should have been included on the report.
3. The committee first reported the contribution required to be included on the first supplement to the second pre-election report on its post-election report filed on November 29, 2004, making this portion of the report 23 business days late.

4. On March 11, 2005, the secretary sent the committee a Notice of Proposed Civil Penalty. The notice sent by certified mail was returned by the post office noting that the treasurer was no longer at the address. After review of the SEL 221, the secretary determined that the notice was mailed to the incorrect address. On March 24, 2005, the secretary sent the committee a Notice of Proposed Civil Penalty. The notice was sent by both certified and first class mail to the treasurer at 721 NW Ninth Ave, Ste 290, Portland, OR 97209, the correct address to which all committee correspondence is to be sent, reported on the committee's Statement of Organization filed January 10, 2005. The notice proposed a civil penalty of \$100.00 and allowed the committee 20 days to request a hearing. The notice sent by certified mail was received and signed for by Marina Yudin on March 25, 2005.
5. The committee did not request a public hearing or submit notarized testimony in lieu of a public hearing.
6. The secretary has record of no previous late filings during the two-year period beginning September 15, 2003.

ULTIMATE FINDINGS OF FACT

David Moskowitz, Treasurer, failed to file a complete first supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election.

CONCLUSIONS OF LAW

Treasurer David Moskowitz's failure to file a complete first supplement to the second pre-election contribution and expenditure report for the November 2, 2004, General Election violated ORS 260.073.

By statute, a maximum \$10,000 civil penalty may be imposed for this violation. The *2004 Campaign Finance Manual*, which contains a penalty calculation matrix on pages 101 and 102, is designated in OAR 165-012-0005 as the procedure manual for Oregon campaign finance regulations.

Under the penalty matrix, the maximum statutory penalty of \$10,000 is reduced to 1% of the total contributions or total expenditures—whichever is greater—for each business day the report was late as this is the first late violation by the treasurer.

Although the calculated penalty for the late report is \$163.76 ($\$712.00 \times 1\% \times 23$ days), the penalty matrix sets a maximum penalty of \$100.00 when the total contributions or total expenditures—whichever is greater—is between \$0 and \$2,000.

ORDER

It is ordered that a penalty of \$100.00 is assessed. If your payment is not received within 60 days from the date of service noted below, this Order will be sent to our accounting division for collection and may be subsequently sent to the Oregon Department of Revenue.

Please refer to case number L8178 when mailing your payment.

RIGHT TO JUDICIAL REVIEW

You have the right to appeal this Order to the Oregon Court of Appeals pursuant to ORS 183.482. To appeal you must file a petition for judicial review with the Court of Appeals within 60 days from the day this Order was served to you. Because this Order was mailed to you, the date of service is the day it was *mailed*, not the day you received it. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

Jennifer Hertel, Compliance Specialist

DATE of Service: April 27, 2005