



ORDER

issued to

Mr. Frederick A. Mitchell Jr.

and

The Broadcasting Corporation of The Bahamas

pursuant to section 96(3) of the Communications Act, 2009

WHEREAS:

- (1) On 25th April, 2012, Mr. Frederick A. Mitchell (“Mr. Mitchell”) the duly nominated candidate for the Fox Hill Constituency for the Progressive Liberal Party submitted an urgent complaint to the Utilities Regulation and Competition Authority (“URCA”) through his Attorneys against The Broadcasting Corporation of The Bahamas (“the Broadcasting Corporation”) pursuant to Clause 10.9(21) of the Code of Practice for Content Regulation (“Content Code”) issued by URCA on 2nd March 2012 (URCA document reference number ECS 06/2012). Mr. Mitchell complained that the placement of his photograph in close proximity to the announcement of alleged visa scandals in a political advertisement prepared by the Free National Movement (“FNM”) and broadcast on ZNS-TV was defamatory and damaging to his public and professional reputation and was not tantamount to fair comment contrary to Clause 6.8(1) and (8) of the Content Code as the subject political advertisement sought by innuendo, suggestion or reference to convey to the audience viewing that Mr. Mitchell was involved or participated (knowingly or otherwise) in the illegal sale of Bahamian visas.
- (2) On 27th April, 2012, in response to Mr. Mitchell’s complaint URCA issued the following INTERIM ORDER to the Broadcasting Corporation:

“[P]ursuant to section 96(1) of the Communications Act and Clause 10.9(22) of the Content Code, URCA hereby issues an Interim Order to the Broadcasting Corporation directing the Broadcasting Corporation to cease and desist from broadcasting any political advertisement on behalf of the FNM which infers or suggests in such political advertisement that Mr. Mitchell was involved in an alleged visa scandal at the Ministry of Foreign Affairs, due to the possibility of serious or irreparable damage to Mr. Mitchell. This Interim Order is limited in

UTILITIES REGULATION & COMPETITION AUTHORITY

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time to 4th May 2012 being the period of time that URCA currently expects to require in order to complete its investigation into this matter.”

The Broadcasting Corporation was also at the same time directed to submit a copy of the subject recording to URCA by 4:00 PM on 27th April 2012.

- (3) On 27th April, 2012, the Broadcasting Corporation wrote to URCA enclosing a recording of the subject advertisement while at the same time advising URCA that the FNM was prepared to remove Mr. Mitchell’s photograph from the subject advertisement and enquired whether this would resolve Mr. Mitchell’s complaint.
- (4) On 30th April, 2012, Mr. Mitchell’s Attorneys wrote to URCA indicating, amongst other things, that the removal of Mr. Mitchell’s photograph from the subject advertisement would resolve Mr. Mitchell’s complaint. Following receipt of this letter, URCA wrote to the Broadcasting Corporation on the same day advising them that provided the FNM resubmitted the advertisement without Mr. Mitchell’s picture in it, both URCA and Mr. Mitchell were not opposed to the broadcast of a revised version of the subject advertisement. URCA also required the Broadcasting Corporation to confirm in writing that the FNM had resubmitted a revised version of the subject political advertisement without Mr. Mitchell’s photograph and provide URCA with an undertaking that the Broadcasting Corporation would not rebroadcast the original political advertisement, upon the receipt of which URCA would revoke the Interim Order.
- (5) On 1st May, 2012, the Broadcasting Corporation provided the requested written confirmation and undertaking to URCA and also submitted a recording of the political advertisement without Mr. Mitchell’s photograph in it.
- (6) Having regard to the above and to the provisions of section 96(3) of the Communications Act, 2009, which stipulates that *“Any interim order should be followed by a full investigation, upon the completion of which an order shall be issued by URCA that either reinforces, changes or revokes the interim order”* and the provisions of Clause 10.9(23) of the Content Code which stipulates that *“Upon completion of its full investigation, URCA will issue an order under section [96(3)] of the Communications Act that either reinforces, changes or revokes the interim order”*, URCA has concluded that in light of the events that have transpired since issuing the Interim Order on 27th April, 2012, and following the removal of Mr. Mitchell’s photograph from the political advertisement the subject of Mr. Mitchell’s

complaint, thereby resulting in the resolution of the complaint, URCA should revoke the said Interim Order and discontinue its investigation of this matter.

Now, therefore, in exercise of its powers under section 96(3) of the Communications Act and Clause 10.9(23) of the Content Code, URCA issues the following ORDER to Mr. Mitchell and to the Broadcasting Corporation:

1. The Interim Order issued by URCA to the Broadcasting Corporation on 27th April, 2012, and thereby limited in time to 4th May, 2012, is hereby revoked and of no further effect.

Dated this 2nd day of May, 2012.

A handwritten signature in blue ink, appearing to read "Kathleen Dineen".

Chief Executive Officer
Utilities Regulation and Competition Authority