FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4441

DATE FILMED 4-1-97 CAMERA NO. 4

CAMERAMAN JMN

9704378321 3

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 14 10 37 AM '96

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 13, 1996

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REPUBLICAN PARTY OF DADE COUNTY - REFERRAL MATTER

On August 1, 1996 the Commission approved the Final Audit Report on Republican Party of Dade County. The report was released to the public on August 12 1996. As a result, the attached finding (Finding II.C. - Receipt of Apparent Prohibited Contributions) from the final audit report is being referred to your office.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Mary Moss or Tom Nurthen at 219-3720

Attachment:

Finding II.C. (Receipt of Apparent Prohibited Contributions), Final Audit Report Pages 8-12, top pagination.

9 7 0 4 3 7 8 3 2 1 4

C. RECEIPT OF APPARENT PROHIBITED CONTRIBUTIONS

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation to make a contribution or expenditure in connection with any election to any political office, and that a candidate, political committee or any other person is prohibited from accepting a contribution from a corporation.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

Sections 110.1(e)(1) and (2)(i) of Title 11 of the Code of Federal Regulations state a contribution by a partnership shall be attributed to the partnership and to each partner in direct proportion to his or her share of the partnership profits, according to instructions which shall be provided by the partnership to the political committee or candidate, or by agreement of the partners, as long as only the profits of the partners to whom the contribution is attributed are reduced (or losses increased).

1. Direct Contributions

The Audit staff's review of contributions indicated that the Committee received three contributions from apparent corporate entities totaling $3,000. The corporate status and current standing of the business entities were verified with the Florida Secretary of State.

Although refund checks have not been issued, the Committee maintained sufficient funds in its federal account during the audit period to make such refunds. The Treasurer was provided a schedule of the above contributions and agreed to take corrective action.

2. In-kind Contribution

a. The Committee leased office space for its Victory '92 headquarters at a cost of $21,300. The office space was leased for the period July 1, 1992 through November 4, 1992, from the Figueredo Center Ltd. (FCL), a partnership. The

9704378321 5

Committee paid $1,598. The remainder of the cost, $19,702, was originally reported as an in-kind contribution from FCL. The Committee amended its reports to disclose an in-kind contribution from Carlos Salman.[3]

Based on information developed during fieldwork FCL had at least three partners. CSR Inc. is its general partner, Frascate Inc. is its managing general partner, and Carlos Salman is its limited partner. Further, it appears CSR Inc. stands for Carlos Salman Realty, Inc.[4] The corporate status and current standing of both entities were verified with the Florida Secretary of State.

Absent documentation which demonstrates that the personal profits and/or losses of Carlos Salman, as partner, or any other individual partner were affected, and the profits and/or losses of any corporate partners were not affected by the above transactions, the in-kind contribution was made from prohibited sources, CSR Inc. and/or Frascate Inc.

According to written procedures relative to Victory '92 activities, Victory '92 is a project of the Republican Party of Florida designed to support the entire Republican ticket. It is a volunteer effort that helps all GOP candidates through the use of generic messages, party building programs and legally permissible non-allocable projects.

Accordingly, the value of the in-kind contribution should be allocated between the Committee's federal and non-federal accounts based on the ratio derived from the ballot composition (37% federal/63% non-federal). As a result, the federal account's share would be $7,290 ($19,702 x 37%).

In Advisory Opinion 1992-33 the Commission addressed the matter of a committee accepting in-kind corporate donations for allocable administrative and event expenses. The Commission concluded that:

> "national party committee may accept corporate in-kind donations in connection with fundraising activities, but only if one of two conditions is met: (1) the amount of the Federal share of goods or services is paid to the non-federal account in advance or on receipt; or (2) sufficient funds to pay for the Federal share of goods or services have been transferred to a

---

3 The Reports Analysis Division requested that the Committee disclose the names of the partners who contributed in excess of $200. The Treasurer made a written request to Carlos Salman in an effort to obtain the names of the partners. According to the Treasurer, the in-kind contribution was not from FCL but from Mr. Salman, as an individual.

4 Information provided by Dun & Bradstreet Information Services - Business Information Report.

9 7 0 4 3 7 8 3 2 1 6

non-federal account in advance under the following circumstances." (emphasis in original)

"To meet the latter condition, the committee must, in essence, prepay or escrow an amount of funds that corresponds to the value of the Federal share of the expenses associated with in-kind donations that will be received. The committee must make good faith estimates of the amount of such in-kind donations that are expected and transfer a sufficient amount of funds from the committee's Federal account to a non-federal account to cover the Federal share of the expenses associated with the in-kind donations actually received."

As previously stated in Finding II.A., the federal account overpaid its share of administrative and event expenses in calendar year 1992 by $15,014.[5] The Audit staff considered the value ($7,290 - approximately $1,779 monthly) of the federal account's share of the in-kind contribution to have been received on the first of each month (July through October). Accordingly, the Audit staff calculated the federal account's position with respect to overpayment of shared expenses as of the first of each month. Our analysis indicated that the federal account did not pay its share of the in-kind contribution in advance and, therefore, did not meet either of the conditions set forth in Advisory Opinion 1992-33.

b. It appeared, based on information available during audit fieldwork, that Mr. Salman (a Dade County Co-chair for Bush/Quayle '92) paid additional Victory '92 expenses totaling $4,058. The Committee reimbursed Mr. Salman and/or FCL for these expenses. However, it was not clear if these expenditures were originally paid from Mr. Salman's personal funds or from funds controlled by FCL.

These matters were discussed with Committee officials at the exit conference and on October 27, 1995. A schedule of the apparent prohibited contributions was provided.

In the interim audit report, the Audit staff recommended the Committee:

- demonstrate that the contributions, noted in C.1. above, were not from prohibited sources or refund the contributions;

- provide documentation to demonstrate that the in-kind contribution, noted in C.2.a. above, was not from prohibited sources. This documentation

---

5 The majority of the overpayment did not occur until October 1992, when all administrative expenses were paid by the federal account.

9704378321 7

should include the partnership agreement for the Figueredo Center Ltd. in order to determine the nature of the entity and to identify all of the general and limited partners. Further, the documentation should include information on the partnership status of the individual(s) to whom the in-kind contribution was attributed, and documentation to demonstrate how the profits or losses of both individual and corporate partners were affected;

- demonstrate that the contributions, noted in C.2.b. above, were not from prohibited sources, to include documentation that Victory '92 expenses, totaling $4,058, were paid from personal funds of Carlos Salman as opposed to funds of Figueredo Center Ltd.;

The Audit staff also recommended that absent a demonstration that the above contributions were not from prohibited sources, the Committee refund the contribution and provide evidence (front and back of the negotiated checks) for all payments; and, if funds are not available to refund the prohibited contributions, disclose on Schedule D a debt owed to each contributor.

In response to the interim audit report, the Committee stated that the direct contributions, noted in C.1., consisted of three checks, each in the amount of $1,000, which did not appear to be corporate checks on their face, but rather, referenced the individual's profession, such as architect.[6] The Committee also stated the checks were deposited into the federal account by mistake.

The Committee refunded the contributions to the contributors and provided copies (front only) of the refund checks.[7]

With respect to the in-kind contribution from the partnership, discussed at C.2.a., the Committee provided a copy of a Department of the Treasury Internal Revenue Service Form 1065, U.S. Partnership Return of Income with supporting schedules pertaining to FCL for tax year 1992. The Committee also provided a copy of FCL's Agreement and Certificate of Limited Partnership.

Based on the information provided, the Audit staff determined that FCL was comprised of two General Partners which are corporations and 15 Limited Partners (eight corporations and seven individuals). The documentation demonstrated that

---

6 Two of the three checks contained a business name followed by either Inc. or Corporation. On the third check, an individual's name was followed by Architect and General Contractor.

7 Copies (front and back) of the negotiated refund checks have subsequently been provided.

9704378218

the profits of all corporate partners (general and limited) were affected by this transaction.[8] Consequently, the in-kind contribution ($7,290) was from prohibited sources (see Advisory Opinion 1980-132).

The Committee filed an amended Schedule D which reflected a debt due to FCL for $7,290, the federal portion of the in-kind contribution.

With respect to the expenses noted in C.2.b. ($4,058), the Committee provided an affidavit from Mr. Salman, wherein he stated that he paid Judy Sable $1,500 for a Victory '92 consulting fee and was later reimbursed by the Committee. Copies of three checks from Mr. Salman's personal checking account used to pay Ms. Sable were also provided. Mr. Salman further stated that he paid additional expenses on behalf of the Committee, totaling $960, from his personal account which were also reimbursed by the Committee. Mr. Salman stated the rental payment of $1,598 was paid directly to FCL by the Committee, thus the contribution [initially viewed as $4,058] should be adjusted by the $1,598.

The documentation demonstrated that the above contributions, totaling $2,460 ($4,058 - 1,598), were not from prohibited sources and did not exceed Mr. Salman's contribution limit.

9704378321 9

---

8 The documentation also indicates that one individual appears to be a foreign national and that three corporate partners appear to be foreign partners.

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEB 21 4 21 PM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Enforcement Priority System II)
)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

On September 10, 1996, the Commission approved an Enforcement Priority System for enforcement matters assigned to OGC Public Financing, Ethics & Special Projects staff ("EPS II"). *See* Memorandum to the Commission, *PFESP Enforcement Priority System*, dated August 6, 1996.

This Office has rated all of its PFESP enforcement cases under EPS II. Based upon that evaluation, this Office has identified 12 MURs for closing. By closing these 12 cases, this Office will be better able to focus its resources on the more significant cases, generally presidential matters. Moreover, these closings will enable us to process the 1996 presidential audits in a more efficient manner.[1]

[1] This Office is currently assessing the impact of *FEC v. Williams*, No. 95-55320 (9th Cir. Filed Dec. 26, 1996), on our caseload. In *Williams*, the court ruled that the five-year statute of limitations under 28 U.S.C. § 2462 applies to the imposition of civil penalties in Commission enforcement actions. Unlike the initial implementation of the Enforcement Priority System ("EPS"), this Office is not recommending that certain cases involving stale activity be closed at this time. *See, e.g.*, Implementation of the Enforcement Priority System, approved April 20, 1993. This Office will forward specific recommendations in light of *Williams* in a subsequent report to the Commission.

9704378322C

Attached for Commission approval is the form letter that would be sent should these recommendations be approved. With the exception of notification letters sent to respondents in audit referrals, this Office will use the form notification letters currently used by the Enforcement Division. Since there is no form notification letter for audit referrals, this Office drafted the form notification letter at Attachment 1. Unlike RAD referrals, audit referrals are immediately assigned a MUR number and will eventually go on the public record when closed. Thus, it is necessary for us to notify the respondents in these instances prior to the matter appearing on the public record.

II. CASES RECOMMENDED FOR CLOSING

A. Cases Not Warranting Further Pursuit Relative to Other Cases Pending Before the Commission

Having evaluated the PFESP enforcement caseload, this Office has identified 12 cases that do not warrant pursuit relative to other pending matters.[2] A short description of each case and the factors leading to assignment of a relatively low priority and consequent recommendation not to pursue each case is attached to this Report. *See* Attachment 2. Also attached are the referral materials where that information has not been circulated previously to the Commission. *See* Attachment 3.

[2] These matters are: (1) MUR 4251 (Republican State Committee of Delaware); (2) MUR 4266 (Friends of Marc Little); (3) MUR 4271 (People for English); (4) MUR 4300 (The Committee to Elect Michael Flanagan); (5) MUR 4337 (Montana State Democratic Central Committee); (6) MUR 4345 (Nevada State Democratic Party); (7) MUR 4346 (Citizens for Jack Metcalf); (8) MUR 4381 (United Republican Fund of Illinois, Inc.); (9) MUR 4400 (San Bernardino County Republican Central Committee); (10) MUR 4436 (Abraham for Senate); (11) MUR 4441 (Republican Party of Dade County); and (12) MUR 4618 (Mississippi Democratic Party Political Action Committee).

97043783221

RECOMMENDATIONS

1. Approve the notification form letter at Attachment 1.

2. Take no further action, close the file effective (date) and approve the appropriate letters in the following matters:

   a. MUR 4251
   b. MUR 4266
   c. MUR 4271
   d. MUR 4300
   e. MUR 4337
   f. MUR 4345
   g. MUR 4346
   h. MUR 4381
   i. MUR 4400
   j. MUR 4436
   k. MUR 4441
   l. MUR 4618

2/21/97
Date

Lawrence M. Noble
General Counsel

Attachments

1. Form letter
2. Description of low rated cases
3. Referral materials not previously circulated

9704378322 2

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Enforcement Priority System II.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 27, 1997, the Commission decided by a vote of 5-0 to take the following actions in the above-captioned matter:

1. Approve the notification form letter, as recommended in the General Counsel's Report dated February 21, 1997.

2. Take no further action, close the file effective March 5, 1997 and approve the appropriate letters in the following matters:

a.	MUR 4251	g.	MUR 4346
b.	MUR 4266	h.	MUR 4381
c.	MUR 4271	i.	MUR 4400
d.	MUR 4300	j.	MUR 4436
e.	MUR 4337	k.	MUR 4441
f.	MUR 4345	l.	MUR 4618

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

2-27-97
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Fri., Feb. 21, 1997 4:21 p.m.
Circulated to the Commission: Mon., Feb. 24, 1997 11:00 a.m.
Deadline for vote: Thurs., Feb. 27, 1997 4:00 p.m.

lrd

97043783223

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1997

Andrew E. Grisby, Treasurer
The Republican Party of
Dade County
362 Minorca Ave. #102
Coral Gables, FL 33134

RE: MUR 4441

Dear Mr. Grisby:

On August 8, 1996, the Audit Division referred the enclosed matters to the Office of General Counsel involving the Republican Party of Dade County ("Committee") and Andrew E. Grisby, as treasurer, for possible enforcement action. The referral emanated from an audit of the Committee undertaken pursuant to 2 U.S.C. § 438(b). After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the Committee. Accordingly, the Commission closed its file in this matter on March 5, 1997.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

If you have any questions, please contact me at (800)424-9530 or (202) 219-3690.

Sincerely,

Gregory R. Baker
Special Assistant General Counsel

Enclosure

9704378322 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4441

DATE FILMED 4-1-97 CAMERA NO. 4

CAMERAMAN JMN

9704378322 5