



FEDERAL ELECTION COMMISSION
Washington, DC 20463

FIG. 1
CONFIDENTIAL
SECRETARIAT

2005 NOV -1 P 12: 16

October 31, 2005

MEMORANDUM

TO: The Commission

SENSITIVE

THROUGH: Robert J. Costa *RJC*
Acting Staff Director

FROM: Allan D. Silberman *AS*
Director ADR Office

SUBJECT: ADR 298 –Bacardi USA, Inc. PAC and Robert M. Higdon, Treasurer et al.
Recommendation to Dismiss

On September 2, 2005, the ADR Office received from OGC MUR 5671 to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 298**, is inappropriate for ADR and recommend that it be closed.

Summary: The Complainant alleges that Respondent Bacardi USA, Inc. PAC and Robert M. Higdon, Treasurer (Respondent “BAC”) made contributions reported on its 2005 Mid-Year Report to two PACs that failed to report the contributions within 10 days as required in the regulations. Specifically, Respondent BAC contributed on January 25, 2005 \$1,000 to Respondent Pete’s PAC and Barbara Bonfiglio, Treasurer (Respondent “Pete’s Pac”) and \$1,000 on April 13, 2005 to Respondent Democracy Believers PAC and Barbara Bonfiglio, Treasurer (Respondent “Democracy PAC”). The two referenced recipient PACs reported the subject contributions as received on March 4, 2005 and May 31, 2005 respectively. Respondent BAC contends its check made payable to Respondent Pete’s PAC for \$1,000 on January 25, 2005 was the date the funds were disbursed. Similarly, Respondent BAC contends that it executed a check made payable to Respondent Democracy PAC for \$1,000 on April 13, 2005. Respondent BAC acknowledged the difference in the date of disbursement listed in the 2005 Mid-Year Report and the date the two contributions were received by the two recipient committees; however, it contends that it followed “proper accounting principles” in recording the date the two checks were executed. The Treasurer of both referenced recipient PACs explained that the date that appears on a check is the date used to report a contribution but that in nine times out of ten it will not be the same date that the recipient reports having received the check.

Attached for the Commission’s review is the *ADR Case Analysis Report* on **ADR 298** 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). In addition, the Report has been reviewed by OGC, which concurs in the description of the case.

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Recommendations:

1. Dismiss the complaint as it pertains to Bacardi USA, Inc. PAC and Robert M. Higdon, Treasurer.
2. Dismiss the complaint as it pertains to Pete's PAC and Barbara Bonfiglio, Treasurer.
3. Dismiss the complaint as it pertains to Democracy Believers PAC and Barbara Bonfiglio, Treasurer.
4. Approve the appropriate letters.
5. Close the file on this matter.

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ADR CASE ANALYSIS REPORT

ADR Case: 298

MUR: 5671

Respondents: 1) Bacardi USA, Inc. PAC
Robert M. Higdon, Treasurer
2) Pete's PAC
Barbara Bonfiglio, Treasurer
3) Democracy Believers PAC
Barbara Bonfiglio, Treasurer

Respondents' Rep: 1) Thomas J. Spulak, Esq.
2) Barbara Bonfiglio, Treas.
3) Barbara Bonfiglio, Treas.

Date Case Opened: 7-18-05

Committees Types: 1) S.S.F. PAC
2) Leadership PAC
3) Leadership PAC

Date Forwarded to ADRO: 9-2-05

Committees Names: 1) Bacardi USA, Inc. PAC
2) Pete's PAC
3) Democracy Believers PAC

Date Reviewed by ADRO: 10-11-05

District #/or State: N/A

Election - Won or Lost: N/A

Election Cycle: 2004

Complainant: Melanie Sloan, Ex. Director,
Citizens for Responsibility and
Ethics in Washington

Summary of Complaint: Complainant alleges that Respondent Bacardi USA, Inc. PAC (Respondent "BAC") made contributions reported on its 2005 Mid-Year Report to two PACs that failed to report the contributions within 10 days as required in the regulations. Specifically, Respondent BAC contributed on January 25, 2005 \$1000 to Respondent Pete's PAC, a leadership PAC of Senator Pete Dominici, and \$1000 on April 13, 2005 to Respondent Democracy Believers PAC (Respondent "Democracy PAC"), a leadership PAC of Congresswomen Lincoln Diaz-Balart and Mario Diaz-Balart. The two referenced PACs reported the subject contributions as received on March 4, 2005 and May 31, 2005 respectively. The Complainant contends that in both instances either Respondent BAC's treasurer violated 11 C.F.R. §§ 102.9(b)(1)(ii) and 104.9(a) or the treasurer of Respondent Pete's PAC and the treasurer of Respondent Democracy PAC violated 11 C.F.R. § 103.3(a).

Respondent's Reply: The Respondent BAC contends that its treasurer, located in Miami, Florida, executed a check made payable to Respondent Pete's PAC for \$1,000 on January 25, 2005 which was the date listed when the funds were disbursed. The check, thereafter, was transmitted to the Respondent BAC's Washington office. Respondent BAC contends the check was subsequently mailed to Respondent Pete's PAC's post office box in New Mexico. Similarly, Respondent BAC argued that its Treasurer received a request from a BAC PAC official and executed the requested check made payable

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to Respondent Democracy PAC for \$1,000 on April 13, 2005. The latter check was thereafter delivered to the BAC official who transmitted it to Respondent Democracy PAC on or about May 13, 2005.

Respondent BAC acknowledged the difference in the date of disbursement listed in the 2005 Mid-Year Report and the date the two contributions were received by the two recipient committees. Respondent BAC contends that its Treasurer, "following proper accounting principles", recorded the date the two checks were executed. Respondent BAC maintains that it is "common" for treasurers to list in their record the date a check is written as the date of the disbursement. Checks, according to Respondent BAC, are then transmitted to the requesting PAC official who often is located in another city. The latter official will, thereafter, forward the contribution, according to Respondent BAC, days later to a recipient committee.

The Treasurer for both Respondent Democracy PAC and Respondent Pete's PAC contend that the date that appears on a check is the date used to report a contribution but that "nine times out of ten it will not be the same date that the recipient reports having received the check." Respondent for both recipient PACs explained the many explanations that may account for the difference in the date that appears on a check and the date of receipt of a contribution. The Treasurer for both recipient Respondents PACs advised that it is the policy of both PACs to report all contributions when they are received and to deposit the checks within ten days of receipt.

Analysis: The regulations advise that a contribution shall be considered to be made when the contributor relinquishes control over the contribution. A contributor shall be considered to relinquish control over the contribution when it is delivered by the contributor to the candidate, to the political committee, or to an agent of the political committee. A contribution that is mailed to the candidate, or to the political committee or to an agent of the political committee, shall be considered to be made on the date of the postmark. 11 C.F.R. § 110.1(b)(6).

The Regulations specify that the date of receipt of a contribution shall be the date received by a treasurer – i.e., Date of receipt shall be the date such person obtains possession of the contribution. 11 C.F.R. § 102.8(a). The regulations call for the contribution to be deposited within 10 days of receipt – i.e., all deposits shall be made within 10 days of the treasurer's receipt. 11 C.F.R. § 103.3(a). Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receipt, forward such contribution to the treasurer. 11 C.F.R. § 102.8(a).

There is not enough information in the complaint, responses or FEC reports to precisely determine the dates when the subject contributions were made and received. There is reason to suggest that one or more of the Respondents may have listed incorrect dates – and possibly also untimely deposited the contributions. However, given the de minimis nature of the issues in this matter and the lack of sufficient evidence to the contrary, the conclusion of the ADR Office is that the matter is not worth the expenditure of additional resources, therefore, the recommendation is that the matter be dismissed.

Issues:

- Contributions to political committees, 11 C. F.R. § 110.1(b)(6)
- Receipt of contributions, 2 U.S.C. § 432(b) and 11 C.F.R. § 102.8 (a)
- Deposit of receipts, 11 C.F.R § 103.3(a)

Recommendation: Dismiss

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