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Federal Election Commission
Washington, DC 20463

SENSITIVE

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: April 30, 2004

On April 2, 2004, the ADR Office received from OGC/CELA the following case to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 163 (MUR 5368), is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 163 (MUR 5368): Complainant alleges that Respondents knowingly and willfully filed false disclosure reports before and after the special election held in the 1st Congressional District of Oklahoma on January 8, 2002. Specifically, Complainant alleges that Respondents tried to mislead the public on its financial status by failing to accurately report its debts. The complaint stated that Respondents eventually filed amended reports to disclose some, but not all debt, owed to Complainant. In addition, even when the aggregate of debt was reported on the summary page, Respondents often failed to itemize the debt on Schedules C or D as required by the regulations.

Respondents contend that Complainant misread the first Pre-General Report filed on December 27, 2001. The debt owed by Respondents was reported as \$141,911 on that report. In addition, Respondents stated that an audit was done during the same time period, and nothing was noted in the audit about errors in the reports filed. Respondents further contend that their software had glitches which failed to correctly identify debts. Respondents stated they never intentionally filed false reports, and the amount of the debt owed to Complainant was in dispute.

Attached for the Commission's review is the *ADR Case Analysis Report* on **ADR 163**, along with copies of the EPS Rating and ADR Rating reports. The *ADR Case Analysis Report* includes an analysis of the case and a description of the issues that the ADR Office anticipates addressing if the case is assigned to ADR. In addition, the *ADR Case Analysis Report* has been reviewed by OGC, which concurs in the description of the case.

Recommendation: We recommend that **ADR 163 (MUR 5368)** be assigned to the ADR Office for processing.

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ADR CASE ANALYSIS REPORT

ADR Case: 163

Respondents: John Sullivan for Congress
Gregory T. Colpitts, Treasurer
John Sullivan

MUR: 5368

OGC Case Open Date: 06/09/2003

Respondent's' Rep.: Benjamin I. Ginsberg, Esq.

Date Forwarded to ADRO: 04/02/2004

Committee Name: John Sullivan for Congress

Date Reviewed by ADRO: 04/23/2004

Committee Type: Authorized

District #/or State: OK CD #1

Election - Won/Lost: Won (Special Election)

Election Cycle: 2002

Summary of Complaint: Complainant alleges that Respondents knowingly and willfully filed false disclosure Pre-General and Post-General Reports before and after the special election held in the 1st Congressional District of Oklahoma on January 8, 2002. Specifically, Complainant alleges that Respondents tried to mislead the public on its financial status by failing to accurately report its debts. Complainant provided political consultation services to Respondents pursuant to a contract. Complainant contends he was not paid in a timely manner and that Respondents failed to report the debt to the Commission. The complaint stated that Respondents eventually filed amended reports to disclose some, but not all debt, owed to Complainant. In addition, even when the aggregate of debt was reported on the summary page, Respondents often failed to itemize the debt on Schedules C or D as required by the regulations. Complainant was unable, in those cases, to ascertain what debt was included in the total.

Violations Alleged: 2 U.S.C. § 434(b)(8), 11 C.F.R. §§ 104.3(d), 104.11, 116.10(a)

Respondents' Reply: Respondents contend that Complainant misread the first Pre-General Report filed on December 27, 2001, and actually debt owed by Respondents was reported as \$141,911. In addition, Respondents stated that an audit was done during the same time period and nothing was noted in the audit about errors in the reports filed. Respondents further contend that there were errors with their software, that they never intentionally filed false reports, and the amount of the debt owed to Complainant was in dispute.

Issues:

- Reporting the amount and nature of outstanding debts and obligations 2 U.S.C. § 434(b)(8), 11 C.F.R. §§ 104.3(d), 104.11
- Reporting disputed debt 11 C.F.R. § 116.10(a)

Related FEC Experience/Guidance: The FECA and regulations are fairly straight forward as to the reporting of debt, including disputed debt.

Analysis: It appears Complainant did, in fact, misstate or misread the first Pre-General Report filed on December 27, 2001, as it does reflect debt owed by Respondents to be \$141,911.25. No Schedules C or D were filed with the report, however, for itemization of the debt. As for other reports referred to in the complaint, many did report \$0 debt owed by Respondents. Amendments were filed by Respondents with different amounts of debt owed, but often without the Schedules C or D as required.

An audit was done of Respondents' contributions and bank records for the period of April 13, 2001 to March 31, 2002. However, this was a limited scope audit and, according to the Audit Division, would not have reviewed Respondents' reports filed with the Commission. A review of Respondents' reports index for the relevant time period also reflects a number of Requests for Additional Information ("RFAI") sent to Respondents by the Reports Analysis Division ("RAD"). The RFAs, in addition to requesting additional information, also explain what is required of the committee. There are numerous errors in reporting, and even with the input from RAD, errors continued to be made.

ADR Recommendation: Assign to ADRO

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