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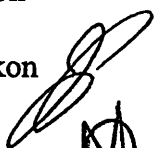
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Federal Election Commission
Washington, DC 20463


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: June 21, 2004

On May 28, 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 173/MUR 5439, is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 173/MUR 5439: Complainant alleges that for the 2003 Year End Report and the April 2004 Quarterly, Bacardi USA, Inc. PAC and Robert Higdon, Treasurer ("Respondents") failed to file timely, failed to file electronically as required, and failed to disclose the identity of the recipients of contributions to federal candidates or committees. Respondents contend that they did not realize they were required to continue to file electronically, but that the 2003 Year End Report, in paper format, was filed timely. Respondents stated that the itemization was disclosed on the 2003 Year End Report filed electronically on May 19, 2004. In addition, the April 2004 Quarterly Report was also filed electronically on May 19, 2004.

Attached for the Commission's review is the *ADR Case Analysis Report* on ADR 173, 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*

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Case Analysis Report has been reviewed by OGC, which concurs in the description of the case.

Recommendation: We recommend that ADR 173/MUR 5439 be assigned to the ADR Office for processing.

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ADR CASE ANALYSIS REPORT

ADR Case: 173

MUR: 5439

OGC Case Open Date: 03/22/04

Date Forwarded to ADRO: 05/28/04

Date Reviewed by ADRO: 06/09/04

Respondents:

Bacardi USA, Inc. PAC
Robert Higdon, Treasurer

Respondents' Rep.:

Thomas Spulak, Esq.

Committee Name: Bacardi USA, Inc. PAC

Committee Type: Unauthorized

District #/or State: N/A

Election - Won/Lost: N/A

Election Cycle: 2004

Complainant:

Citizens for Responsibility & Ethics in
Washington

Summary of Complaint: Complainant alleges that Respondents failed to file timely the 2003 Year End Report, failed to file electronically as required, and failed disclose the identity of the recipients of \$8,500 in contributions to federal candidates or committees listed on the summary page. Complainant also alleges that the April 2004 Quarterly Report was not filed timely, nor in electronic format as required. In addition, as Respondents had not filed the April 2004 Quarterly Report as of the date of the complaint, Complainant also alleges Respondents failed to disclose the identity of recipients of contributions to federal candidates or committees.

Violations Alleged: 2 U.S.C. §§ 434(a), 434(b)(3), 434(b)(5) and 11 C.F.R. §§ 104.1, 104.3(b)(3), 104.18(b).

Respondents' Reply: Respondents contend that the 2003 Year End Report, in paper format, was filed timely. Respondents did not realize that as they had voluntarily elected to file electronically that the reports for that calendar year were all to be filed electronically. The Reports Analysis Division notified Respondents on April 2, 2004 that the 2003 Year End Report was not considered filed as it had not been filed electronically. An electronic filing of this report was received by the FEC on May 19, 2004. Respondents also contend they unintentionally failed to file the required itemization of contributions to federal candidates or committees when the original (paper) 2003 Year End Report was filed. Respondents stated that itemization was disclosed on the 2003 Year End Report filed electronically on May 19, 2004. Respondents stated that the April 2004 Quarterly Report was filed late because they did not receive a reminder from the Commission. The April 2004 Quarterly report was also filed electronically on May 19, 2004, with the necessary itemization of contributions to federal candidates or committees.

Issues:

- Failure to file 2 U.S.C. § 434(a), 11 C.F.R. §§ 104.1, 104.18(b)
- Failure to itemize 2 U.S.C. §§ 434(b)(3), 434(b)(5), and 11 C.F.R. § 104.3(b)(3)

Related FEC Experience/Guidance: The regulations implementing the administrative fines program provides guidance on what a civil penalty would be for this violation under similar circumstances. In addition, a variety of matters dealing with a combination of reporting violations such alleged in this matter, provide guidance on these issues.

Analysis: The statute and regulations delineate the reporting requirements for political committees, including the timing of the filings and the contents. Committee brochures available from the Commission also explain the requirements of filing reports. The regulations implementing the electronic filing also explain the procedures and requirements for committees to file reports.

ADR Recommendation: Assign to ADRO

24-19-025-3666