

**BEFORE THE DELAWARE STATE  
FIRE PREVENTION COMMISSION**

**IN RE:** )  
 ) **ORDER**  
**CHRISTIANA FIRE COMPANY** )  
 )

A hearing was held before the Delaware State Fire Prevention Commission (the “Commission”) on April 11, 2011, after due notice to Christiana Fire Company (“Christiana”) pursuant to 16 *Del. C.* §§ 6604(4) and 6608 and Commission Regulation 708.

Pursuant to 16 *Del. C.* §6608 the following sub-sections apply to audits of volunteer fire and ambulance companies:

(a) The State Fire Prevention Commission shall promulgate regulations requiring financial audits of volunteer fire and ambulance companies and the Smyrna and Georgetown American Legion Ambulances and the Mid-Sussex Rescue Squad. The regulations shall include, but not be limited to, specifying the required types of audits, the reporting periods, procedures for reviewing the audits and the processes to be followed in the event a company fails to submit or submits an inadequate audits.

(b) The State Fire Prevention Commission shall have the authority, after a hearing, to impose a civil penalty not to exceed \$100 against any volunteer fire and ambulance companies, the Smyrna and Georgetown American Legion Ambulances and the Mid-Sussex Rescue Squad that fails to comply with any regulation promulgated pursuant to subsection (a) of this section. Each day a violation continues may be deemed a separate offense in the State Fire Prevention Commission's discretion. However, in no event shall the total penalties exceed \$5,000 per reporting period.

(c) The penalties specified in this section are in addition to and not in lieu of any other penalties provided for under this chapter.

Pursuant to Commission Regulation 708 the following sections apply to a audits of volunteer fire and ambulance companies:

#### 4.0 Reporting Periods.

4.1 Any company whose fiscal year begins on or after January 1, 2009 must file no later than six and onehalf months after the close of the company's fiscal year. Reports shall be submitted annually thereafter no later than six and one-half months after the close of the company's fiscal year. The report due date will be calculated by the Commission based on the information provided by the volunteer fire and/or ambulance company as to the close of its fiscal year.

4.2 No extensions will be granted except upon a showing of hardship. Requests for a hardship extension must be made in writing prior to the report due date. The request must specify in detail the nature of the hardship. A showing of hardship requires that the lack of compliance with this regulation is due to causes beyond the company's control. The Commission's decision on the extension request shall be final.

#### 5.0 Report Compliance Committee.

5.2.2 Fire department and ambulance companies that fail to file the mandatory financial reports will be referred to the Commission with a recommendation for a hearing before the Commission for the imposition of civil penalties as provided in 16 Del.C. §6608 and any other penalties available under the Chapter.

#### 7.0 Sanctions for Non-Compliance.

7.1 Where the Commission has determined, upon notice and hearing, that a fire department or ambulance company failed to file or has filed incomplete reports or audits in violation of 16 Del.C. §6608, the Commission may impose a civil penalty of \$100 per day beginning on the date the report or audit was due. Each day a violation continues may be deemed a separate offense in the Commission's discretion resulting in penalties of up to \$5000 per reporting. The civil penalty is in addition to any other penalties provided for in the Chapter.

7.2 Where the Commission has determined, upon notice and hearing, that the reports or audits of a fire department or ambulance company indicate inadequate financial management, lack of appropriate

internal controls, and/or issues or trends that indicate possible financial failure of the company the Commission may require a written corrective action plan. Failure to submit a written corrective action plan may result in the imposition of a civil penalty of \$100 per day. Each day a violation continues may be deemed a separate offense in the Commission's discretion resulting in penalties of up to \$5000 per reporting. The civil penalty is in addition to any other penalties provided for in the Chapter.

7.3 Continued failure to file reports or audits or to take corrective action may also result in the Commission referring the fire department or ambulance company to other regulatory agencies for review and possible action under their governing authority, including but not limited to, the Internal Revenue Service, the Delaware Division of Revenue and the State Auditor's Office.

A quorum of the Commission members deliberated and voted. Christiana was not present, nor represented by counsel or other representative. Elio Battista, Jr., Deputy Attorney General, advised the Commission.

### **SUMMARY OF THE EVIDENCE**

Commission Chairman David Roberts opened the hearing with preliminary comments and stated that:

The statutory require[d] audit report of Christiana Fire Company was due on January the 15<sup>th</sup>, 2011. According to the Commission records, an audit report was received today [April 11, 2011, by e-mail], however no extension request has been filed by Christiana Fire Company.

*See* Transcript at pg. 1, line 25 through page 2, lines 1-5

The Commission reserved determination regarding whether the documentation submitted by Christiana met the requirements of Commission Regulation 708, section 3.0.

Ms. Sherry Lambertson, Executive Specialist for the Commission was sworn and testified. Ms. Lambertson testified that notice of the hearing was provided to Christiana by certified mail,

return receipt requested. Ms. Lambertson further testified that she received the return receipt signed by a representative of Christiana acknowledging receipt of the notice. A copy of the signed return receipt was entered into evidence as Commission Exhibit 1.

Ms. Lambertson further testified that according to the Commission's records and to the best of her knowledge an extension request had not been submitted by Christiana nor received by the Commission.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Commission has considered the sworn testimony, the Commission's records and the exhibit entered.

Christiana's statutorily mandated audit report was due on January 15, 2011. Christiana submitted its proposed audit report via e-mail the morning of April 11, 2011.

No evidence either through testimony or exhibit was presented by Christiana that an audit extension request had been submitted pursuant to Commission Regulation 708, section 4.2.

Christiana did not present any evidence either through testimony or exhibit that the lack of compliance with Delaware State law and the Commission's regulations was due to causes beyond Christiana's control.

Notwithstanding prior timely notice of the hearing, Christiana did not request a continuance and did not to attend the hearing either directly or through counsel.

The Commission finds by the affirmative vote of the undersigned members, after consideration of the testimony and evidence presented that:

- 1) Christiana did not timely comply with the financial audit reporting requirements as provided in 16 *Del C.* §6608 Audits of Volunteer Fire and Ambulance Companies

and Commission Regulation 708 Financial Audit Regulations;

- 2) Christiana was provided timely and proper notice of the hearing pursuant to 16 *Del C.* §6604(4) and 29 *Del C.* §10122;
- 3) Christiana did not present substantial evidence to support the granting of an extension pursuant to Commission Regulation 708, Section 4.2; and
- 4) THE SANCTION FOR NON-COMPLIANCE IMPOSED AGAINST CHRISTIANA PURSUANT TO 16 *Del C.* §6608(b) AND COMMISSION REGULATION 708, SECTION 7.0 SHALL BE FIVE THOUSAND DOLLARS (\$5,000.00).

**ORDER**

The Delaware State Fire Prevention Commission, having considered the matter of the audit compliance of Christiana Fire Company, by majority voted to sanction Christiana Fire Company for non-compliance pursuant to 16 *Del C.* §6608(b) and Commission Regulation 708, Section 7.0 in the amount of Five Thousand Dollars (\$5,000.00).

**IT IS SO ORDERED** this \_\_\_\_ day of May, 2011.

**DELAWARE STATE FIRE PREVENTION COMMISSION**

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David J. Roberts, Chairman

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Alan Robinson, Vice Chairman

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Kevin Wilson, Commissioner

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Tom DiCristofaro, Commissioner

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Bob Ricker, Commissioner

**Date Mailed:** \_\_\_\_\_