

BEFORE THE DELAWARE STATE FIRE COMMISSION

In re: South Bowers Fire Company

ORDER

At its meeting on July 16, 2019, the Delaware State Fire Prevention Commission received a report indicating that South Bowers Fire Company requested an extension of time to file its annual financial audit, otherwise due July 15, 2019. *See 16 Del. C. § 6608; 1 DE ADMIN. CODE 708.4.1.* Because the Commission may grant an extension only “upon a showing of hardship,” the Commission scheduled a hearing for South Bowers to justify its request. On August 19, 2019, the Commission held a hearing on South Bowers’ request for an extension.

Summary of the Evidence

Terrance Johnson, CPA, of Lank, Johnson & Tull, testified on behalf of South Bowers. Lank, Johnson & Tull prepares the company’s books, but another firm reviews financial statements. Mr. Johnson testified that South Bowers requested a 30-day extension of time to submit the audit because five members of South Bowers held credit cards and information was needed regarding their use. Mr. Johnson explained that he had requested financial information from South Bowers in 2018 and through 2019. He then stated that he received the wrong information from South Bowers shortly before the July deadline. Mr. Johnson received the requested 2018

financial information from South Bowers on July 15, 2019, the day South Bowers' audit was to be filed with the Commission. He testified that the hardship was, essentially, the communication between his firm and South Bowers. Mr. Johnson acknowledged that everyone is aware of the due date, but the lack of communication was the issue. He indicated that, in hindsight, a letter to the Board may have been more effective. Mr. Johnson said the company will take steps to correct the matter going forward.

South Bowers President Jason Harvey also testified on behalf of South Bowers. He testified that the Treasurer is new and had to replace someone who left South Bowers unexpectedly. He did not recall the exact date or timeframe when the previous Treasurer left.

The audit was submitted August 15, 2019.

Findings of Fact and Conclusions of Law

Each Delaware fire company is required to submit an annual financial audit for review to the Commission pursuant to 16 *Del. C.* § 6608. The Commission is empowered to promulgate regulations governing the audit process, including “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 audit.” 16 *Del. C.* § 6608(a). The statute further provides that the Commission has the authority, after a hearing, to impose a civil

penalty of up to \$100 for each day a fire company fails to comply with any regulation promulgated under Section 6608. The Commission's regulations require that audits be submitted by July 15 of each year. 1 DE ADMIN. CODE 708.4.1. Extensions may be granted only where there is a showing of "hardship," which is defined as something "beyond the company's control." 1 DE ADMIN. CODE 708.4.2. "The Commission's decision on the extension request shall be final." *Id.*

Here, South Bowers submitted its request for an extension on July 15, 2019, the due date of the audit. A majority of the Commissions concluded at the August 19, 2019 hearing that South Bower's inability to submit a timely audit was not due to a hardship as defined by the Commission's regulation. Accordingly, the request for an extension under the circumstances described by South Bowers is denied. South Bowers did not meet its burden to demonstrate how the failure to timely submit its audit was not within their control. In fact, it appeared that South Bowers' failure to meet the deadline was the result of communication issues and several members not timely submitting required information to those responsible for compiling and submitting the audit. After due consideration, the Commission determined that a \$2900 fine is appropriate and hereby orders this fine to be imposed.

IT IS SO ORDERED, this 17th day of September, 2019 by the Commission:

David J. Roberts

David J. Roberts, Chairman

Alan Robinson, Jr.

Alan Robinson, Jr. Vice Chairman

Lynn Truitt

Lynn Truitt

Ron Marvel

Ron Marvel

Joe Leonetti, Sr.

Joe Leonetti, Sr.

Richard T. Perillo

Richard T. Perillo

William Kelly

William Kelly