

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 Birnbaum for District Attorney (Martin J.),) Final Order by Default
Martin J. Birnbaum, Candidate, Anna L. Baum, Treasurer,)
for the First Supplement to the Second Pre-Election for the) Case No. L7829
May 18, 2004, Primary Election)

November 15, 2004

Birnbaum for District Attorney (Martin J.) (004678)
Martin J. Birnbaum, Candidate / Anna L. Baum, Treasurer
68552 Hunter Rd
Summerville, OR 97876

Dear Mr. Birnbaum:

This is a Final Order by Default issued by the Secretary of State (secretary) for your failure to file a timely first supplement to the second pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

On August 19, 2004, the secretary notified Birnbaum for District Attorney (Martin J.) (committee), pursuant to ORS 260.232(2), that it had failed to file the 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 220), applicable during the reporting period, was filed with the secretary on November 24, 2003. The mailing address provided on the Statement of Organization for the candidate was 68552 Hunter Rd, Summerville, OR 97876. The statement reported Anna L. Baum as the treasurer and PO Box 3377, La Grande, OR 97850 as the address to which all committee correspondence was to be sent.
2. The committee was required to file a first supplement to the second pre-election report with the secretary on May 10, 2004, because it made an expenditure to a single payee exceeding \$1,000 between May 3 and May 9, 2004.

3. The committee reported the expenditure required to be on the first supplement to the second pre-election report (\$1,573.59 to Rich Zinzer on May 6, 2004) on its post-election report filed June 11, 2004, which is 23 business days after the first supplement to the second pre-election report was due.
4. On August 19, 2004, the secretary sent the committee a Notice of Proposed Civil Penalty. The notice was sent by both certified and first class mail to the candidate and was sent by first class mail to the treasurer at the above-referenced addresses. 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 Linda Birnbaum on August 26, 2004.
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

Martin J. Birnbaum, Candidate, and Anna L. Baum, Treasurer, failed to file a timely first supplement to the second pre-election contribution and expenditure report for the May 18, 2004, Primary Election.

CONCLUSIONS OF LAW

Candidate Martin J. Birnbaum's and Treasurer Anna L. Baum's failure to file a timely first supplement to the second pre-election contribution and expenditure report for the May 18, 2004, Primary Election violated ORS 260.058.

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 candidate.

Although the calculated penalty for the late report is \$362.02 ($\$1,573.59 \times 1\% \times 23$ 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 L7829 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: _____

c: Anna L. Baum, Treasurer
PO Box 3377
La Grande, OR 97850