



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

January 20, 2006

MEMORANDUM

TO: Allan Silberman
Director of Alternative Dispute Resolution

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

FROM: Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

Wanda J. Thomas *WJT*
Audit Manager

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Lead Auditor

SUBJECT: Fortuño 2004, Inc. (A05-09) – Referral Matter

On January 12, 2006, the Commission approved the final audit report on Fortuño 2004, Inc. The report was released to the public on January 20, 2006. In accordance with the Commission approved materiality thresholds, the final audit report includes matters that meet the criteria for referral to Alternative Dispute Resolution (ADR):

Finding 4. Itemization of Debts and Obligations

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Jeff Spilizewski or Wanda Thomas at 694-1200.

Attachments: Finding 4. Itemization of Debts and Obligations
Committee Response to the Interim Audit Report

cc: Reports Analysis Division

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Finding 4. Itemization of Debts and Obligations

Summary

The Audit staff identified debts and obligations totaling \$191,420 that were not itemized on Schedules D (Debts and Obligations). The Audit staff recommended the Committee file amended reports for 2003 and 2004 to correct its disclosure of debts and obligations. In response, the Committee stated that amended reports did not need modification due to the nature of the transactions. Nonetheless, the Committee filed amended reports disclosing the requested debt and obligation information.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Separate Schedules. A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

During a 100% review of disbursements, the Audit staff identified debts and obligations totaling \$191,420 that were not itemized on Schedules D. In order to determine total debts not reported, each outstanding debt was counted only once, even if it was outstanding for several reporting periods.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended the Committee file amended reports for 2003 and 2004 to correct its itemization of debts and obligations. In response, the committee believed that the reports did not need modification. The Committee stated that the majority of the invoices were for media and advertising which were paid half in advance, and the other half after receiving proof that the service had been provided. The Committee further explained that the invoices at issue carried the date of the original service request. As such, the total cost of the service to be provided may have appeared as debt. The Committee contended that the cost of such services should not be considered a debt until the Committee and its Treasurer received and reviewed the proof that the service had been provided. According to the Committee, that verification could take as long as 30 days from the date of the invoice. Nonetheless, the Committee filed the requested amended reports.

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The Committee's explanation about the media and advertising expenditures supports the Audit staff's position that the disbursements were reportable as debts. The Commission's regulation at 11 CFR §104.11 states in part that a debt or obligation, including a written contract, written promise or written agreement to make an expenditure, must be reported as of the date incurred. These media and advertising invoices were written agreements for the vendors to provide a service for which the total cost exceeded \$500.

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Interim Report of the Audit Division on Fortuño 2004, Inc.

July 31, 2003 – December 31, 2004

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Campaign (p. 2)

Fortuño 2004, Inc. (the Committee) is the principal campaign committee for Luis Fortuño, Republican candidate for the U.S. House of Representatives from the territory of Puerto Rico. The Committee is headquartered in San Juan, Puerto Rico. For more information, see the chart on Campaign Organization, p. 2.

Financial Activity (p. 2)

- **Receipts**
 - Contributions from Individuals \$ 1,555,555
 - Contributions from Political Committees 150,367
 - **Total Receipts** \$ 1,705,922

- **Disbursements**
 - Operating Expenditures \$ 1,661,727
 - Contribution Refunds 18,050
 - **Total Disbursements** \$ 1,679,777

Findings and Recommendations (p. 3)

- Disclosure of Form 3Z-1 (Finding 1)
- Itemization of Receipts (Finding 2)
- Disclosure of Disbursements (Finding 3)
- Disclosure of Debts and Obligations (Finding 4)

¹ 2 U.S.C. §438(b).

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Interim Report of the Audit Division on Fortuño 2004, Inc.

July 31, 2003 – December 31, 2004



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Part I

Background

Authority for Audit

This report is based on an audit of Fortuño 2004, Inc., undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various factors and as a result, this audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

Limitations

The Audit staff identified reimbursements to individuals for campaign related expenses that required itemization totaling \$121,473. Although the Committee complied with the record keeping requirements of the Act by providing a cancelled check², 26% of these reimbursements did not have receipts from the original vendors to support the individual's reimbursement. As a result, the scope of the review for reimbursements to individuals, with respect to disclosure of the required memo entries, was limited to those disbursement records containing a receipt or invoice from the original vendors.

² If the disbursement was in excess of \$200, the records must include a receipt or invoice from the payee, or a cancelled check or share draft to the payee. 11 CFR §102.9(b)(2)

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Part II

Overview of Campaign

Campaign Organization

Important Dates	Fortuño 2004, Inc.
• Date of Registration	August 5, 2003
• Audit Coverage	July 31, 2003 – December 31, 2004
Headquarters	San Juan, Puerto Rico
Bank Information	
• Bank Depositories	1
• Bank Accounts	1 Checking Account
Treasurer	
• Treasurer When Audit Was Conducted	Maria Sánchez Brás
• Treasurer During Period Covered by Audit	Maria Sánchez Brás
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	FecFile
• Who Handled Accounting and Recordkeeping Tasks	Volunteers

Overview of Financial Activity (Audited Amounts)

Cash on hand @ July 30, 2003	\$ 0
Receipts	
○ Contributions from Individuals	1,555,555
○ Contributions from Political Committees	150,367
Total Receipts	\$ 1,705,922
Disbursements	
○ Operating Expenditures	1,661,727
○ Contributions Refunds	18,050
Total Disbursements	\$ 1,679,777
Cash on hand @ December 31, 2004	\$ 26,145

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Part III

Summaries

Findings and Recommendations

Finding 1. Disclosure of Form 3Z-1

The Committee filed Form 3Z-1 (Consolidated Report of Gross Receipts for Authorized Committees) with its 2003 Year-End report but did not disclose the required financial information. The Audit staff recommends the Committee demonstrate that the required form was filed correctly or provide any comments it may have relative to this filing. (For more detail, see p. 4)

Finding 2. Itemization of Receipts

The Audit staff identified contributions from the Republican National Committee totaling \$10,000 that were not itemized on Schedule A (Itemized Receipts) of reports filed before the Committee was notified of the audit. After receiving notice of the audit, the Committee filed amended reports disclosing these contributions. The Audit staff recommends the Committee provide any comments it may have regarding the itemization of these receipts. (For more detail, see p. 5)

Finding 3. Disclosure of Disbursements

The Audit staff identified disbursements totaling \$311,775 that lacked or inadequately disclosed the required information. The Audit staff recommends the Committee file amended reports for 2003 and 2004 to correct the disclosure of its disbursements. (For more detail, see p. 6)

Finding 4. Disclosure of Debts and Obligations

The Audit staff identified debts and obligations totaling \$191,420 that were not itemized on Schedules D (Debts and Obligations). The Audit staff recommends the Committee file amended reports for 2003 and 2004 to correct its disclosure of debts and obligations. (For more detail, see p. 7)

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Part IV

Findings and Recommendations

Finding 1. Disclosure of Form 3Z-1

Summary

The Committee filed Form 3Z-1 (Consolidated Report of Gross Receipts for Authorized Committees) with its 2003 Year-End report but did not disclose the required financial information. The Audit staff recommends the Committee demonstrate that the required form was filed correctly or provide any comments it may have relative to this filing.

Legal Standard

Special Reporting Requirements. Principal campaign committees of candidates for the U.S. House and the U.S. Senate must file FEC Form 3Z-1 as part of their July Quarterly and Year-End Reports in the year proceeding the year in which the general election for the office sought is held. The information in this form allows opposing candidates to compute their “gross receipts advantage” used to determining whether a candidate is entitled to an increased contribution limit. The following information must be disclosed:

1. Gross receipts to date for the primary and general elections,
2. Aggregate amount of contributions from personal funds of the candidate for the primary and general elections, and,
3. A calculation of gross receipts less the candidate’s personal contributions for each election. 11 CFR §104.19.³

Facts and Analysis

The Committee filed Form 3Z-1 (Consolidated Report of Gross Receipts for Authorized Committees) with its 2003 Year-End Report but did not disclose the required financial information.

Using the electronic data provided by the Committee, the Audit staff determined gross receipts for the primary of \$490,235, and for the general of \$60,475, should have been disclosed on its 2003 Year-End Report. There were no personal contributions by the Candidate.

The Audit staff discussed this matter with the Committee representative at the exit conference. The representative stated she strongly remembers filing Form 3Z-1 because she had to count all of the receipts. She also stated she talked with the Committee’s FEC Campaign Finance Analyst about this filing.

³ This regulation became effective January 27, 2003; as such, this audit period is the first that required filing of this form.

Interim Audit Report Recommendation

The Audit staff recommends that, within 30 calendar days of service of this report, the Committee demonstrate that Form 3Z-1 was filed correctly or provide any comments it may have relative to this filing.

Committee Response:

The form 3Z-1 was requested by the FEC analyst responsible for the committee's review, Christopher Whyrick, with a request letter submitted to the committee during the campaign. (Please see attachment 1). When this request was received by the committee, the committee's Treasurer proceeded to make the necessary amendment to the FEC electronic file with the help of Christopher Whyrick. The committee did not receive any other letters from the analyst, due to the fact that the information had been provided.

Finding 2. Itemization of Receipts

Summary

The Audit staff identified contributions from the Republican National Committee totaling \$10,000 that were not itemized on Schedule A (Itemized Receipts) of reports filed before the Committee was notified of the audit. After receiving notice of the audit, the Committee filed amended reports disclosing these contributions. The Audit staff recommends the Committee provide any comments it may have regarding the itemization of these receipts.

Legal Standard

A. When to Itemize. Authorized candidate committees must itemize:

- Any contribution from an individual if it exceeds \$200 per election cycle, either by itself or when aggregated with other contributions from the same contributor; and
- Every contribution from any political committee, regardless of the amount.
- Every transfer from another political party committee, regardless of whether the committees are affiliated. 2 U.S.C. §434(b)(3)(A), (B) and (D).

B. Definition of Itemization Itemization of contributions received means that the recipient committee discloses, on a separate schedule, the following information:

- The amount of the contribution;
- The date of receipt (the date the committee received the contribution);
- The full name and address of the contributor;
- In the case of contributions from individual contributors, the contributor's occupation and the name of his or her employer; and
- The election cycle-to-date total of all contributions from the same contributor. 11 CFR §§100.12 and 104.3(a)(4) and 2 U.S.C. §434(b)(3)(A) and (B).

Facts and Analysis

The Audit staff identified contributions from the Republican National Committee totaling \$10,000 that were not itemized on Schedule A (Itemized Receipts), Line 11b of reports filed prior to being notified of the Commission's audit. Subsequent to being notified of the audit, the Committee filed amended reports disclosing these contributions.

Interim Audit Report Recommendation

The Audit staff recommends the Committee provide any comments it may have regarding the itemization of these receipts.

Committee Response:

The FEC electronic file had been modified for this matter prior to the audit from the FEC, based on the review made by the committee's Treasurer.

Finding 3. Disclosure of Disbursements

Summary

The Audit staff identified disbursements totaling \$311,775 that lacked or inadequately disclosed the required information. The Audit staff recommends the Committee file amended reports for 2003 and 2004 to correct the disclosure of its disbursements.

Legal Standard

A. Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in an election cycle, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee⁴; and
- Purpose (a brief description of why the disbursement was made—see below). 11 CFR §104.3(b)(4)(i).

B. Examples of Purpose.

- **Adequate Descriptions.** Examples of adequate descriptions of “purpose” include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3(b)(4)(i)(A).
- **Inadequate Descriptions.** The following descriptions do not meet the requirement for reporting “purpose”: advance, Election Day expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3(b)(4)(i)(A).

⁴ Payee means the person who provides the goods or services to the committee. 11 CFR §102.9(b)(2)(i)(A)

Facts and Analysis

During a 100% review of disbursements, the Audit staff identified expenditures totaling \$311,775 that lacked or inadequately disclosed the required information. Disbursements totaling \$274,453 inadequately disclosed the name, address, or purpose. The remaining \$37,322 were reimbursements to individuals for campaign related expenses that did not disclose the required memo entries of the original vendors.

As stated earlier, the scope of the review for reimbursements to individuals, with respect to disclosure of the required memo entries, was limited to those disbursement records containing a receipt or invoice from the original vendors.

The Audit staff discussed this matter with the Committee representative at the exit conference and provided a schedule of the transactions noted above. The Committee representative stated she would amend the appropriate schedules as necessary.

Interim Audit Report Recommendation

The Audit staff recommends that, within 30 calendar days of service of this report, the Committee file amended 2003 and 2004 reports:

- To disclose on Schedules B (Itemized Disbursements) the correct name, address, or purpose of expenditures; and,
- To disclose on Schedules B, for reimbursements to individuals (excluding personal travel and subsistence), a memo entry, if required, including the name and address of the original vendor, as well as the date, amount, and purpose of the original purchase.

Committee Response:

The committee will submit an amended report with the itemizations requested by the FEC auditors, including any necessary memo entries.

Finding 4. Disclosure of Debts and Obligations

Summary

The Audit staff identified debts and obligations totaling \$191,420 that were not itemized on Schedules D (Debts and Obligations). The Audit staff recommends the Committee file amended reports for 2003 and 2004 to correct its disclosure of debts and obligations.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Separate Schedules. A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement