

RECEIVED

By Office of the Commission Secretary at 10:06 am, Apr 03, 2023



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

April 3, 2023

MEMORANDUM

TO: The Commission

THROUGH: Alec Palmer *AP*
Staff Director

FROM: Patricia C. Orrock *PCO*
Chief Compliance Officer

Debbie Chacona *DC*
Assistant Staff Director
Reports Analysis Division

BY: Kristin D. Roser *KDR*
Compliance Branch

SUBJECT: Reason to Believe Recommendation -
Failure to File 48-Hour Notices under the Administrative Fine Program

Attached is the name of a principal campaign committee that has failed to file 48-hour notices with the Commission for contributions of \$1,000.00 or more received from the close of books for the 12-Day Pre-General Report up to 48 hours before the November 8, 2022 General Election in accordance with 52 U.S.C. § 30104(a) and 11 CFR. § 104.5(f). The committee, Dan Franzese for Congress, represents a candidate who lost the General Election. The committee is being referred for failing to file 48-hour notices for contributions totaling \$175,025.00.

A 48-hour notice is required to report all contributions of a \$1,000.00 or more, to any authorized committee of a candidate, including contributions from the candidate, loans from the candidate and other non-bank sources and endorsements or guarantees of loans from banks, as per 11 CFR § 104.5(f).

We have attached an information sheet which includes the contributor name, date of receipt and amount of the contributions for which a 48-hour notice was not filed.

In accordance with the schedule of civil money penalties outlined within 11 CFR § 111.44, this committee should be assessed the civil money penalty so indicated.

Recommendation

1. Find reason to believe that Dan Franzese for Congress and Robert Scott Kiger, in their official capacity as treasurer, violated 52 U.S.C. § 30104(a) and make a preliminary determination that a civil money penalty of \$17,674 be assessed.
2. Send the appropriate letter.

Attachments

Contributions for Which a 48-Hour Notice Was Not Received**AF 4639****Committee ID: C00780056****Committee Name: Dan Franzese for Congress****Report Type: 30-Day Post-General Report (10/20/2022 – 11/28/2022)****48-Hour Reporting Period: 10/20/2022 – 11/05/2022**

CONTRIBUTOR	DATE	AMOUNT
FRANZESE, DANIEL J	10/24/2022	\$175,025.00
	TOTAL	\$175,025.00

Proposed Civil Money Penalty: \$17,674 ((1 Notice Not Filed at \$172) + (10% of the Overall Contributions Not Reported))

Federal Election Commission
Reason to Believe Circulation Report
48-Hour Notification Report

3/30/2023 11:11 AM

AF#	Committee ID	Committee Name	State	Election	Candidate Name	Treasurer	Prev Violations	Notices Not Filed	LOA	Penalty
4639	C00780056	DAN FRANZESE FOR CONGRESS	FL	2022	DANIEL JOHN FRANZESE	ROBERT SCOTT KIGER	0	1	\$175,025	\$17,674

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) AF 4639
 Reason to Believe Recommendation -)
 Failure to File 48-Hour Notices under the)
 Administrative Fine Program: Dan)
 Franzese for Congress and Robert Scott)
 Kiger, in their official capacity as)
 treasurer)

CERTIFICATION

I, Vicktoria J. Allen, Deputy Secretary of the Federal Election Commission, do hereby certify that on April 04, 2023, the Commission decided by a vote of 5-0 to take the following actions in AF 4639:

1. Find reason to believe that Dan Franzese for Congress and Robert Scott Kiger, in their official capacity as treasurer, violated 52 U.S.C. § 30104(a) and make a preliminary determination that a civil money penalty of \$17,674 be assessed.
2. Send the appropriate letter.

Commissioners Broussard, Cooksey, Dickerson, Lindenbaum, and Trainor voted affirmatively for the decision. Commissioner Weintraub did not vote.

Attest:


 April 5, 2023

 Date

Vicktoria J Allen Digitally signed by Vicktoria J Allen
 Date: 2023.04.05 09:47:52 -04'00'

 Vicktoria J. Allen
 Deputy Secretary of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AF

April 5, 2023

Robert Scott Kiger, in official capacity as Treasurer
Dan Franzese for Congress
P.O. Box 2008
Palm Beach, FL 33407

C00780056

AF#: 4639
FINE: \$17,674

Dear Robert Scott Kiger,

The Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101, et seq. ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing the Federal Election Commission (the "Commission" or "FEC") and the Secretary of State, as appropriate, of any contribution of \$1,000 or more, received by any authorized committee of the candidate after the 20th day, but more than 48 hours before, any election. 52 U.S.C. § 30104(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. *Id.* These notification requirements are in addition to all other reporting requirements. 52 U.S.C. § 30104(a). Our records indicate that Dan Franzese for Congress did not submit 48-Hour Notices for contributions of \$1,000 or more, received between October 20, 2022 and November 5, 2022, totaling \$175,025, as required by 52 U.S.C. § 30104(a)(6)(A). Attachment 1.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 52 U.S.C. § 30104(a). 52 U.S.C. § 30109(a)(4). On April 4, 2023, the Commission found that there is Reason to Believe ("RTB") that Dan Franzese for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) by failing to file the 48-Hour Notices. Based on the Commission's schedule of civil money penalties at 11 C.F.R. § 111.44, the amount of your civil money penalty calculated at the RTB stage is \$17,674. Please see the attached copy of the Commission's administrative fine regulations at 11 C.F.R. §§ 111.30-111.55. Attachment 2. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. <http://www.fec.gov/af/af.shtml>. 11 CFR § 111.34. The amount of the civil money penalty is \$172 for each non-filed notice plus 10 percent of the dollar amount of the contributions not timely reported. The civil money penalty increases by 25 percent for each prior violation. Send your payment of \$17,674

DAN FRANZESE FOR CONGRESS

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within forty (40) days of the finding, or by May 14, 2023.

At this juncture, the following courses of action are available to you:

1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty

If you decide to challenge the RTB finding and/or calculated civil money penalty, you must email a written response to the FEC's Office of Administrative Review at administrativefines@fec.gov. Your response must include the AF# (found at the top of page 1 under your committee's identification number) and be received within forty (40) days of the Commission's RTB finding, or May 14, 2023. 11 C.F.R. § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 C.F.R. § 111.36(c).

The FEC will only consider challenges that are based on at least one of three factors: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 C.F.R. § 111.35(b). For a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 C.F.R. § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 C.F.R. § 111.35(d).

If you fail to timely raise a factual argument in your challenge to the RTB finding, your right to present such an argument in an appeal to the U.S. District Court under 52 U.S.C. § 30109 shall be deemed waived. 11 C.F.R. § 111.38.

It should also be noted that, all challenges to an RTB finding and/or calculated civil money penalty should be converted to PDF (Portable Document Format) and emailed to administrativefines@fec.gov. The Commission encourages the use of electronic

DAN FRANZESE FOR CONGRESS

Page 3 of 4

signatures on electronically submitted documents, but scanned copies of ink signatures will be accepted. Electronically submitted challenges will be deemed received on the date they are electronically received by staff.

In addition, if you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge

If you do not pay the calculated civil money penalty and do not submit a written response challenging the RTB finding and/or calculated civil money penalty, the FEC will conclude that the factual allegations are true and make a final determination that Dan Franzese for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, et seq. The Commission may take any and all appropriate action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 C.F.R. § 111.51(a)(2).

3. If You Choose to Pay the Civil Money Penalty

If you decide to pay the calculated civil money penalty, please follow the payment instructions below. Upon receipt of your payment, the FEC will send you a final determination letter.

You may remit payment by Automated Clearinghouse ("ACH") withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit <http://www.fec.gov/af/pay.shtml> to be directed to Pay.gov's Administrative Fine Program Payment form. Please use the details at the top of this letter to complete the required fields.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS

Partial Payments

If you make a payment in an amount less than the calculated civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that

DAN FRANZESE FOR CONGRESS

Page 4 of 4

the Commission assesses upon making a final determination.

Settlement Offers

Any offer to settle or compromise a debt owed to the Commission will be rejected. This includes making a payment in an amount less than the calculated civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assesses upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 52 U.S.C. § 30109(a)(2). Unless you notify the FEC in writing that you wish the matter to be made public, it will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) until it is placed on the public record at the conclusion of this matter in accordance with 11 C.F.R. § 111.42.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Jacqueline Gausepohl in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll-free number (800) 424-9530 (press 0, then ext. 1158) or (202) 694-1158.

On behalf of the Commission,



Dara Lindenbaum
Chair

Contributions for Which a 48-Hour Notice Was Not Received**AF 4639****Committee ID: C00780056****Committee Name: Dan Franzese for Congress****Report Type: 30-Day Post-General Report (10/20/2022 – 11/28/2022)****48-Hour Reporting Period: 10/20/2022 – 11/05/2022**

CONTRIBUTOR	DATE	AMOUNT
FRANZESE, DANIEL J	10/24/2022	\$175,025.00
	TOTAL	\$175,025.00

Proposed Civil Money Penalty: \$17,674 ((1 Notice Not Filed at \$172) + (10% of the Overall Contributions Not Reported))



April 14, 2023

VIA EMAIL: administrativefines@fec.gov

Office of Administrative Review
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: *Dan Franzese for Congress (#C00780056) Civil Monetary Penalty (AF #4639)*

To Whom It May Concern:

On April 5, 2023, the Federal Election Commission notified Dan Franzese for Congress (the "Committee") that it had found reason to believe the Committee failed to file a 48-Hour Notice disclosing a contribution from the candidate to the Committee made on October 24, 2022. As a result of this finding, the Commission determined that a civil monetary penalty in the amount of \$17,674 was owed by the Committee.

The Committee asks the Commission to reconsider the reason-to-believe finding and civil monetary penalty, given additional facts surrounding the failure to file the Notice and subsequently to correct that failure to file. As outlined in the attached declaration, the Committee received a Request for Additional Information on February 5, 2023, which identified three items for which the Commission sought additional information.

Two of the three items involved the filing of 48-Hour Notices (the third item involved the disclosure of a contribution refund not relevant here). The first item described in the RFAI letter noted a potential failure "to file one or more of the required 48-hour notices regarding 'last minute' contributions." The letter did not, however, identify any specific contribution for which a 48-Hour Notice was missing; rather, the missing 48-Hour notice was identified in an attachment to the letter. The second item indicated that the Committee may have filed a duplicate 48-Hour Notice; the specific contribution at issue was identified in the letter.

Upon receipt, I took prompt action to address the RFAI. I printed the RFAI letter, but the attachment to the letter did not appear to have been included when I did so. On February 9, 2023, I filed an amendment and a Form 99 to address both the contribution refund and what I believed to be the single 48-Hour Notice issue. At that point, I believed that I had addressed the matters raised in the RFAI letter. When I later learned that there was a second 48-Hour Notice issue – the failure to file a report – I immediately filed an amended report on April 7, 2023.

If you have any questions about these additional facts, please do not hesitate to contact me at 720-837-4528.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Kiger', with a long horizontal flourish extending to the right.

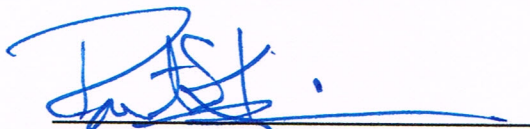
Robert Kiger

DECLARATION OF ROBERT SCOTT KIGER

1. I am the Treasurer for the Dan Franzese for Congress Committee (“Committee”). In this capacity, I am responsible for campaign finance reports required by the Committee.
2. On October 24, 2022, the Committee received a contribution from the candidate in the amount of \$175,025. On October 26, 2022, the Committee received another contribution from the candidate in the amount of \$200,000.
3. On October 28, 2022, I filed, on behalf of the Committee, a 48-Hour Notice of Contributions/Loans Received disclosing the \$200,000 contribution made by the candidate on October 26, 2022 and one other contribution. I also filed, on behalf of the Committee, a 48-Hour Notice on October 26, 2022, disclosing three contributions received by the Committee. The October 24, 2022 contribution from the candidate, in the amount of \$175,025, was inadvertently omitted from these Notices.
4. On or about February 5, 2023, I received a Request for Additional Information seeking information regarding three items:
 - 1) A contribution reported on the Committee’s 30-day Post-General Report for which a 48-Hour Notice had not been filed; the specific contribution was not identified in the RFAI letter but in an attachment to the letter;
 - 2) The refund of a contribution received from Diane Evans; and,
 - 3) Duplicate 48-Hour Notices for a \$1,500 contribution made by Michael Bragman on November 1, 2022.
5. Upon receipt of the RFAI, I took steps to address the items raised. I printed both pages of the RFAI letter, but the attachment did not appear to print. Because the letter

was marked “Page 1 of 2” and “Page 2 of 2” I did not believe I was missing any pages.

6. On February 9, 2023, four days after receiving the RFAI, I filed, on behalf of the Committee, an amendment to address the clarifying the circumstances of the refunded contribution and a Form 99 to address the duplicate 48-Hour Notices. At that point, I believed I had addressed the items raised in the RFAI.
7. With respect to the first item identified in the RFAI, I believed that to be referring to the second, duplicate 48-Hour Notice disclosing the Michael Bragman contribution, which was filed on November 5, 2022. My copy of the printed letter (Attachment A) includes my handwritten note “Filed 11-5” next to that item. Having filed a Form 99 to address that duplicate filing, I believed that item to have been addressed.
8. It was only upon receiving the Commission’s April 5, 2023 letter, notifying the Committee that the Commission had found reason to believe it failed to file a required 48-Hour Notice, that I became aware of the inadvertent failure to include the October 24, 2022 contribution from the candidate on a 48-Hour Notice.
9. On April 7, 2023, I filed, on behalf of the Committee, an amended 48-Hour Notice report, correcting the omission of that contribution on the October 28, 2022 Notice.
10. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 14, 2023.



Robert Scott Kiger, Treasurer
Dan Franzese for Congress



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

February 5, 2023

ROBERT SCOTT KIGER, TREASURER
DAN FRANZESE FOR CONGRESS
PO BOX 2008
PALM BEACH, FL 33407

Response Due Date

03/13/2023

IDENTIFICATION NUMBER: C00780056

REFERENCE: 30 DAY POST-GENERAL REPORT (10/20/2022 - 11/28/2022)

Dear Treasurer:

This letter is prompted by the Commission's preliminary review of the report referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. **Failure to adequately respond by the response date noted above could result in an audit or enforcement action.** Additional information is needed for the following 3 item(s):

1. Schedule A of your report indicates that your committee may have failed to file one or more of the required 48-hour notices regarding "last minute" contributions (to include loans, in-kind contributions, and advances) received by your committee after the close of books for the 12 Day Pre-General Report (see attached). A principal campaign committee must notify the Commission, in writing, within 48 hours of any contribution of \$1,000 or more received between two and twenty days before an election. These contributions are then reported on the next report required to be filed by the committee. To ensure that the Commission is notified of last minute contributions of \$1,000 or more to your campaign, it is recommended that you review your procedures for checking contributions received during the aforementioned time period. The failure to file 48-hour notices may result in civil money penalties or legal enforcement action. (11 CFR § 104.5(f))

If any contribution of \$1,000 or more was incorrectly reported, you must amend your original report with the clarifying information.

2. Schedule B supporting Line 20(a) discloses a refund of a contribution received from Diane Evans. However, it appears that your committee received an original contribution that was designated to a different election than the refund. Please amend the appropriate report(s) to disclose the original contribution or provide clarifying information. (52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) and 11 CFR § 104.3(a) & (b))

1,500

DAN FRANZESE FOR CONGRESS

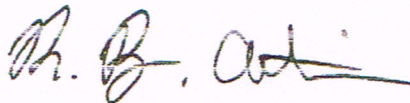
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3. It appears that your committee may have filed duplicate 48-hour notices. Your committee filed two 48-hour notices for the contribution from Michael Bragman on 11/1/2022 for \$1,500.00; however, this contribution is only disclosed once on Schedule A of your report. Please amend your report to include the additional contribution or provide an explanation of the apparent discrepancy. (11 CFR §104.3(a)(4)(i))

Please note, you will not receive an additional notice from the Commission on this matter. Adequate responses must be received by the Commission on or before the due date noted above to be taken into consideration in determining whether audit action will be initiated. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action. **Requests for extensions of time in which to respond will not be considered.**

Electronic filers must file amendments (to include statements, designations and reports) in an electronic format and must submit an amended report in its entirety, rather than just those portions of the report that are being amended. For information about the report review process or specific filing information for your committee type, please visit www.fec.gov/help-candidates-and-committees. For more information about Requests for Additional Information (RAFI), why you received a letter, and how to respond, please visit www.fec.gov/help-candidates-and-committees/request-additional-information. Should you have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1196.

Sincerely,



Bradley Austin

Sr. Campaign Finance & Reviewing Analyst

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 9, 2023

REVIEWING OFFICER RECOMMENDATION OFFICE OF ADMINISTRATIVE REVIEW (“OAR”)

AF# 4639 – Dan Franzese for Congress and Robert Scott Kiger, in their official capacity as Treasurer (C00780056)

Summary of Recommendation

Make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$17,674 civil money penalty.

Reason-to-Believe Background

On April 4, 2023, the Commission found reason to believe (“RTB”) that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file a 48-Hour Notice for one contribution totaling \$175,025 and made a preliminary determination that the civil money penalty was \$17,674 based on the schedule of penalties at 11 C.F.R. § 111.44. A letter was sent to the respondents’ email address of record from the Reports Analysis Division (“RAD”) on April 5, 2023 to notify them of the Commission’s RTB finding and civil money penalty.

Legal Requirements

The Federal Election Campaign Act (“Act”) requires that the principal campaign committee of a candidate notify the Commission, in writing, of any contribution of \$1,000 or more received after the 20th day but more than 48 hours before an election. The principal campaign committee must notify the Commission within 48 hours of receipt of the contribution. The 48-hour notification shall be in addition to all other reporting requirements under the Act. 52 U.S.C. § 30104(a)(6) (A) and 11 C.F.R. § 104.5(f). Reports electronically filed must be received and validated at or before 11:59 pm Eastern Standard/Daylight Time on the filing deadline to be timely filed. 11 C.F.R. §§ 100.19(c) and 104.5(e). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

Summary of Respondents' Challenge

On April 14, 2023, the Commission received the written response (“challenge”) from the respondents. The Treasurer states that the Committee appropriately filed 48-Hour Notices for other contributions received, but the single contribution in question was inadvertently omitted. The Treasurer acknowledges that the reporting issue was contained in a Request for Additional Information (“RFAI”)¹, of which they responded to two of the three cited reporting issues. However, the Committee inadvertently overlooked the relevant item and attachment detailing the contribution in question. Therefore, they were unaware of the missing 48-Hour Notice until receiving the RTB notification in this matter and did not respond to the reporting error until April 7, 2023.

Analysis

The Committee contends it inadvertently failed to file a 48-Hour Notice for the contribution in question and inadvertently failed to timely respond to the related item included in the RFAI sent February 5, 2023. The Reviewing Officer notes that the Commission’s RTB finding in this matter is not dependent on the Committee’s failure to timely respond to the related item in the RFAI. Regardless of the Committee’s response to this item, the 48-Hour Notice for the contribution in question would still be considered not filed for the purpose of this matter. 11 C.F.R. § 111.44

The Reviewing Officer recognizes the Committee may have attempted to comply with reporting requirements and appropriately respond to the RFAI. However, their challenge fails to address any of the three valid grounds at 11 C.F.R § 111.35(b). These are: (i) the RTB finding is based on factual errors; and/or (ii) the improper calculation of the civil money penalty; and/or (iii) they used best efforts to file on time but were prevented from doing so by reasonably unforeseen circumstances that were beyond their control and they filed the report no later than 24 hours after the end of these circumstances. 11 C.F.R. § 111.35(b). Therefore, the Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$17,674.

OAR Recommendations

1. Adopt the Reviewing Officer recommendation for AF# 4639 involving Dan Franzese for Congress and Robert Scott Kiger, in their official capacity as Treasurer, in making the final determination;
2. Make a final determination in AF# 4639 that Dan Franzese for Congress and Robert Scott Kiger, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$17,674 civil money penalty; and
3. Send the appropriate letter.

¹See <https://docquery.fec.gov/pdf/269/202302050300170269/202302050300170269.pdf>.

Attachments

Attachment 1 –

Attachment 2 – Declaration from RAD

Attachment 3 – Declaration from OAR

DECLARATION OF KRISTIN D. ROSER

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission (“Commission”). In my capacity as Chief of the Compliance Branch, I oversee the initial processing of the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. It is the practice of the Reports Analysis Division to document all calls to or from committees regarding a letter they receive or any questions relating to the FECFile software or administrative fine regulations, including due dates of reports and filing requirements.
3. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to Dan Franzese for Congress:
 - A) Request for Additional Information for the Amended 2022 30-Day Post-General Report, dated February 5, 2023, referencing missing 48-Hour Notices (sent via electronic mail to: dan@danforfl.com and rkiger@restoringusa.org);
 - B) Reason-to-Believe Letter, dated April 5, 2023, referencing the missing 48-Hour Notice (sent via electronic mail to: dan@danforfl.com and rkiger@restoringusa.org).
4. I hereby certify that I have searched the Commission’s public records and find that Dan Franzese for Congress filed the missing 48-Hour Notice with the Commission on April 7, 2023.
5. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecoms for the matter have been provided. This declaration was executed on the 28th day of April, 2023.

Kristin D. Roser

Kristin D. Roser
Chief, Compliance Branch
Reports Analysis Division
Federal Election Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

February 5, 2023

ROBERT SCOTT KIGER, TREASURER
DAN FRANZESE FOR CONGRESS
PO BOX 2008
PALM BEACH, FL 33407

Response Due Date
03/13/2023

IDENTIFICATION NUMBER: C00780056

REFERENCE: 30 DAY POST-GENERAL REPORT (10/20/2022 - 11/28/2022)

Dear Treasurer:

This letter is prompted by the Commission's preliminary review of the report referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. **Failure to adequately respond by the response date noted above could result in an audit or enforcement action.** Additional information is needed for the following 3 item(s):

1. Schedule A of your report indicates that your committee may have failed to file one or more of the required 48-hour notices regarding "last minute" contributions (to include loans, in-kind contributions, and advances) received by your committee after the close of books for the 12 Day Pre-General Report (see attached). A principal campaign committee must notify the Commission, in writing, within 48 hours of any contribution of \$1,000 or more received between two and twenty days before an election. These contributions are then reported on the next report required to be filed by the committee. To ensure that the Commission is notified of last minute contributions of \$1,000 or more to your campaign, it is recommended that you review your procedures for checking contributions received during the aforementioned time period. The failure to file 48-hour notices may result in civil money penalties or legal enforcement action. (11 CFR § 104.5(f))

If any contribution of \$1,000 or more was incorrectly reported, you must amend your original report with the clarifying information.

2. Schedule B supporting Line 20(a) discloses a refund of a contribution received from Diane Evans. However, it appears that your committee received an original contribution that was designated to a different election than the refund. Please amend the appropriate report(s) to disclose the original contribution or provide clarifying information. (52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) and 11 CFR § 104.3(a) & (b))

DAN FRANZESE FOR CONGRESS

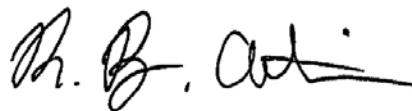
Page 2 of 2

3. It appears that your committee may have filed duplicate 48-hour notices. Your committee filed two 48-hour notices for the contribution from Michael Bragman on 11/1/2022 for \$1,500.00; however, this contribution is only disclosed once on Schedule A of your report. Please amend your report to include the additional contribution or provide an explanation of the apparent discrepancy. (11 CFR §104.3(a)(4)(i))

Please note, you will not receive an additional notice from the Commission on this matter. Adequate responses must be received by the Commission on or before the due date noted above to be taken into consideration in determining whether audit action will be initiated. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action. **Requests for extensions of time in which to respond will not be considered.**

Electronic filers must file amendments (to include statements, designations and reports) in an electronic format and must submit an amended report in its entirety, rather than just those portions of the report that are being amended. For information about the report review process or specific filing information for your committee type, please visit www.fec.gov/help-candidates-and-committees. For more information about Requests for Additional Information (RAI), why you received a letter, and how to respond, please visit www.fec.gov/help-candidates-and-committees/request-additional-information. Should you have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1196.

Sincerely,



Bradley Austin

Sr. Campaign Finance & Reviewing Analyst

436

Missing 48-Hour Notices
Dan Franzese for Congress (C00780056)

Contributor Name	Date	Amount	Election
Franzese, Daniel J	10/24/22	\$175,025.00	G2022

DECLARATION OF RHIANNON MAGRUDER

- 1) I am the Reviewing Officer in the Office of Administrative Review for the Federal Election Commission (“Commission”). In my capacity as Reviewing Officer, I conduct research with respect to all challenges submitted in accordance with the Administrative Fine program.
- 2) The principal campaign committee of a candidate must file notifications disclosing contributions of \$1,000 or more which are received after the 20th day but more than 48 hours before an election. These notifications (also called 48-Hour Notices) must be filed with the Commission within 48 hours of the committee’s receipt of the contribution(s).
- 3) I hereby certify that I have searched the Commission’s public records and find that Dan Franzese for Congress did not file the required 48-Hour Notice for the contribution included in the Commission’s April 4, 2023 RTB finding until April 7, 2023.
- 4) The documents identified herein are the true and accurate copies of:
 - a) 48-Hour Notice filed by Dan Franzese for Congress on April 7, 2023.
- 5) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 9th day of June, 2023.

Rhiannon Magruder
Rhiannon Magruder
Reviewing Officer
Office of Administrative Review
Federal Election Commission

48-HOUR NOTICE OF CONTRIBUTIONS/LOANS RECEIVED

(See Reverse Side for Instructions)

To be used to report all contributions (including loans) of \$1000 or more, received within 20 days of the election.

1. NAME OF COMMITTEE IN FULL DAN FRANZESE FOR CONGRESS			
ADDRESS (number and street) PO BOX 2008			
CITY PALM BEACH	STATE FL	ZIP CODE 33407	
2. NAME OF CANDIDATE Franzese, Daniel, J, ,		3. OFFICE SOUGHT (State and District) House FL 22	
4. FEC IDENTIFICATION NUMBER C00780056			
5. IS THIS AN AMENDMENT? <input type="checkbox"/> NO, THIS IS A NEW FILING <input checked="" type="checkbox"/> YES, IT AMENDS THE NOTICE FILED ON <u>10</u> / <u>28</u> / <u>2022</u>			
A. FULL NAME Javits, Eric, , ,			
MAILING ADDRESS 150 Bradley Place #407		Name of Employer Retired	
CITY Palm Beach	STATE FL	ZIP CODE 33480	Date (month, day, year) 10/27/2022
		Transaction ID : F6.6079	
		Occupation Diplomat	
Amount 1000.00			
B. FULL NAME Franzese, Daniel, J, ,			
MAILING ADDRESS 3140 S Ocean Blvd. Apt. 207-S		Name of Employer Self	
CITY Palm Beach	STATE FL	ZIP CODE 33480	Date (month, day, year) 10/24/2022
		Transaction ID : F6.6271	
		Occupation Candidate	
Amount 175025.00			
C. FULL NAME Franzese, Daniel, J, ,			
MAILING ADDRESS 3140 S Ocean Blvd. Apt. 207-S		Name of Employer Self	
CITY Palm Beach	STATE FL	ZIP CODE 33480	Date (month, day, year) 10/26/2022
		Transaction ID : F6.6081	
		Occupation Candidate	
Amount 200000.00			
D. FULL NAME			
MAILING ADDRESS		Name of Employer	
CITY	STATE	ZIP CODE	Date (month, day, year)
		Occupation	
Amount			
E. FULL NAME			
MAILING ADDRESS		Name of Employer	
CITY	STATE	ZIP CODE	Date (month, day, year)
		Occupation	
Amount			
SIGNATURE (optional) Kiger, Robert, , ,		DATE 04/07/2023	
[Electronically Filed]		For further information contact: Federal Election Commission 999 E Street, NW, Washington, DC 20463 Toll Free 800-424-9530, Local 202-694-1100	

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Any information copied from reports and statements filed under the Federal Election Campaign Act may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes other than using the name and address of any political committee to solicit contributions from such committee.

FEC FORM 6

(Revised 03/2016)



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 9, 2023

Robert Scott Kiger, in official capacity as Treasurer
Dan Franzese for Congress
PO Box 2008
Palm Beach, FL 33480

C00780056
AF# 4639

Dear Treasurer:

On April 4, 2023, the Federal Election Commission (“the Commission”) found reason to believe (“RTB”) that Dan Franzese for Congress and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to timely file a 48-Hour Notice for one contribution totaling \$175,025. The Commission also made a preliminary determination that the civil money penalty was \$17,674 based on the schedule of penalties at 11 C.F.R. § 111.44.

After reviewing your written response and any supplemental information submitted by you and Commission staff, the Reviewing Officer has recommended that the Commission make a final determination. A copy of the Reviewing Officer’s recommendation is attached.

You may file with the Commission Secretary a written response to the recommendation within 10 days of the date of this letter. Please note, all written responses and supporting documentation should be converted to PDF (Portable Document Format) and emailed to the Commission Secretary at secretary@fec.gov. The Commission encourages the use of electronic signatures on electronically submitted documents, but scanned copies of ink signatures will be accepted. Electronically submitted responses will be deemed received on the date it is electronically received by staff. Please include the AF # in your response. Your response may not raise any arguments not raised in your original written response or not directly responsive to the Reviewing Officer’s recommendation. 11 C.F.R. § 111.36(f). The Commission will then make a final determination in this matter.

Please contact me at the toll free number 800-424-9530 (press 0, then press 1660) or 202-694-1158 if you have any questions.

Sincerely,

Rhiannon Magruder

Rhiannon Magruder
Reviewing Officer
Office of Administrative Review

**RECEIVED**

By Office of the Commission Secretary at 7:40 pm, Jun 20, 2023

June 18, 2023

VIA EMAIL: secretary@fec.gov

Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: *Dan Franzese for Congress (#C00780056) Civil Monetary Penalty (AF #4639)
Response to Reviewing Officer's Recommendation*

On June 9, 2023, the Office of Administrative Review notified me, in my official capacity as Treasurer of Dan Franzese for Congress (the "Committee"), of its recommendation to the Commission to assess a civil monetary penalty in the amount of \$17,674 for failure to timely file a 48-Hour Notice disclosing a contribution from the candidate to the Committee on October 24, 2022.

As explained in my response to the Office of Administrative Review on April 14, 2023, the Request for Addition Information ("RFAI") letter I received from the Commission on or about February 5, 2023, did not identify the candidate's contribution. Instead, the candidate's contribution was listed in an attachment that appeared not to have been included with the RFAI letter when I printed it. If I had known of the failure to file a 48-Hour Notice to disclose the candidate's contribution, I would have filed an amended 48-Hour Notice at that time.

I made a good-faith effort to comply with the RFAI. As stated in my declaration, I only became aware of this inadvertent omission after receiving the Commission's letter dated April 5, 2023, notifying me that it found a reason to believe that the Committee failed to file a 48-Hour Notice for the candidate's contribution. Upon receipt of that letter, I promptly cured the matter by filing an amended 48-Hour Notice report on April 7, 2023.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Robert Scott Kiger', is written over a horizontal line.

Robert Scott Kiger, Treasurer
Dan Franzese for Congress



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

October 11, 2023

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Rhiannon Magruder *RM*
Reviewing Officer
Office of Administrative Review

Subject: Final Determination Recommendation in AF# 4639 – Dan Franzese for Congress and Robert Scott Kiger, in their official capacity as Treasurer (C00780056)

On April 4, 2023, the Commission found reason to believe (“RTB”) that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file a 48-Hour Notice for one contribution from the Candidate, totaling \$175,025, and made a preliminary determination that the civil money penalty was \$17,674 based on the schedule of penalties at 11 C.F.R. § 111.44. On April 14, 2023, the Commission received their written response (“challenge”). After reviewing the challenge, the Reviewing Officer Recommendation (“ROR”) dated June 9, 2023 was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference.

The Committee contends it inadvertently failed to file a 48-Hour Notice for the contribution in question and inadvertently failed to timely respond to the related item included in the Reports Analysis Division’s Request for Additional Information (“RFAI”) sent February 5, 2023. The Reviewing Officer recognized the Committee may have attempted to comply with reporting requirements and appropriately respond to the RFAI. However, their challenge failed to address any of the three valid grounds at 11 C.F.R § 111.35(b). Therefore, the Reviewing Officer recommended that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$17,674. *See* ROR.

Within 10 days of transmittal of the recommendation, the respondents may file a written response with the Commission Secretary which may not raise any arguments not raised in their

challenge or not directly responsive to the ROR. 11 C.F.R. § 111.36(f). The Treasurer submitted a response reiterating the points made in the original challenge. *See* Attachment 1.

The Reviewing Officer considered the response, and the Reviewing Officer's recommendations are unchanged. The Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a civil money penalty of \$17,674.

OAR Recommendations

1. Adopt the Reviewing Officer recommendation for AF# 4639 involving Dan Franzese for Congress and Robert Scott Kiger, in their official capacity as Treasurer, in making the final determination;
2. Make a final determination in AF# 4639 that Dan Franzese for Congress and Robert Scott Kiger, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$17,674 civil money penalty; and
3. Send the appropriate letter.

BEFORE THE FEDERAL ELECTION COMMISSION


In the Matter of)
) AF 4639
 Final Determination Recommendation:)
 Dan Franzese for Congress and Robert)
 Scott Kiger, in their official capacity as)
 Treasurer (C00780056))

CERTIFICATION

I, Laura E. Sinram, Secretary and Clerk of the Federal Election Commission, do hereby certify that on October 18, 2023, the Commission decided by a vote of 5-0 to take the following actions in AF 4639:

1. Adopt the Reviewing Officer recommendation for AF# 4639 involving Dan Franzese for Congress and Robert Scott Kiger, in their official capacity as Treasurer, in making the final determination.
2. Make a final determination in AF# 4639 that Dan Franzese for Congress and Robert Scott Kiger, in their official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$17,674 civil money penalty.
3. Send the appropriate letter.

Commissioners Broussard, Cooksey, Dickerson, Lindenbaum, and Trainor voted affirmatively for the decision. Commissioner Weintraub did not vote.


 October 19, 2023

 Date

Attest:
Laura e Sinram
 Digitally signed by Laura e Sinram
 Date: 2023.10.19 08:46:56 -04'00'

 Laura E. Sinram
 Secretary and Clerk of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 27, 2023

Robert Scott Kiger, in official capacity as Treasurer
Dan Franzese for Congress
P.O. Box 2008
Palm Beach, FL 33407

C00780056
AF# 4639
FINE: \$17,674

Dear Robert Scott Kiger:

On April 4, 2023, the Federal Election Commission (the “Commission” or “FEC”) found reason to believe (“RTB”) that Dan Franzese for Congress and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to file a 48-Hour Notice for one contribution totaling \$175,025. By letter dated April 5, 2023, the Commission sent notification of the RTB finding that included a civil money penalty calculated at \$17,674 in accordance with the schedule of penalties at 11 C.F.R. § 111.43. On April 14, 2023, the Office of Administrative Review received your written response challenging the RTB finding.

The Reviewing Officer reviewed the Commission’s RTB finding with its supporting documentation and your written response. Based on this review, the Reviewing Officer recommended that the Commission make a final determination that Dan Franzese for Congress and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a), and assess a civil money penalty in the amount of \$17,674 in accordance with 11 C.F.R. § 111.43. The Reviewing Officer Recommendation was sent to you on June 9, 2023.

On October 18, 2023, the Commission adopted the Reviewing Officer’s recommendation and made a final determination that Dan Franzese for Congress and you, in your official capacity as Treasurer, violated 52 U.S.C. § 30104(a), and assessed a civil money penalty in the amount of \$17,674. A copy of the Final Determination Recommendation is attached.

At this juncture, the following courses of action are available to you:

1. If You Choose to Appeal the Final Determination and/or Civil Money Penalty

If you choose to appeal the final determination, you must submit a written petition requesting that the final determination be modified or set aside. This request must be made within

thirty (30) days of receipt of this letter and sent to the U.S. District Court for the district in which the committee or you reside or transact business. *See* 52 U.S.C. § 30109(a)(4)(C)(iii). If you did not timely raise a factual argument in a challenge to the Commission’s RTB finding, your right to present such an argument in an appeal to the U.S. District Court under 52 U.S.C. § 30109 shall be deemed waived. 11 C.F.R. § 111.38.

2. If You Choose to Not Pay the Civil Money Penalty and to Not Appeal

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 (“DCA”), as amended by the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, *et seq.* If you do not pay this debt within thirty (30) days and do not appeal the Commission’s final determination to the U.S. District Court (see above), the Commission will transfer the debt to the U.S. Department of the Treasury (“Treasury”) for collection. Treasury will contact you to request payment within five (5) days of the receiving the debt. Treasury currently charges a fee of 30% of the civil money penalty amount for its collection services. If the age of the debt is greater than or equal to two years old, Treasury will charge a fee of 32% of the civil money penalty amount for its collection services. The fee will be added to the amount of the civil money penalty that you owe. Should Treasury’s attempts fail, Treasury will refer the debt to a private collection agency. If the debt remains unpaid, Treasury may recommend that the Commission refer the matter to the Department of Justice for litigation.

Actions which may be taken by Treasury to enforce recovery of a delinquent debt may also include: (1) offset of any payments, which the debtor is due, including tax refunds and salary; (2) referral of the debt to agency counsel for litigation; (3) reporting of the debt to a credit bureau; (4) administrative wage garnishment; and (5) reporting of the debt, if discharged, to the IRS as potential taxable income. In addition, under the provisions of DCIA and other statutes applicable to the FEC, the debtor may be subject to the assessment of other statutory interest, penalties, and administrative costs.

In accordance with the DCIA, at your request, the agency will offer you the opportunity to inspect and copy records relating to the debt, the opportunity for a review of the debt, and the opportunity to enter into a written repayment agreement.

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the civil money penalty, please follow the payment instructions below. You should make payment within thirty (30) days of receipt of this letter.

You may remit payment by Automated Clearinghouse (“ACH”) withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government’s secure portal for online collections. Visit www.fec.gov/af/pay.shtml to be directed to Pay.gov’s Administrative Fine Program Payment form. Please use the details above to complete the required fields.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS**Partial Payments**

If you make a payment in an amount less than the civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assessed upon making a final determination.

Settlement Offers

Any offer to settle or compromise a debt owed to the Commission will be rejected. This includes a payment in an amount less than the civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assessed upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

The confidentiality provisions at 52 U.S.C. § 30109(a)(12) no longer apply and this matter is now public. Pursuant to 11 C.F.R. §§ 111.42(b) and 111.20(c), the file will be placed on the public record within thirty (30) days from the date of this notification.

If you have any questions regarding this matter, please contact Rhiannon Magruder on our toll-free number (800) 424-9530 (press 0, then ext. 1158) or (202) 694-1158.

On behalf of the Commission,



Dara Lindenbaum
Chair