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2005 APR 21 A 10:40

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: April 19, 2005

On February 4, 2005, 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 238/MUR 5529, is appropriate for ADR and recommend that it be assigned to the ADR Office.

ADR 238/MUR 5529: The complaint alleges that the Peter Hort For Congress (the "Committee") failed to report disbursements and expenditures for such things as advertising, rent on two campaign offices and administrative expenses, received excessive and/or prohibited contributions, and failed to have disclaimers on public communications. The Committee contends that one "campaign office" was, in fact, the candidate's residence and the second office, in a building scheduled for demolition, was reported as an in-kind contribution from the buyer of the building. The Committee concedes the need for clarification on some itemizations and filed amended reports accordingly. While the Committee also contends that the Committee received no prohibited or excessive contributions, it concedes that their website and electronic communications did not have adequate disclaimers as required. The Committee argues that the truck used for advertising did have a disclaimer on it, and disclaimers were added to their website and e-mail communications.

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ADR Director's Recommendation: We recommend that **ADR 238/MUR 5529** be assigned to the ADR Office for processing.

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ADR CASE ANALYSIS REPORT

ADR Case: 238

MUR: 5529

OGC Case Open Date: 9/8/04

Date Forwarded to ADRO: 2/4/05

Date Reviewed by ADRO: 2/24/05

Respondents:

1. Peter Hort for Congress
1. Tal Weitzman, Treasurer
2. Rema Hort Mann Foundation, Inc.
2. Michael and Susan Hort
3. Nucisera, Ltd.
4. 145 Sixth Avenue Associates, LLC
5. Crash Mansion/BLVD
6. Serge and Julie Morel

Respondents' Reps.:

1. Peter Hort
2. Michael and Susan Hort
3. Howard Rower
4. Harold Thurman
5. Brendan Spiro
6. Serge and Julie Morel

Committee Name: Peter Hort for Congress

Committee Type: Authorized

District #/or State: NY 8th C.D.

Election - Won/Lost: Lost General

Election Cycle: 2004

Complainant: Brad Hoylman

Summary of Complaint: Complainant alleges that Peter Hort for Congress and Tal Weitzman, Treasurer ("Committee") accepted excessive in-kind contributions from Michael and Susan Hort (the "Hort Respondents") and Serge and Julie Morel (the "Morel Respondents"), accepted prohibited corporate contributions from the Rema Hort Mann Foundation ("Respondent RHM") and 145 Sixth Avenue Associates LLC, ("Respondent 145") and Nucisera Ltd. ("Respondent Nucisera"), failed to pay in advance for a fundraiser held at Crash Mansion/BLVD ("Respondent BLVD"), a commercial food establishment, failed to have disclaimers on campaign advertising, and a variety of reporting errors or omissions, including the failure to disclose an adequate purpose for some expenditures.

Violations Alleged: 2 U.S.C. §§ 434(b)(6)(B)(v), 441a(a)(1)(A), 441a(f), 441b, 441d, 11 C.F.R. §§ 104.3(b)(3)-(4), 110.1(b), 114.2(f)(2)(i)(E), 110.11(a)-(b)

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Respondents' Reply: The Committee contends that the 155 Hudson Street address used as the campaign's mailing address was, from summer 2001 through May 2004, the residence of the candidate, and thus no excessive contribution was received from the candidate's parents. The candidate and his family resided on the second floor of the building and the candidate used his own telephone and computer for campaign activities. In addition, the Hort Respondents invited a few friends for a "meet and greet" for the Committee at their residence which is on the 5th floor of 155 Hudson Street. The Committee argues that there was no excessive contribution due to the small number of people involved, and the Hort Respondents spent less than \$1,000 per candidate per election on the incidental expenses for the events. The Committee also contends that Respondent RHM, a not-for-profit foundation (501(c)(3) corporation) established by the Hort family to honor the candidate's sister who died of cancer, did not sponsor any campaign activities for the candidate, nor did Respondent RHM make any contribution to the Committee. The Committee explained that Respondent RHM has the same address as the candidate's parents, and that the RHM Foundation does not have an office or staff of its own.

The rental of campaign office space at 145 Sixth Avenue was through an in-kind contribution from the owner, Peter Moore, and was reported as such. The building was to be "gutted" for extensive renovation, and was being emptied of tenants. The Committee states it was allowed to use space in the building on a month-to-month tenancy, and the amount of the in-kind contribution was the "fair market value." The Committee points out that the small office was in a building with no working toilets, limited security, no cleaning service, no running water and limited elevator service. Respondent 145 states that the building was under contract to be sold to Peter Moore, and the contract included a net lease to Peter Moore of the building in the interim. Respondent 145 further states that it made no contribution to Peter Hort for Congress, and had no relationship with the Committee whatsoever.

The Committee concedes that two fundraisers were held at ARC, an after hours club, located in a building owned by Respondent Nucisera. The Committee argues, however, that although ARC opened early for the fundraiser, no contribution arose by virtue of the use of the space, as the people who attended purchased beverages and tipped the wait staff. The only food served at the ARC fundraisers were cookies and brownies made by the candidate's wife. The Committee also concedes that the Rema Hort Mann Foundation also had a fundraiser at ARC, but that was a separate occasion to raise funds for the Foundation, and not to solicit contributions to the Committee.

In addition, the Committee concedes that it had a fundraiser at a commercial establishment owned by Respondent BLVD. The Committee contends that the reported expense of \$1,242, for 18 dinners at \$40 each, in addition to gratuity and drinks was the fair market value of the event, and no contribution from Respondent BLVD occurred. The Committee argued that the invoice was paid upon receipt, which was approximately two weeks following the fundraiser.

The Committee argues that it reported an in-kind contribution of \$230 per month from the Morel Respondents, the owners of the truck used for advertising purposes. The Committee further argues that the sign on the side of the truck does have a disclaimer which states that it was paid for by Peter Hort for Congress. They concede that their website and electronic mail did not have disclaimers as they were unaware of the requirement, but contend that disclaimers were added to their website and all e-mail.

In response to alleged reporting irregularities and/or omissions, the Committee filed amended reports to clarify or more adequately describe the purpose of the expenditures at issue.

Issues:

- Reporting disbursements 2 U.S.C. § 434(b), 11 C.F.R. § 104.3(b)
- Excessive contributions 2 U.S.C. § 441a, 11 C.F.R. §§ 110.1(b), 103.3(b)
- Corporate contributions 2 U.S.C. § 441b, 11 C.F.R. §§ 114.2(f), 116.3
- Disclaimers 2 U.S.C. § 441d, 11 C.F.R. § 110.11(a)-(b)

Related FEC Experience/Guidance: The statute and regulations, in addition to the Commission website and the brochure for Congressional Candidates and Committees, provide campaign finance information on the requirements for authorized committees. Numerous matters have been resolved by the OGC and ADRO involving each of these issues.

Analysis: The complaint alleges that the Committee failed to report rent for office space at 155 Hudson Street, as well as for office space at 145 Sixth Avenue, in New York City. The Complainant argued that the candidate's father, Michael Hort, owns the building and, as Michael Hort had contributed the maximum to his son's campaign, the Committee accepted excessive contributions. In addition, the Complainant states the property records for 145 Sixth Avenue reflect that the property is owned by a corporation and that, in addition to not reporting the rental expense, the Committee accepted prohibited contributions. The Committee contends that 155 Hudson Street is the candidate's residence and that campaign staff met there on a regular basis. There appears to be no section in the FECA prohibiting a candidate from using a residence as a campaign headquarters, and a candidate for Congress may make unlimited personal contributions to their campaign, 11 C.F.R. § 110.10, although they must report those contributions.

The Committee also contends that the property located at 145 Sixth Avenue is being purchased by Peter Moore, and an in-kind contribution of \$240 per month was reported from Mr. Moore as rent for the building pursuant to a contract beginning on March 15, 2004. As the building was being emptied of tenants for renovations, and had no running water, working toilets or security, the amount of the rent was commercially reasonable. The Committee did report the in-kind contribution, but failed to report the resulting in-kind disbursement as required by the regulations. 11 C.F.R. § 104.13(a)(2).

The Committee did hold fundraisers at premises owned by Respondent Nucisera ("ARC") and Respondent BLVD ("Crash Mansion"). For the two fundraisers held at ARC, invitees purchased drinks and tipped the wait staff, and there is no evidence that the drinks were sold at a discounted rate. The Committee states that for the fundraiser at the Crash Mansion, it paid \$40 for each dinner, a 20% gratuity and provided drink tickets to invitees that they purchased at \$7 each. The statute and regulations are clear that a corporation does not facilitate the making of a contribution to a candidate if it provides goods or services in the ordinary course of its business as a commercial vendor at the *usual and normal charge*. 11 C.F.R. § 114.2(f). The regulations state that if a vendor, incorporated or not, provides food or beverage to a candidate's campaign at a charge less than the normal or comparable commercial rate, does not make a contribution provided that the charge is at least equal to the cost of such food or beverage to the vendor, and that the aggregate value of such discount given to a single candidate does not exceed \$1,000 per

election. 11 C.F.R. § 100.78. While the complaint cites the requirement of payment in advance if a corporation provides catering or other food services at 11 C.F.R. 114.2(f)(2)(i)(E), the regulation states that subsection is for corporations that are not commercial vendors. In this matter, Crash Mansion/BLVD appears to be commercial vendor that may extend credit, without making a contribution, to a political committee if the extension is in the ordinary course of the commercial vendor's business, and if the terms are substantially similar to extensions given to others. 11 C.F.R. § 116.3.

The Committee reported the use of the truck as an in-kind contribution from Serge Moral, but as with other in-kind contributions, failed to report the in-kind disbursement as required. The sign on the truck, however, did bear a disclaimer stating that it was paid for by Peter Hort for Congress. The Committee concedes that there was no disclaimer on its website, nor on the press releases sent via e-mail, as it was unaware of the requirement. 11 C.F.R. § 110.11(a).

ADR Director's Recommendation: Assign to ADRO

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Silberman



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

DATE & TIME OF TRANSMITTAL: Thursday, April 21, 2005 4:00

BALLOT DEADLINE: Tuesday, April 26, 2005 4:00

COMMISSIONER: MASON, McDONALD, SMITH, THOMAS, TONER, WEINTRAUB

SUBJECT: **Case for ADR Activation ADR 238/MUR 5529
Memorandum from The Director, ADR dated
April 19, 2005.**

() I approve the recommendation(s)

() I object to the recommendation(s)

() I am recused from voting

COMMENTS: _____

DATE: _____

SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the Commission Secretary. Please return ballot no later than date and time shown above.

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