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Case number: ADR 150  
Source: RAD 03L-05  
Case Name: Citizens Committee  
for Gilman for Congress

### NEGOTIATED SETTLEMENT

This matter was initiated by the Federal Election Commission ("the Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Following a review of the record and in an effort to promote compliance with the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), and to resolve this matter, the Commission entered into negotiations with Donald F. McGahn II, Esq. on behalf of Citizens Committee for Gilman for Congress ("the Committee") and Murray M. Rosen, 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 with the FECA on the part of the Respondent. The Commission's use of ADR procedures is authorized by "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. Respondents received one hundred and forty-two (142) excessive contributions from one hundred and two (102) individuals and five (5) political committees totaling \$78,469, all of which were designated for the 2002 General Election. The candidate, who for thirty years represented the Twentieth District of New York, lost his seat due to reapportionment. As a result, the candidate on July 2, 2002, withdrew prior to the Primary Election. The Committee failed to refund or redesignate any of the aforementioned contributions. The Committee also apparently spent the contributions that were designated for the 2002 General Election.
4. Respondents contend that they had disclosed information regarding re-designations of contributions, provided copies of refund checks, refunded all remaining campaign funds and amended their reports appropriately. They noted that the Committee had closed its offices and had no funds in its accounts with which to make further refunds.
5. No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of 2 U.S.C. § 441a. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitation imposed on contributions and expenditures under 2 U.S.C. § 441a(f)

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6. If the candidate, or his or her authorized committee(s), receives contributions prior to the date of any primary election, which contributions are designated in writing by the contributor for use in connection with the general election, such candidate or such committee(s) shall use an acceptable accounting method to distinguish between contributions received for the primary election and contributions received for the general election. 11 C.F.R. § 102.9(e).
7. The treasurer shall be responsible for examining all contributions received for evidence of illegality and for ascertaining whether contributions received, when aggregated with other contributions from the same contributor exceed contribution limitations. 11 C.F.R. 103.3(b). In case of excessive contributions, the treasurer shall have sixty (60) days from the date of receipt to refund, reattribute or re-designate the subject contributions. 11 C.F.R. §§ 110.1(b)(5), 110.2(b)(5) and 110.1(k)(3).
8. If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded in accordance with 11 C.F.R. § 110.1(b)(5) or § 110.2(b)(5) or reattributed in accordance with 11 C.F.R. § 110.1(k)(3) within sixty (60) days as appropriate. 11 C.F.R. § 102.9(e).
9. In order to resolve this matter and enable Respondents to conclude the activities of the Committee, Respondents agree to: 1) work with the Reports Analysis Division to amend and conclude the Committee's reporting obligation; 2) to file, thereafter, for termination; and 3) pay a civil penalty of \$25,000.
10. Respondents agree that all information provided to resolve this matter is true and accurate to the best of their knowledge and that they sign this agreement under penalty of perjury pursuant to 28 U.S.C. § 1746.
11. The parties agree that if the Respondents fail to comply with the terms of this settlement, the Commission may undertake civil action in the U.S. District Court for the District of Columbia to secure compliance and/or forward any outstanding civil penalty to the U.S. Treasury for collection.
12. This agreement will become effective on the date signed by all parties and approved by the Commission. Respondents shall comply with the terms of this settlement within thirty (30) days of the effective date of the agreement, and make payment pursuant to the following schedule:
  - \$4,000 on August 1, 2004
  - \$4,000 on September 1, 2004
  - \$4,000 on October 1, 2004
  - \$4,000 on November 1, 2004
  - \$4,000 on December 1, 2004
  - \$5,000 on January 2, 2005
13. This Negotiated Settlement constitutes the entire agreement between the parties on ADR 150/RAD 03L-05 and effectively resolves this matter between the Committee and Commission. No other statement, promise or Agreement, either written or oral, made by either party, not included herein, shall be enforceable.

FOR THE COMMISSION:

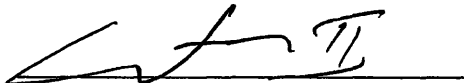
Allan D. Silberman,  
Director of Alternative Dispute Resolution Office



Allan D. Silberman

7-8-04  
Date

FOR THE RESPONDENTS:



Donald F. McGahn II, Esq.  
Attorney for Citizens Committee for Gilman  
for Congress

6-28-04  
Date

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