




FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 31, 2004

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman 
Director, ADR Office

SUBJ: Recommendation to Close the File **ADR 190**

On August 6, 2004, the ADR Office (ADRO) received from OGC/CELA a complaint to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 190**, 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 this matter will not be returned to OGC for further action.

ADR 190/MUR 5456: The complaint alleges that Respondent Case for Congress accepted illegal contributions from two corporations, \$1,000 from Phoenix Group, LLC on March 31, 2004 and \$500 from B & K Enterprises on January 30, 2004. Counsel/Treasurer for Respondent Case acknowledged receiving the two subject contributions adding that the \$500 contribution from B & K Enterprises was accepted after it was advised by B & K Enterprises that it was a sole proprietorship. Counsel/Treasurer for the Case Committee also advised that the \$1,000 contribution from the Phoenix Group, LLC was deposited after the sole member of the Group advised that the Phoenix Group was a LLC. Both contributions, which are reported on Respondent Case's April 2004 Quarterly Report, are within the limits provided in the FECA, thus, the ADR Office recommends that the allegations against Case for Congress, James H. Case Treasurer, the Phoenix Group, LLC and B & K Enterprises be dismissed.

Attached for the Commission's review is the *ADR Case Analysis Report* on **ADR 190** along with a copy of the EPS and ADR Rating Sheets.

ADR Director's Recommendation: We recommend that **ADR 190/MUR 5456** be closed and the appropriate letters sent.

6093-520-61-42

ADR CASE ANALYSIS REPORT

ADR Case. 190

MUR: 5456

Case Open Date: 5-28-04

Date Forwarded to ADRO: 8-6-04

Date Reviewed by ADRO: 8-25-04

Election Cycle: 2004

Respondents: 1. Case for Congress
James H. Case, Treasurer
2. Phoenix Group, LLC
3. B & K Enterprises

Respondent's Rep: 1. James H. Case
2. Matthew V. Pietsch, Esq.

Committee Type: 1. Authorized Committee

Committee Name: Case for Congress

District #/or State: HI 2nd C.D.

Election: 2004

Complainant: Justin Pittullo

Summary of Referral: Complaint alleges that Respondent Case accepted illegal contributions from two corporations, \$1,000 from Phoenix Group, LLC on March 31, 2004 and \$500 from B & K Enterprises on January 30, 2004. The complaint also alleges that the Phoenix Group does business under the name of Maui Plastic Surgery Corporation.

Respondents' Reply: Counsel/Treasurer for Respondent Case acknowledged receiving the two subject contributions and stated that the \$500 contribution from B & K Enterprises was accepted by Case for Congress after being advised by B & K Enterprises that it was a sole proprietorship. Regarding the contribution from the Phoenix Group, Treasurer for Respondent Case advised that the \$1,000 contribution from the Phoenix Group was deposited after the sole member of the Group advised him that it was a LLC. Dr. Stephen L. Schlesinger, M.D., who established the Phoenix Group and is its only member, advised that the Phoenix Group is the name he uses when working as an independent contractor. He also advised that Maui Plastic Surgery Corporation went out of existence in December 1999 when it was purchased by Plastic Surgery Company of Santa Barbara, California, which, at the time of the letter from Dr. Schlesinger, was in bankruptcy.

Alleged Violations: 11 C.F.R. §§ 110.1(g)(2), (4) and (5)

Issues:

- Restrictions governing contributions from Limited Liability Companies (LLC) – 11 C.F.R. §§ 110.1(g)(2), (4) and (5)

24-19-025-3610

Analysis: The Complainant confounded the status of the two entities that allegedly contributed the corporate funds to the Case for Congress committee. B & K Enterprise, the source of the \$500 contribution, is distinct from the B & K Enterprise, Inc., which was formed a month and a half after the Case Committee received the aforementioned check and is different from the B & K Enterprise, LLC. Both of the latter two entities are listed on the California Secretary of State Business Portal with different addresses from that listed on the check received by the Case Committee. The B & K Enterprise that made the \$500 contribution was identified by its owner as a "sole proprietorship".

The Phoenix Group is described by Dr. Schlesinger as "the title I use as an independent contractor when working for American Healthcare Services of Atlanta, Georgia." Dr. Schlesinger also noted that "the Phoenix Group has no employees and I file the income tax for the Phoenix Group as if it were me and I were it...." The Phoenix Group is identified by its owner as a LLC.

The complainant further contributed to the confusion regarding the status of the Phoenix Group LLC by implying that Maui Plastic Surgery Corporation, listed with the Hawaii Department of Commerce and Consumer Affairs as the latter's consent name, was the source of the subject contribution to Respondent Case.

Both contributions are reported on Respondent Case's April 2004 Quarterly Report.

The regulations stipulate that a contribution from an LLC with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service pursuant to 26 CFR 301.7701-3 shall be attributed only to that single member. 11 C.F.R. § 110.1(g)(4). An LLC that makes a contribution pursuant to the aforementioned subsection of the regulation shall, at the time it makes the contribution, provide information to the recipient committee as to how the contribution is to be attributed and affirm to the recipient committee that it is eligible to make the contribution. 11 C.F.R. § 110.1(g)(5).

The complaint confuses the status of the two entities that made the contributions to Respondent Case with other registered corporations and fails to provide creditable evidence regarding the "alleged" corporate status of the two entities. However, even with the absence of an IRS stipulation regarding the nature of the Phoenix Group's LLC designation, given the de minis nature of the contribution to the Case Committee argues against the Commission devoting additional resources to this matter. Therefore, the ADR Office recommends that the allegations against Respondent Case, the Phoenix Group, LLC and B & K Enterprises be dismissed.

Recommendation: Dismiss

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