



Federal Election Commission
Washington, DC 20463

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2004 SEP 13 P 3: 04

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: Recommendation to Close the File on **ADR 189**

DATE: September 10, 2004

SENSITIVE

On August 9, 2004, the ADR Office ("ADRO") received this matter from OGC/CELA to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 189** is inappropriate for ADR and recommend that the case be closed. Following the procedures approved by the Commission on March 3, 2003, this matter will be closed by ADRO if the Commission approves the recommendation in this memorandum. The Office of General Counsel ("OGC") concurs in the description of this matter and also concurs that it will not be returned to OGC for further action.

ADR 189/MUR 5441: Complainant alleges he supplied an aircraft and crew on January 30, 2004 to Respondents Clark for President, Inc. and Dorian Vanessa Weaver, Treasurer ("Respondents") to fly from Columbia, South Carolina to Tulsa, Oklahoma. He asserts he invoiced the Clark for President campaign \$67,230.50. Respondents paid \$49,000. Complainant further alleges that the campaign committee informed him, in response to his query about payment of the balance, that the \$18,230.50 should be considered an in-kind donation, or he should discount the cost of the services provided.

Respondents contend that Complainant was requested to provide an aircraft and crew for a multi-stop campaign flight on January 30-31, 2004, and failed to provide service beyond the first stop in Tulsa, Oklahoma. Respondents paid for the aircraft and crew, and further contend they requested Complainant send an invoice for his fee and out of pocket expenses which he failed to do.

Attached for the Commission's review is the *ADR Case Analysis Report (CAR)* on **ADR 189**,

ADR Director's Recommendation: We recommend that the Commission take no further action on **ADR 189/MUR 5441**, that the file be closed and the appropriate letters sent.

ADR CASE ANALYSIS REPORT

ADR Case: 189

Respondents:

Clark for President, Inc.

Dorian Vanessa Weaver, Treasurer

MUR: 5441

OGC Case Open Date: 04/14/2004

Respondents' Rep.: William C. Oldaker, Esq.

Date Forwarded to ADRO: 08/09/2004

Committee Name: Clark for President, Inc.

Date Reviewed by ADRO: 08/20/2004

Committee Type: Authorized

District #/or State: N/A

Election - Won/Lost: N/A

Election Cycle: 2004

Complainant: Thay Humes

Summary of Complaint: Complainant Thay Humes, owner of Humes McCoy Aviation, alleges he was contacted on January 29, 2004 by a representative of John Kerry for President and told that an aircraft was needed for the Clark for President campaign. Complainant states the second contact was made by Holly Johnson, assistant to Wesley Clark, requesting a plane large enough for 40 passengers and media equipment on January 30, 2004 to fly from Columbia, South Carolina to Tulsa, Oklahoma. He asserts he invoiced the Clark for President campaign for \$67,230.50 of which \$49,000 was paid. Complainant further alleges that the campaign committee informed him, in response to his query about payment of the balance, that the \$18,230.50 should be considered an in-kind donation or he should discount the cost of the services provided.

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

Respondents' Reply: Respondents contend that they were not aware of any debt to Complainant until the complaint was sent to them by the Commission. They further contend that the complaint has too many errors for them to adequately respond to. Respondents argue that the initial assertion that the Kerry for President committee first contacted Complainant, asking about a plane for the Clark for President campaign's use does not make sense. They point out that John Kerry and Wesley Clark were, at that time, competitors for the Democratic nomination, and the Kerry for President committee would not make travel arrangements for Respondents. According to Respondents, the second error is the suggestion that the arrangements were only for a flight from Columbia, SC to Tulsa, OK on January 30, 2004. In fact, the aircraft was to be scheduled for flights from Columbia, SC to Tulsa, OK, and then on to Santa Fe, NM, Tucson, AZ, Sierra

Vista, AZ, Mesilla, NM, Norman, OK, McAlester, OK and finally Oklahoma City, OK. This campaign trip was to take place over two days, January 30 and January 31, 2004. In addition to not scheduling aircraft and crew for the entire itinerary as requested, Respondents contend Complainant failed to provide aircraft that satisfied Transportation Security Agency security requirements as requested to facilitate boarding, resulting in a critical delay of several hours. They also contend there are errors on the alleged invoice such as the date of January 2, 2004, whereas the complaint alleges the conversations about travel arrangements began January 29, 2004.

When Respondents arrived at Tulsa, OK and learned Complainant could not provide aircraft or crew for the remainder of the trip, they attempted to pay Humes McCoy Aviation for the first leg of the flight. They contend Complainant did not have an active bank account to which a wire transfer could be made. Therefore, the \$49,000 payment was made directly to Sportsflight Air, the provider of the aircraft and crew. Respondents maintain they requested Complainant send Respondent an invoice for the broker's fee he thought was due under the circumstances, and any out of pocket expenses. Respondents maintain Complainant failed to ever send them an invoice for his fee or expenses, and the first Respondents knew of the alleged debt was when the Commission sent them the complaint.

Related FEC Experience/Guidance: There are numerous cases, complaints and referrals, dealing with the reporting of debts and obligations, including disputed debts. The Office of General Counsel and the Alternative Dispute Resolution Office resolved many cases, and the resolution of these matters ranged from closing the file with no further action, an admonishment, filing amended reports and/or a civil penalty.

Analysis: The statute and regulations clearly state that debts and obligations must be reported, and disputed debts must continue to be reported until extinguished. The regulations define a disputed debt as an actual *or potential* debt or obligation where there is a bona fide disagreement between the creditor and the committee as to the existence or amount of the obligation. 11 C.F.R. § 116.2(d). In the current matter, it appears that as Complainant never presented Respondents with an invoice for any fee or expenses. They were not aware that Complainant felt there was an unpaid debt or obligation. When Respondents received the complaint from the Commission, they learned of the disputed debt, and knew they are required to report it until the debt is resolved with

ADR Director's Recommendation: DISMISS