

BEFORE THE DELAWARE STATE FIRE PREVENTION COMMISSION

In re: Belvedere Fire Company)
Opinion and Order)

Nature and Stage of the Proceedings

By letter dated July 29, 2013, the Delaware State Fire Prevention Commission noticed the Belvedere Fire Company of the Commission's intent to conduct a hearing regarding Belvedere's apparent failure to file its statutorily required audit. The hearing was held on September 17, 2013, in Dover, Delaware, before the Delaware State Fire Prevention Commission at the Delaware Fire Service Center, 1463 Chestnut Grove Road, Dover, Delaware 19904 at 11:00 AM.

Belvedere Fire Company appeared *pro se*. Peter Jamison, Deputy Attorney General, prosecuted the case. Patricia Davis Oliva, Deputy Attorney General, advised the Commission.

Summary of the Evidence

Sherry Lambertson, after being reminded she was previously sworn, testified as the first witness for the State. Ms. Lambertson testified that she is the Executive Specialist for the Delaware State Fire Prevention Commission. Ms. Lambertson's duties and responsibilities include receiving and reviewing correspondence sent to the Commission. Ms. Lambertson testified that July 13, 2013 was the due date for Belvedere Fire Company to submit its audit report regarding fiscal year 2012, which closed for Belvedere on December 31, 2012. She has never received a final report from Belvedere for fiscal year 2012. In fact, Ms. Lambertson has not received a final audit report from Belvedere Fire Company since at least as far back as 2009.

Upon questioning from the Commission, Ms. Lambertson testified that documentation was received from Belvedere in February of 2013, but this documentation was insufficient and failed to meet the Commission's regulations regarding audit reporting. It was rejected, and a letter was sent back to Belvedere informing it of this bases for the rejection. At the conclusion of Ms. Lambertson's testimony, the State rested its case.

Robert Johnson testified as the first witness on behalf of Belvedere. Mr. Johnson testified that he just joined the Company this year and was not aware of the entirety of what was going on in the past. He received the rejection letter from the Commission in February and has been trying to get this situation cleared up since then. Correspondence from the Commission has been addressed to the Company's past President, Keith Harmon, and Mr. Johnson has not been able to claim it.

Upon cross-examination, Mr. Johnson testified that he is the current President of the Belvedere Fire Company. He has been President for the past nine months. Immediately preceding him was Keith Harmon, who held that position for three years. Currently, the Treasurer is Ms. Sharhonda Spencer. Ms. Spencer has been the Treasurer for the past five years. Belvedere Fire Company employs an accounting firm, BDO. The Company has employed this firm for the past four or five years. Belvedere recently hired BKS to assist with coming into compliance with the Commission's audit requirements. Mr. Johnson testified that he has not spoken with Mr. Harmon with regard to Belvedere's prior filings with the Commission. Belvedere Fire Company's Board of Directors requested Mr. Harmon come to this hearing, but he declined that invitation. Mr. Johnson

spoke with Ms. Spencer recently about the audit requirements and she indicated that she believed the past President had filed the necessary audit paperwork with the Commission.

Upon questioning from the Commission, Mr. Johnson indicated that he has not discussed the matter of the audit filing with Mr. Harmon and admitted Belvedere Fire Company has had financial issues in the past; specifically, an “embezzlement issue.” Mr. Johnson indicated he was aware that meetings had been held with past officers of the Company and the Commission regarding the need to comply with the audit requirements.

Mr. Vaughn Rider was sworn and testified that in 2007 there was an embezzlement issue at Belvedere Fire Company and Mr. Rider, who was not the President at the time this occurred, came back in as President of the Company after the State Auditor came in and audited the Company. Mr. Rider was working with BDO, who assured Belvedere that the audit would be taken care of on time in 2008. It was not done, and when Mr. Rider contacted BDO, he was informed that the accountant who was working on their file either left or was fired. Thereafter, Belvedere Fire Company received correspondence from BDO attempting to get Belvedere to switch to another accountant. Mr. Rider has made numerous attempts to meet with BDO but every time he would reach out to them, BDO replied “it is our busy season; we can’t meet.” Mr. Rider recognizes that the responsibility is Belvedere Fire Company’s to make sure these things get done. They have paid BDO \$ 29,000 at this point in fees and they cannot believe these filings have not been completed.

Upon cross-examination, Mr. Rider testified that when he recently learned that audits were not being completed, he began contacting BDO to find out why. This was approximately September or October of 2012. Mr. Rider also spoke with the

Commission Chair a few months ago regarding the legislation that requires the audit filing. Mr. Rider took this information and gave it to BDO, who assured Mr. Rider the filing would be completed by July 26, 2013. Mr. Rider spoke with Tom Shopa at BDO. Mr. Shopa assured Mr. Rider the filing would be completed by the due date. They were not.

Mr. Ronald Derr, CPA, was called as Belvedere's third witness. After being sworn, Mr. Derr testified that when he was first called by Mr. Rider to take a look at the financials of the Company, he thought he was only going to have to look at the past year's financials. However, he recently learned that his review will need to go back at least three years. The issue that he is trying to address is providing financial statements that have not been provided up until this point to the Commission. Based on his review of the Quickbook files and the 990's, he will have to go to outside sources to get what is missing. He has not spoken with Mr. Shopa.

Upon cross-examination, Mr. Derr testified that he works for PK&S. He is a CPA and a manager at PK&S. He was engaged by Belvedere Fire Company approximately one month ago. He was formerly employed by McBride Shopa Company. He has never worked for BDO. Mr. Derr has the Quickbooks from BDO and has looked over the information. He does not believe he has all the information he needs to provide the filing the Commission requires because he still needs to verify some of the information contained in the Quickbooks. He has not had any conversation with BDO regarding Belvedere Fire Company's filings.

Upon questioning from the Commission, Mr. Derr indicated that the Company's bookkeeper was McBride Shopa Company. McBride Shopa was bought out by BDO in

2010 and, BDO is therefore no longer independent. Mr. Derr cannot speak for how BDO was going to be able to maintain this relationship without a conflict. Mr. Derr testified that while BDO may be able to provide bookkeeping services and tax returns for the Company, he does not believe it can provide independent audit reports.

Findings of Fact and Conclusions of Law

The Commission has been working with the Belvedere Fire Company for some time trying to get the Company to understand what it needs to do to come into compliance with the regulations. Unfortunately, this has been an on-going problem for some time. To date, the Commission has not received an audit report for fiscal year 2012 from Belvedere Fire Company. Further, no audit report was received for fiscal year 2011 and a civil penalty was previously imposed by this Commission. The Commission finds as a matter of fact that Belvedere Fire Company has failed to file its audit report to date for Fiscal Year 2012.

Pursuant to Delaware State Fire Prevention Regulation 708, Chapter 1, Section 4.0, “[a]ny company whose fiscal year begins on or after January 1, 2009 must file no later than six and one-half 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.”

Further, pursuant to Delaware State Fire Prevention Regulation 708, Chapter 1, Section 7.1, “[w]here 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.* § 6622, 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.” Section 7.3 further provides that “[c]ontinued 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.”

Here, the Commission finds Belvedere Fire Company violated Regulation 4.1 by failing to submit its audit report for FY2012 to the Commission on or before July 13, 2013. Pursuant to Regulation 7.1 and 7.3, the Commission orders Belvedere Fire Company be penalized at the permitted maximum amount of \$5,000. Further, the Commission orders all outstanding audit reports be submitted by Belvedere Fire Company to the Commission before its December 17, 2013 meeting. Failure to submit these reports by that time will result in the Commission referring the Belvedere Fire Company to the Delaware State Auditor for investigation pursuant to Regulation 7.3.

IT IS SO ORDERED THIS ____ DAY OF _____, 2013

David J. Roberts, Chairman

Alan Robinson, Vice Chairman

Bob Ricker

Marvin Sharp

Ron Marvel

Charles Boyer