




FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 25, 2005

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman 
Director

SUBJECT: ADR 246 – The Independent Action, Inc. and Ralph Santora, Treasurer
Recommend to Assign Case

On March 21, 2005 the ADR Office received from OGC/CELA RR 05L-01 to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 246**, is appropriate for ADR and recommend that it be assigned to the ADR Office.

Summary: RAD determined that The Independent Action, Inc. and Ralph Santora, Treasurer, (the “Respondents”) failed to timely file their 2003 Mid-Year and Year End Reports and 2004 April Quarterly Report. On August 19, 2003, Respondents were sent a Failure to File Notice, which referenced the 2003 Mid-Year Report. On February 2, 2004, Respondents were sent a Failure to File Notice, which referenced the 2003 Year-End Report. On April 16, 2004, Respondents were sent a Failure to File Notice, referencing the 2004 April Quarterly Report. A subsequent Failure to File Notice sent to Respondents on May 5, 2004 referenced the 2004 April Quarterly Report. Following receipt of each of the Failure to File Notices, Respondents filed the missing reports.

Note: Respondents were excluded from the Administrative Fine program due to the fact that the Committee’s estimated level of activity did not meet the Commission’s threshold for the program. However, after filing the reports well after the required filing deadline, Respondents disclosed financial activity that would have warranted their inclusion.

Attached for the Commission’s review is the *ADR Case Analysis Report* on **ADR 246** along with a copy of the EPS and ADR Rating Sheets. The *Case Analysis Report* includes an analysis of the case and a description of the issues that the ADR Office (ADRO) 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. If the Commission concurs in the recommendation to assign the matter to ADRO, the above case description will be provided to Respondents as part of ADRO’s notification package sent to Respondents.

Recommendation:

1. Assign **ADR 246/RR 05L-01** to the ADR Office for activation.

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ADR CASE ANALYSIS REPORT

ADR Case: # 246

Respondents: The Independent Action, Inc.

RR: # 05L-01

Ralph Santora, Treasurer

Date Forwarded to ADRO: 3-21-05

Respondents Rep: Ralph Santora

Date Reviewed by ADRO: 3-30-05

Committee Type: Unconnected PAC

Election Cycle: 2004

Committee Name: Independent Action, Inc.

Tier Level: 3

District #/or State: N/A

EPS Rating: 23

Election: N/A

ADR Rating: 51

Complainant: RAD Referral

Summary of Referral: RAD determined that Respondents failed to timely file their 2003 Mid-Year and Year End Reports and 2004 April Quarterly Report. On August 19, 2003, Respondents were sent a Failure to File Notice, which referenced the 2003 Mid-Year Report. On July 16, 2004, Respondents filed their Mid Year Report disclosing receipts of \$52,974.61 and disbursements of \$55,499.92. On February 2, 2004, Respondents were sent a Failure to File Notice, which referenced the 2003 Year-End Report. On July 17, 2004, Respondents filed their 2003 Year-End Report disclosing receipts of \$66,179.60 and disbursements of \$50,658.22. On April 16, 2004, Respondents were sent a Failure to File Notice, which reference the 2004 April Quarterly Report. A subsequent Failure to File Notice was sent to Respondents on May 5, 2004 again referencing the 2004 April Quarterly Report. On July 18, 2004, Respondents filed their 2004 April Quarterly Report disclosing receipts of \$42,618.84 and disbursements of \$36,079.23.

Note: Respondents were excluded from the Administrative Fine program due to the fact that the Committee's estimated level of activity did not meet the Commission's threshold for the program. However, after filing the reports well after the required filing deadline, Respondents disclosed financial activity that would have warranted their inclusion.

Respondents' Reply: Following receipt of each of the Failure to File Notices, Respondents filed the missing reports.

Alleged Violations: 2 U.S.C. § 434(a) and 11 C.F.R. §104.5(c)(1)

Analysis: Respondents, a committee registered with the Commission for more than ten years, filed each of the missing three reports within a three-day period, one day apart. Respondents' reply, however, to the Failure to File notification took between three and eleven months. Respondents' failure to file timely excluded the Committee being included in the Administrative Fine program. While that may have been part of the motivation, Respondents' obligation to file, and file electronically, should not have been in question. Having exceeded the \$50,000 aggregate annual threshold there can be no question regarding Respondents' obligation to file the Committee's

reports electronically. Therefore, the primary issue to be addressed is Respondents' failure to file the required reports on a timely basis as directed in the Commission regulations and in statute.

Issue:

- Reporting Requirements, 2 U.S.C. § 434(a) and 11 C.F.R. § 104.5(c)(1)

Related FEC Experience/Guidance: RAD's analysis of Respondents' responsibility to report is explicit, as is the guidance provided in the Commission's publications regarding a committee's obligation to report their receipts and disbursements.

Potential Terms of Settlement: Terms of settlement may include payment of a civil penalty and attendance at a FEC seminar for political committees.

Recommendation: Assign to ADR

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ADR Office (ADRO) Case Selection Criteria for Assigning Cases to ADR Processes

In order for cases to be considered by the ADR Office, respondents will need to first indicate their desire to submit their case to ADR. Cases reviewed by the Office will be evaluated according to the following factors, which will identify cases that are considered appropriate for ADR and prioritize them for processing

RR 05L-01/ADR 246
MUR #

	No/False	Yes/True
1. Some remedial action has been taken by Respondent to correct violation (score: 0 or 5). <ul style="list-style-type: none"> • Respondent conveys desire to comply with law and accept responsibility for actions 	0	5
2. Respondent is inexperienced (score: 0 or 5) <ul style="list-style-type: none"> • Respondent lacks knowledge in campaign finance matters 	0	5
3. Amount of money at issue is limited (Below 10,000 (5), up to 50,000 (3), above 50,000 (1)) <ul style="list-style-type: none"> • Amount of money at issue is amenable to alternative resolution 	5	3 1
4. Case involves a single, identified issue (score: 0 or 5) <ul style="list-style-type: none"> • Preference will be given to single as a opposed multi-issue case 	0	5
5. Genuine <i>sua sponte</i> submission (score: 0 or 5) <ul style="list-style-type: none"> • Case submission is complete and lacks any gaps or discrepancies 	0	5
6. "Accepted" allegation of FECA violation (score: 0 or 5) <ul style="list-style-type: none"> • Respondent admits or does not contest that a violation has occurred 	0	5
7. Respondent has already "paid" for the same conduct at issue in complaint (score: 0 or 5) <ul style="list-style-type: none"> • Respondent has been assessed criminal or civil penalties for the conduct in question 	0	5
8. Principal respondents have already filed complete and forthcoming response (score: 0 or 5) <ul style="list-style-type: none"> • Respondent has filed complete and forthcoming response to complaint 	0	5
9. Violation appears not to have altered election outcome (score: 0 or 5) <ul style="list-style-type: none"> • Activity not conducted at critical time or significant in terms of overall campaign 	0	5
10. Material facts are reasonably clearly known and identified (score 0 or 5) <ul style="list-style-type: none"> • Case lacks need for extensive fact-finding 	0	5
11. Feasibility of reaching a voluntary resolution (score: 0 or 15) <ul style="list-style-type: none"> • Respondent's affirmative reply to letter conveys interest in voluntary resolution of case 	0	— 15
12. Appropriate number of respondents (score: 0 or 5) <ul style="list-style-type: none"> • Appropriate number of respondents identified in case file 	0	5
13. Commission interest in case (score: 0 or 10) <ul style="list-style-type: none"> • Commissioners have indicated interest in case (10) otherwise score "0" 	0	10
14. Timely case (score 0 to 10) <ul style="list-style-type: none"> • Case is current, i.e. within 2 years of event (10) or beyond 2 years (0) 	0	10
15. Worthy ADR action (score: 0 to 10) <ul style="list-style-type: none"> • EPS rating above 20 (10), between 19 and 0 (5) and below (score 0) 	0	5 10

Maximum point total: 100.

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