



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

Case Number ADR 088  
Source MUR 5291  
Case Name Mark Fleisher

### **NEGOTIATED SETTLEMENT**

This matter was initiated by a signed, sworn and notarized complaint filed by Maureen T. Schneider. Following a review of the record and in an effort to promote compliance with the Federal Election Campaign Act of 1971, as amended ("the FECA"), and to resolve this matter, the Federal Election Commission ("the Commission") entered into negotiations with Mark Fleisher on behalf of MarkFleisher.com, Mark Fleisher and Frank T. Costanzo, Treasurer ("the Respondents"). It is understood that this agreement will have no precedential value relative to any other matters coming before the Commission.

Negotiations between the Commission and the Respondents have addressed all the issues raised in this matter. The parties have agreed to resolve the matter according to the following terms:

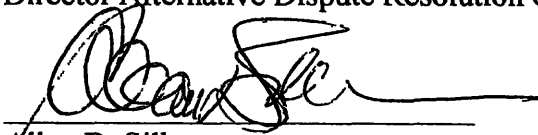
- 1 The Commission has entered into this agreement as part of its responsibility for administering the Federal Election Campaign Act and in an effort to promote compliance of the FECA on the part of the Respondents. The Commission's use of ADR procedures is authorized in "The Administrative Dispute Resolution Act of 1996", 5 U.S.C. § 572 and is an extension of 2 U.S.C. § 437g.
2. The Respondents have voluntarily entered into this agreement with the Commission.
- 3 The complaint alleges that the Respondents failed to file, in a timely fashion, a *Statement of Candidacy* formally acknowledging the candidacy of Mark Fleisher for Arizona's 7<sup>th</sup> Congressional District. Each candidate for Federal office shall designate in writing, within 15 days of becoming a candidate, a political committee to serve as the principal campaign committee of the candidate. 2 U.S.C § 432(e)(1).
- 4 The complaint further alleges that Respondents exceeded the \$5,000 contribution and/or expenditure threshold that require political committees to file reports with the Commission. An individual is a candidate for elected Federal office when their campaign activity exceeds in the aggregate \$5,000 in contributions or expenditures 2 U S C. § 431(2)(A)
- 5 Respondents contend that the complaint is without merit. They maintain that they filed the *Statement of Candidacy* once the candidate declared his candidacy on January 14, 2002 and mailed the Statement timely after they were unable to file the document electronically. Respondents further argue that funds raised prior to January 14, 2002 were for "testing the water" in accordance with the provisions of 11 C.F.R. § 100.7(b)(1).

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6. Review of documents filed by the Respondents confirms the receipt of a *Statement of Candidacy* on February 20, 2002, though dated January 30, 2002. Respondents' *Report of Receipts and Disbursements*, dated 4/12/02, records funds received and expenditures for the period from 1/1/01 through 3/31/02. Contributions received and disbursements made prior to the date of the candidate's declaration of candidacy, though in excess of \$5,000, were appropriate "testing the water" expenditures as provided in the regulations, 11 C.F.R. § 100.7(b)(1) and § 100.8(b)(1). The Commission's records also confirm that once the Candidate decided to launch his candidacy, the required financial reports, covering the prior period, were filed in a timely manner.
7. In an effort to conclude this matter, the Respondents acknowledge that the Statement of Candidacy should have been filed by January 29, 2002 and accept an admonishment for the late filing. Based on a review of the referenced documents, the ADR Office concludes that the allegation that Respondents exceeded the reporting threshold is unsubstantiated. The ADR Office has determined that the aforementioned resolutions conclude this matter and the Commission concurs by dismissing this matter.
8. This agreement will become effective on the date signed by all the parties and approved by the Commission.
9. This Negotiated Settlement constitutes the entire agreement between the parties on ADR 088/MUR 5291 and effectively resolves this matter. No other statement, promise or agreement, either written or oral, made by either party, not included herein, shall be enforceable.


FOR THE COMMISSION:

Allan D. Silberman,  
Director Alternative Dispute Resolution Office

  
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Allan D. Silberman

June 14, 2003  
Date

FOR THE RESPONDENTS.

  
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Mark Fleisher, on behalf of MarkFleisher.com,  
and Frank Costanzo, Treasurer

June 10, 2003  
Date

13.19.025.2155