




FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 16, 2004

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman 
Director, ADR Office

SUBJ: Case for Activation -- **ADR 182**

On July 30, 2004, the ADR Office (ADRO) received from OGC/CELA MUR 5448 to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 182**, is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 182/MUR 5448: Complainant alleges that Respondents U.S. Cuba Democracy PAC and Charles W. Puckett, Treasurer ("Respondent CDPAC"), made an in-kind contribution to Martinez for Senate ("Respondent Martinez") when it sponsored a luncheon on December 22, 2003 at which candidate Martinez was a speaker. Complaint further alleges that the luncheon was held "in concert or cooperation with or at the request or suggestion" of candidate Martinez. The complaint also alleges that the payment of \$5,106.79 made by Respondent CDPAC to the hotel that hosted the luncheon was an in-kind excessive contribution given that Respondent CDPAC had earlier contributed \$2,000 to the Martinez committee. Respondent Martinez argues that the subject luncheon was an inaugural event for the Committee designed to promote its agenda rather than a fund-raising event for Martinez or any other candidate. Respondent CDPAC contends that the alleged violation was due to an inadvertent mistake on its April 15, 2004 Quarterly Report, which incorrectly identified the expenditure for the luncheon as an incurred debt and independent expenditure rather than as an operating expense. After being advised of the error, an amended report was filed on April 26, 2004, which correctly identified the debt as an operating expense. Respondent CDPAC reported a contribution of \$2,000 to the Martinez campaign.

Attached for the Commission's review is the *ADR Case Analysis Report* on **ADR 182** along with copies of the EPS Rating and ADR Rating Sheets. The *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 Report has been reviewed by OGC, which concurs in the description of the case.

ADR Director's Recommendation: We recommend that **ADR 182/MUR 5448** be assigned to the ADR Office for processing.

ADR CASE ANALYSIS REPORT

ADR Case # 182

Respondents: 1. Martinez for Senate
Charles W. Puckett, Treasurer
2. U.S. Cuba Democracy PAC
Gus Machado, Treasurer

MUR: 5448

Respondents' Rep: 1. Benjamin Ginsberg, Esq
Glenn Willard, Esq.
2. Gus Machado

OGC Case Open Date: 4-29-04

Date Forwarded to ADRO: 7-30-04

Committee Type: 1. Principal Campaign Comm.
2. Non-connected PAC

Date Reviewed by ADRO: 8-10-04

Committee's Name: Martinez for Senate

District #/or State: FL - Senate

Election Cycle: 2004

Complainant: Melanie Sloan, Executive Director
Citizens for Responsibility & Ethics

Summary of Complaint. Complaint alleges that Respondent U.S. Cuba Democracy PAC (the "Respondent CDPAC") made an in-kind contribution to Martinez for Senate ("Respondent Martinez") when it sponsored a luncheon on December 22, 2003 at which candidate Martinez was a speaker. Respondent CDPAC listed on its April 15 2004 Quarterly report "an independent expenditure" of \$5,106.79, made on behalf of an unnamed candidate, paid to the Hotel that hosted the subject luncheon. Complaint further contends that the luncheon was held "in concert or cooperation with or at the request or suggestion" of candidate Martinez. The complaint also argues that the \$5,106.79 payment was an in-kind excessive contribution given that Respondent CDPAC had earlier contributed \$2,000 to the Martinez committee. CDPAC's first quarter '04 Report lists the \$2,000 contribution.

Alleged Violations: 2 U.S.C. §§ 441a(a)(2)(A), 434(b)(6)(B)(iii), 434(b)(3)(B), and 11 C.F.R. §§ 104.3 and 104.4

Respondents' Replies: Respondent Martinez notes that the subject luncheon, held in recognition of the CDPAC's donors and supporters, was an inaugural event for CDPAC designed to promote its agenda rather than a fund-raising event for Martinez or any other candidate. Respondent CDPAC noted that the program was focused on U.S. policy toward Cuba and neither Martinez, nor any other speaker advocated his election, solicited funds nor indicated that he was a candidate for office. Respondent CDPAC contends that the alleged violation was an inadvertent reporting mistake, which incorrectly listed the luncheon as an incurred debt and "independent expenditure" rather than as an operating expense. After being advised of the error, an amended report was filed on April 26, 2004 correctly identifying the debt as an operating expense. Respondent CDPAC notes that a contribution of \$2,000 as the only contribution made by the PAC to the Martinez campaign.

Analysis: An analysis of the program that was attached to Respondent CDPAC's reply to the complaint lists the luncheon speakers and their respective topics. Respondent Martinez, identified as the former Secretary of Housing and Urban Development and Co-Chair of the Presidential Commission for Assistance to a Free Cuba, was listed as addressing "Issues Surrounding U.S. Policy Toward Cuba". An affidavit from the treasurer of CDPAC that accompanied the reply reiterates the contention that the subject luncheon was not a fundraiser or rally for candidate Martinez but rather a program promoting the cause for which the PAC was established and actively promotes. Payment for the luncheon was initially reported as a debt to the Hotel hosting the event but also listed on the reports as an "independent expenditure". Once the reporting error was brought to the PAC's attention it was corrected on an amended report that was filed fourteen (14) days later.

The Complaint provided no evidence to substantiate the alleged violations. The complaint is predicated on a number of conclusions that are speculative, and suppositions that are not substantiated by the complainant. The fact that candidate Martinez attended the subject luncheon is not proof that the event was "held in concert or cooperation with or at the request or suggestion of the candidate". Likewise, while the Complainant contends that at the luncheon the CDPAC "must have been expressly advocating the election or defeat of a clearly identified candidate" no evidence is presented to substantiate the charge.

The one issue that is substantiated is the CDPAC reporting error concerning the luncheon expenditure, which was mistakenly listed as an independent expenditure rather than an operating debt.

Issues: Reporting of disbursements – 2 U.S.C. § 434(b)(4) and 11 C.F.R. § 104.3(b)

Recommendation: Assign to ADRO