



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Silberman

SENSITIVE

DATE & TIME OF TRANSMITTAL: Monday, March 01, 2004 11:00

BALLOT DEADLINE: Thursday, March 04, 2004 4:00

COMMISSIONER: MASON, McDONALD, SMITH, THOMAS, TONER, WEINTRAUB

SUBJECT: **Case for ADR Activation ADR 156/RAD 04-02.
Memorandum from the Director, ADR Office
dated February 26, 2004.**

I approve the recommendation(s)
 I object to the recommendation(s)
 I am recused from voting.

COMMENTS: _____

DATE: _____ SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the Commission Secretary. Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION



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Federal Election Commission
Washington, DC 20463

2004 MAR - 1 A 9:09

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director, ADR Office

BY: Lynn M. Fraser
Assistant Director, ADR Office

SUBJECT: Case for ADR Activation

DATE: February 26, 2004

SENSITIVE

On February 9, 2004 the ADR Office received from RAD the following case to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 156/RAD 04-02, Conservative Leadership PAC and David Fenner, Treasurer, is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 156/RAD 04-02: Respondents failed to disclose contributor information for 244 of 310 (78.7%) of contributions from individuals itemized on reports covering the 2001-2002 election cycle. Respondents also failed to file an amended Statement of Organization when their address changed and to provide adequate purposes for \$51,816.60 in disbursements on Schedule B (Line 21(b)) disclosed during the same period. RAD sent several Requests for Additional Information (RFAs) to Respondents which the Respondents did not reply to. RAD staff communicated with Respondents by telephone, and subsequently, Respondents attempted to file amended paper reports in July 2003. RAD staff explained to Respondents that they met the electronic filing threshold in 2001, which requires them to file electronically. Paper reports are no longer reviewed for those committees required to file electronically. RAD noted that the amended reports did not address the violations cited in the RFAs.

Attached for the Commission's review is the ADR Case Analysis Report (CAR) on ADR 156, along with the ADR Rating report. The CAR includes an analysis of the case and a description of the issues that the ADR Office anticipates addressing once the case is assigned to ADR. In addition, the CAR has been reviewed by OGC, which concurs in the description of the case.

Recommendation: We recommend that ADR 156/RAD 04-02 be assigned to the ADR Office for processing.

ADR CASE ANALYSIS REPORT

ADR Case: 156

Respondents:

Conservative Leadership PAC

David Fenner, Treasurer

RAD Referral: RAD 04-02

Respondent's Rep.:

David Fenner, Treasurer

Date Forwarded to ADRO: 2/09/04

Committee Type: Qualified Non-Party

Date Reviewed by ADRO: 02/13/04

Committee Name:

Conservative Leadership PAC

District & State: N/A

Election Cycle: 2002

Summary of Referral: Respondents failed to disclose contributor information for 244 of 310 (78.7%) contributions from the individuals disclosed on reports covering the 2001-2002 election cycle. Respondents also failed to file an amended Statement of Organization when Respondent's address changed, and failed to provide an adequate purpose for \$51,816.60 in disbursements to five vendors disclosed during the same period.

Alleged Violations: 2 U.S.C. §§ 433(c), 434(b)(3)(A), 434(b)(5)(A), 11 C.F.R. §§ 100.12, 104.3(b)(3)(i), 104.7(b), 104.8(a)

Respondent's Reply to RAD: Respondents did not respond to Requests for Additional Information (RFAs) sent to the last known address for Respondents. When the RAD analyst finally reached the Respondents by telephone Respondents stated they had not received any letters from the Commission as their address had changed. In a subsequent telephone conference with Respondents, the RAD analyst explained to Respondents that the paper amendments to the 2001 Mid-Year and Year-End reports would not be acceptable as the committee met the threshold in 2001 and must file electronically. Additionally, the RAD analyst clarified for Respondents that the paper amendments filed by Respondents did not address the two issues raised in the RFAs sent to Respondents.

Issues:

- Failure to file an amended Statement of Organization reflecting a change of address, 2 U.S.C. § 433(c), 11 C.F.R. § 102.2(a)(2)
- Failure to disclose contributor information or demonstrate “best efforts” to obtain the information 2 U.S.C. § 434(b)(3)(A), 11 C.F.R. §§ 100.12, 104.7(b), 104.8(a)
- Failure to disclosed an adequate purpose for disbursements to five vendors 2 U.S.C. § 434(b)(5)(A), 11 C.F.R. § 104.3(b)(3)(i)

Related FEC Experience/Guidance: The federal regulations define what constitutes “best efforts” to obtain the contributor employer and occupation information required in the Act. While there are several AOs that address “best efforts” by a committee, those efforts referred to other aspects of the FECA. None of the AOs identified addressed the requirement to obtain relevant information from individual contributors. There were several closed matters in which not disclosing the information about individual contributors was one of the violations cited. In those matters the penalties ranged from simply closing the matter, to an admonishment or civil penalty.

Equally clear in the Act and federal regulations is the required disclosure of the *purpose* of operating expenditures if the aggregate disbursement to the payee is more than \$200 within the calendar year. As in the issue of “best efforts,” the regulations define and clarify “purpose,” even providing examples which meet the requirement.

Analysis: The relevant reports filed by Respondents for calendar year 2001 noted “Information Requested” for Name of Employer and Occupation on most of the individual contributions. The information on a few contributors disclose that the individual is retired or a housewife. The RFAIs sent to Respondents explain that the committee must demonstrate “best efforts” to obtain the information not disclosed. In addition, the RFAIs and the discussions with the RAD analyst informed Respondents that the federal statute and regulations require an explanation for each operating expenditure in excess of \$200 within the calendar year.

ADR Recommendation: Assign to the ADRO