UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FEDERAL ELECTION COMMISSION,

Plaintiff,

vs. Case No. 3:10-cv-1155-J-37MCR

SAM KAZRAN,

Defendant.

ORDER

This matter is before the Court on the following:

1. Plaintiff Federal Election Commission's Motion for Partial Summary Judgment (Doc. No. 18), filed July 21, 2011; and
2. Defendant's Verified Opposition to Plaintiff's Motion for Summary Judgment (Doc. No. 38), filed September 29, 2011.

BACKGROUND

This enforcement action was brought by the Federal Election Commission ("FEC"), an independent agency of the United States charged with the administration, interpretation, and civil enforcement of the Federal Election Campaign Act of 1971, as amended (the "Act"), against Defendant Sam Kazran and his business, a defunct car dealership located in Jacksonville, Florida. (Doc. No. 1.) The FEC seeks to hold Kazran liable for a single violation of conduit provision of the Act and the regulations which implement the Act.[1] (*See id.* ¶ 32.)

Kazaran is the former business partner of Congressman Vernon Buchanan. In

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[1] The Court granted Plaintiff's Motion for Default Judgment against the car dealership on October 13, 2011. (Doc. No. 45.)

2004, he purchased a 49 percent ownership interest in a car dealership, Hyundai of North Jacksonville, from Congressman Buchanan. (Doc. No. 19, Ex. A, November 6, 2009 Deposition of Sam Kazran (hereafter "Kazran Dep."), at 68:9-19.) Congressman Buchanan remained the majority owner of the car dealership during the relevant time period.[2] (*Id.*)

The FEC alleges that Hyundai of North Jacksonville reimbursed several of its employees for contributions the employees had made to Congressman Buchanan's 2006 and 2008 Congressional campaigns. (Doc. No. 1, ¶¶ 17-21.) The dealership reimbursed its employees for $16,800 of contributions made in 2005. (*Id.* ¶ 18.) It reimbursed its employees for $32,700 of contributions made in 2006, and for $18,400 of contributions made in 2007. (*Id.* ¶¶ 19-20.) In total, from 2005 until 2007, the dealership reimbursed its employees for making $67,900 in contributions to the Buchanan campaign. (*Id.* ¶ 21.)

The FEC contends Kazran instructed the dealership's employees to make these contributions and authorized the dealership's comptroller to reimburse the employees. (Doc. No. 18, p. 13.) The FEC marshals several pieces of evidence in support of this contention. The first is a letter from Kazran to the FEC in which he says, "I instructed the employees to make these contributions." (Doc. No. 19, July 21, 2011 Declaration of Mark R. Allen (hereafter "Allen Dec."), at ¶ 4, Ex. 1.) Next, the FEC submits to the Court copies of personal checks made payable to the Buchanan campaign from the dealership's employees and their spouses. (*Id.* ¶ 13, Ex. 4.) The FEC also submits to the Court checks

[2] The ownership structure of the car dealership is unclear. Congressman Buchanan retained some interest in the dealership, but the record is murky regarding the length of time Congressman Buchanan retained his majority interest in the car dealership. The record is also murky as to whether individuals besides Congressman Buchanan and Kazran had ownership interests in the dealership. *See, e.g.*, Kazran Dep. 28:7-9 ("Correct. Yes, Vincent Sams, because he was a partner, I spoke freely with him and he was aware.") (emphasis added).

from dealership to its employees in identical or nearly identical amounts as the contribution checks. (*Id.*) The FEC, however, has not submitted checks for half of the alleged conduit contributions which were made in 2006. (*Id.*)

The FEC also relies on a letter it received from an employee of the dealership. (*Id.* ¶ 5, Ex. 2.) The employee told the FEC that Kazran asked her to make a contribution to the Buchanan campaign. (*Id.*) The employee said she received a check from the dealership in the amount of $9,200 and, after the check cleared, she wrote a personal check in the same amount to the Buchanan campaign. (*Id.*) The Buchanan campaign returned this check because the employee was single, however. (*Id.*) The employee then gave the Buchanan campaign a check in the amount of $4,100, which was the maximum contribution permitted at that time. (*Id.*) The employee also wrote a check to another employee of the dealership "to pay him back" for a contribution that that employee had made. (*Id.*)

Further, in a non-verified document entitled "Questions and Answers," Kazran is identified as the person who requested that the dealership reimburse certain employees for their campaign contributions. (*Id.* ¶ 8, Ex. 3.) According to the FEC, it received this document via email from Kazran on October 2, 2009. (*Id.*) In response, Kazran contends, in a verified pleading, that the statements attributed to him in these materials are "gross mischaracterizations." (Doc. No. 38, p. 2.) He further states that he was "tricked into making statements which appear to be self-incriminating by the government." (*Id.* at 1.) Put simply, Kazran contends "he did not say what the government says he said." (*Id.* at 2.)

APPLICABLE STANDARDS

This Court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *accord Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1259 (11th Cir. 2004). The party moving for summary judgment has the burden of proving (1) there is no genuine issue as to any material fact, and (2) it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In determining whether the moving party has satisfied its burden, the Court considers all inferences drawn from the underlying facts in the light most favorable to the party opposing the motion and resolves all reasonable doubts against the moving party. *Anderson*, 477 U.S. at 255. The Court may not weigh conflicting evidence or weigh the credibility of the parties. *Hairston v. Gainesville Sun Pub. Co.*, 9 F.3d 913, 919 (11th Cir. 1993). If a reasonable fact finder could draw more than one inference from the facts and that inference creates an issue of material fact, the court must not grant summary judgment. *Id.*

DISCUSSION

In this enforcement action, the FEC seeks to hold Kazran accountable for the alleged conduit contributions made to the Buchanan campaign by the dealership's employees.[3] The Act's anti-conduit provision is found in Title 2 U.S.C. § 441f. Section 441f makes it unlawful for any person to "make a contribution in the name of another person," "knowingly permit his name to be used to effect such a contribution," or

[3] The Act authorizes the FEC to bring a civil action in this Court upon an affirmative vote of four of its members, which was satisfied in this case, if the FEC "is unable to correct or prevent any violation of this Act." *See* 2 U.S.C. § 437g.

"knowingly accept a contribution made by one person in the name of another person." Section 441f's prohibitions apply to a wide range of "persons," which the Act defines as including "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons." 2 U.S.C. § 431(11). The statute is very broad; it contains no limiting language; and it applies to all contributions made to a candidate for federal office.

On its face, Section 441f proscribes "false name" contributions. Such contributions are made by *A* directly to a campaign, where *A* represents that the contribution is from another person. The contribution can be made with or without obtaining the consent of the person named. With regard to false name contributions, *A*, the original source of funds, violates Section 441f by making the false name donation.

In addition, courts have held that indirect or "conduit" contributions are also proscribed by Section 441. *U.S. v. O'Donnell*, 608 F.3d 546, 556 (9th Cir. 2010).[4] A conduit contribution is an indirect contribution from *A* through *B* to the campaign. *Id.* at 549. Such contribution occurs when *A* solicits *B* to transmit funds to a campaign in *B*'s name, subject to *A*'s promise to advance or reimburse the funds to *B*. *Id.* With regard to conduit contributions, both the original source of funds, *A*, and the conduit, *B*, violate the statute.

In this case, the car dealership is allegedly the original source of funds, *A*, and the car dealership's employees are the conduits, *B*. Kazran is neither *A* nor *B*, so the FEC's theory of liability must rest on something other than a simple direct or conduit contribution.

[4] So far as the Court can ascertain, the Eleventh Circuit has not decided whether Section 441f proscribes conduit contributions.

The FEC does not provide any guidance in its Motion. Rather, the FEC rests its case primarily on certain statements made by Kazran, which the FEC contends conclusively establish that Kazran solicited others to make campaign contributions in their own names and either advanced the money or promised to reimburse them. (Doc. No. 18.) The Court is not persuaded by the FEC's position.

First, Kazran's statements are not judicially binding admissions. In this Circuit, a judicial admission must be "deliberate, clear and unequivocal." *Backar v. W. States Producing Co.*, 547 F.2d 876, 880 n.4 (5th Cir. 1977).[5] Kazran's statements do not rise to that level. It is not clear whether Kazran, who was proceeding without the benefit of counsel before the FEC and (until recently) this Court, understood that he was admitting to liability under the statute. Given that the statements were made to the FEC in the context of an administrative proceeding, he may have made these statements for other reasons, such as, for example, an effort to induce the FEC to enter into some form of settlement agreement. Further, in his pleadings in this case, Kazran carefully circumscribes his admissions, which suggests Kazran may not have realized the importance of his previous statements at the time he made them. (*See, e.g.*, Doc. No. 10, ¶ 18.) In any event, Kazran's statements to the FEC are not conclusive but rather are evidentiary in nature. *See Backar*, 547 F.2d at 880 n.4. Kazran now disputes these statements. (Doc. No. 38, pp. 1-2.) Because the Court may not resolve this evidentiary dispute or weigh Kazran's credibility on summary judgment, it is compelled to deny the FEC's Motion.

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[5] *See Bonner v. Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc) (adopting all decisions of the former Fifth Circuit announced prior to October 1, 1981, as binding precedent in the Eleventh Circuit).

Second, even if the record did not contain disputed issues of fact, the FEC does not articulate in its Motion how it contends Kazran violated Section 441f. As discussed above, Section 441f is a very broad statute. It sweeps many individuals and much conduct within its proscriptions. In view of this breadth, it is incumbent upon the FEC to articulate the theory by which it seeks to hold Kazran accountable under the statute.

The Court infers from the FEC's pleadings that it may be proceeding under at least two separate theories of liability. The FEC may be traveling along on a theory that Kazran knowingly helped or assisted the dealership in making a contribution in the name of another. This conduct, while not proscribed by the plain language of the statute, has been construed by the FEC to be prohibited by Section 441f. *See* 11 C.F.R. § 110.4(b)(iii). The FEC may also be traveling along on the theory that Kazran is liable for the conduit contributions by virtue of his ownership interest in the dealership. The FEC has promulgated regulations which, in effect, treat contributions made by a the dealership as being made by both the dealership and all of its owners. *See* 11 C.F.R. §§ 110.1(e), 110.1(g)(2). The Court is reluctant to grant partial summary judgment on the issue of liability where the FEC's theory of liability is unclear, especially where one theory may suggest that individuals who are not defendants in this enforcement action may have violated the statute as well.[6] Thus, the Court declines to grant the FEC's Motion. *See*

[6] By no means does the Court suggest that the FEC should have brought enforcement action(s) against other individual(s). The FEC, as the federal agency charged by Congress to enforce the Federal Election Campaign Act of 1971, has absolute discretion to decide whether to prosecute violations of Section 441f. *See, e.g.*, *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion"). Further, the FEC's decision not to prosecute violations of the Act is irrelevant to the issue of Kazran's liability under the statute. The Court is mindful, however, of the impact that an

United States v. Certain Real & Personal Property Belonging to Hayes, 943 F.2d 1292, 1297 (11th Cir. 1991) ("A trial court is permitted, in its discretion, to deny even a well-supported motion for summary judgment, if it believes the case would benefit from a full hearing.") (citing *Marcus v. St. Paul Fire & Marine Ins. Co.*, 651 F.2d 379, 382 (5th Cir. Unit B 1981)).

CONCLUSION

In view of the above, Plaintiff Federal Election Commission's Motion for Partial Summary Judgment (Doc. No. 18) is **DENIED**.

DONE AND ORDERED in Chambers in Jacksonville, Florida, on November 15, 2011.

ROY B. DALTON JR.
United States District Judge

ambiguous or imprecise record may have outside of the narrow confines of this case. The prudent course is for the FEC to precisely present its theory or theories of liability, marshal its evidence in support of each theory, and permit Kazran an opportunity to present argument and evidence in opposition.

Copies:

counsel of record