

BEFORE THE DELAWARE STATE FIRE COMMISSION

In re: Delmar Fire Company

ORDER

On July 23, 2021, the Delaware State Fire Prevention Commission notified Delmar Fire Company (“Delmar”) that it had not received Delmar’s annual audit as required by 1 DE Admin. Code 708.4.1. and that it was, therefore, not in compliance with the Commission’s regulation. It notified Delmar that the Commission may impose a civil penalty of \$100 per day beginning with the date that the audit was due to the Commission. It notified Delmar that if it did not receive the audit report, the Commission would require Delmar to appear at a show cause hearing on August 17, 2021.

Having not received the required report, the Commission held a show cause hearing on August 17, 2021.

Summary of the Evidence

Delmar appeared through their Treasurer, John Merritt. The Commission explained that the nature of the hearing was for Delmar to explain why Delmar had not complied with the requirement to submit the annual audit. Mr. Merritt explained that originally went to an accounting firm and that the firm had not completed their audit. He did not know until a couple weeks ago that they did not have all of the

required information. They now have all of that information and should have the audit completed in the next two weeks. He admitted that he could blame himself for not following up. But they have the information now and will take care of it. Mr. Merritt explained that he has taken care of getting the information to the auditor in the past two days.

Following the hearing, on August 26, 2021, Delmar submitted its annual financial audit, 42 days after it was due.

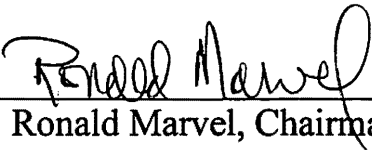
Findings of Fact and Conclusions of Law

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, Delmar’s inability to submit a timely audit was not due to a hardship as defined by the Commission’s regulation. It is the responsibility of each company to timely submit their audit. Fire companies must keep on top of their accountants to make sure the audit is timely submitted or an appropriate request for an extension is made (with good cause shown). Delmar did not even request an extension. Rather, the Commission was forced to hold a show-cause hearing after the due date came and went. At bottom, there were no extenuating circumstances presented. In light of this, the Commission determined that the fine of \$100 day between the date the audit was due and the date that it is received is required. Because the audit was submitted 42 days after the date it was due, a fine of \$4200 is ordered.

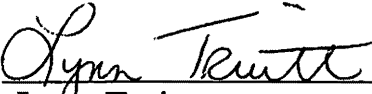
IT IS SO ORDERED, this 21st day of September, 2021 by the Commission:



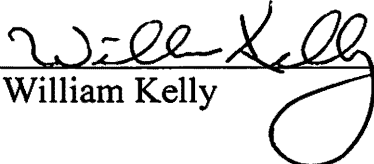
Ronald Marvel, Chairman




Alan Robinson, Jr. Vice Chairman



Lynn Truitt

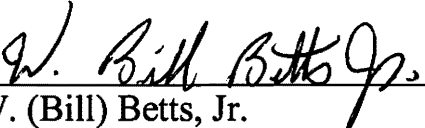


William Kelly



Joseph J. Leonetti, Sr.

Richard T. Perillo



W. (Bill) Betts, Jr.