



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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2005 JUN -11 A 11:08 May 27, 2005

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director

SUBJECT: ADR 234 – Friends of Bill Nojay and Eileen Semmler, Treasurer
Recommendation to Close the File

SENSITIVE

On February 3, 2005 the ADR Office (ADRO) received from OGC/CELA a complaint, MUR 5484, to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 234**, 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.

Summary: Complainant, i.e., Geoffrey Rosenberger, contends that Bill Nojay (the "Candidate") stated on his Statement of Candidacy that he intended to spend no personal funds on his campaign. However, Complainant noted that the report Friends of Bill Nojay and Eileen Semmler, Treasurer (the "Respondents" or "Committee") filed with the Commission indicated that the Candidate had contributed or loaned the campaign \$333,365.95. The Complainant further noted that Respondents stated that they had raised \$338,191 from 515 individual contributors. However, Complainant noted that Respondents' Report of Receipts and Disbursements listed only six donors, including the candidate. Respondents advised that the Statement of Candidacy filed with the Commission indicated that the Committee intended to spend "zero personal funds" exceeding the threshold amount. The candidate indicated that it was his understanding that the threshold amount was \$350,000 and that he did not exceed that amount. Respondents also advised that the Committee disclosed the full amount of the candidate's contributions and loans, which according to the candidate were under \$350,000. Respondents further contend that the Committee accurately reported each contribution that exceeded \$200 or \$50 in cash and in the aggregate for those that contributed lesser amounts.

Attached for the Commission's review is the *ADR Case Analysis Report* on **ADR 234** along with a copy of the EPS and ADR Rating Sheets.

Recommendation:

1. Dismiss the matter and close the file as to all Respondents.
2. Send the appropriate letters.

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ADR CASE ANALYSIS REPORT

ADR Case: 234

Respondents: Friends of Bill Nojay
Eileen Semmler, Treasurer

MUR: 5484

Respondents' Rep: Eileen Semmler

OGC Case Open Date: 7-19-04

Committee Type: Authorized

Date Forwarded to ADRO: 2-3-05

Committee's Name: Friends of Bill Nojay

Date Reviewed by ADRO: 2-14-05

District #/or State: NY – 29th C.D.

Tier Level: 3

Election Won/Lost Cycle: Lost Primary

EPS Rating: 28

Election Cycle: 2004

ADR Rating: 46

Complainant: Geoffrey Rosenberger

Summary of Complaint: Complainant contends that the candidate stated on his Statement of Candidacy, filed on 4/12/04, that he intended to spend no personal funds on his campaign. However, Complainant noted that the report Respondents filed with the Commission on 6/28/04 indicated that the Candidate had contributed or loaned the campaign \$333,365.95. Complainant noted that the initial \$6,174 was contributed on 4/12/04 the same day the candidate signed his Statement of Candidacy. The Complainant further noted that Respondents stated in a mass mailing postmarked 5/1/04 that they had raised \$338,191 from 515 individual contributors. However, Complainant noted that Respondents Report of Receipts and Disbursements filed on 6/28/04 listed only six donors, including the candidate. The complaint also makes reference to the total contributions cited in the previously mentioned mass mailing which lists the total contributions collected by Respondents and three other competing candidates, which the Complainant contends are inaccurate and based on different time periods.

Respondent's Replies: Respondents advised that the Statement of Candidacy filed with the Commission on 4/12/04 indicated that the Committee intended to spend "zero personal funds" exceeding the threshold amount. The candidate indicated that it was his understanding that the threshold amount was \$350,000 and that he did not exceed that amount. Respondents also advised that the Committee disclosed the full amount of the candidate's contributions and loans, which according to the candidate were under \$350,000. (The Committees' 6/28/04 report of Receipts and Disbursements lists expenditures by the candidate of \$333,739.41.) Respondents further contend that the Committee accurately reported each contribution that exceeded \$200 or \$50 in cash and in the aggregate for those that contributed lesser amounts. Respondents further contend that the amounts listed on the mass mailing referenced in the complaint for the other three competing candidates are based on reports filed with the Commission or in one instance an estimate.

Alleged Violations: 2 U.S.C. §§ 434(a), 434(b)(3), 441a-1(b)(1)(B) and 11 C.F.R. §§ 104.3(a) and 400.20(a)(2).

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Analysis: The Statement of Candidacy (FEC Form 2) contains a Declaration Of Intent To Expend Personal Funds, which the candidate is to complete by listing in two boxes below the foregoing statement, the amount of personal funds exceeding the threshold amount that the Committee intends to spend first on the primary election and secondly on the general election. 11 C.F.R. § 400.9(b) advises that the threshold amount for an election to the House of Representatives is \$350,000. Respondents' expenditures did not exceed the aforementioned threshold amount and, therefore, accurately listed zero expenditure on Form 2 for both the primary and general elections. Apparently, the Complainant misunderstood or misread the guidance for filling out the aforementioned Declaration. The Complainant's reference to the 515 individual contributors, listed on an attached campaign flyer, overlooks the amount and number of unitemized contributors who contributed in the aggregate \$16,387 to the campaign. Reference in the complaint to the contributions totals listed on the previously mentioned mass mailing is a matter outside the purview of the FECA. All in all, the lack of evidence of violations justifies the recommendation that this matter be dismissed.

FYI: The Committee's reporting obligation was terminated, at its request, on July 6, 2004 one month before the subject complaint was filed against the Respondents

Issues:

- Reporting: Content and Itemization Requirements, 2 U.S.C. §§ 434(a), 434(b)(3) and 11 C.F.R. § 104.3(a)
- Declaration of Intent, 2 U.S.C. § 441a-1(b)(1)(B) and 11 C.F.R. § 400.20(a)(2)

Recommendation: Dismiss