



Federal Election Commission
Washington, DC 20463

November 24, 2008

Mike McNamara
Sonnenschein Nath & Rosenthal LLP
1301 K Street NW East Tower
Washington, DC 20005

Re: ADR 442 (P-MUR 454)

Dear Mr. McNamara:

On October 22, 2007, the Federal Election Commission (FEC/Commission) received your *sua sponte* submission on behalf of Brinker International, Inc. Political Action Committee and Charles M. Sonstebly, Treasurer admitting to certain violations of the Federal Election Campaign Act of 1971, as amended.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and take no action against the Respondents, Brinker International, Inc. Political Action Committee and Charles M. Sonstebly, Treasurer. In its memorandum to the Commission, dated January 25, 2008, this office stated:

Summary: In this case, Brinker International Inc. ("Brinker") and Brinker PAC, filed a *sua sponte* submission, acknowledging unreported receipts of payroll deductions from the connected organization, Brinker, and unreported contributions made by Brinker PAC to various candidates covering a period of 1994-2007. The submission also acknowledged transfers of payroll deductions that were late, i.e., were outside the 10-day and 30-day time limits set forth in the FECA. Brinker and Brinker PAC explained that their errors resulted from multiple causes: such as the absence of regular reconciliation between the PAC's bank account, and payroll records; several data sources for preparation of FEC reports; different calendars for FEC reporting versus its fiscal accounting system for payroll; and inadequate training for staff responsible for FEC filings. Brinker PAC also alleges it has taken a number of corrective actions including, *inter alia*, updating its governing procedures and policies, conducting internal training for staff employees involved in recordkeeping and reporting, adopting the internal controls as suggested by the Commission's April 2007 policy statement, and reviewing all payroll receipts and bank records on a monthly basis. The Committee also stated that following

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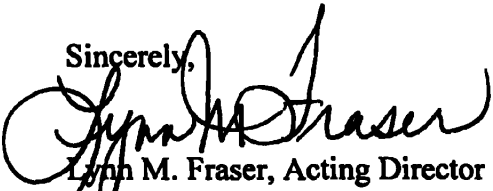
resolution of this matter, it intends to finalize outsourcing the reporting, recordkeeping, and accounting to a new bank who will serve as its Third Party Administrator and designated reporting agent. The new bank, Brinker PAC asserted, will process payroll deductions and result in a more integrated approach for handling receipts, transfers, and FEC reporting.

Accordingly, the Commission closed its file in this matter on November 6, 2008.

The FEC is obligated by federal regulations to make a finding to terminate its proceedings public, as well as the basis therefore. 11 C.F.R. § 111.20(b). In addition, the Commission will also place on the record copies of the complaint, correspondence exchanged between Respondents and the Commission, and reports prepared for the Commission by this office to assist in its consideration of this matter. Accordingly, copies of documents relative to this matter will be forwarded shortly to the FEC's Public Information Office.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,



Lynn M. Fraser, Acting Director
Alternative Dispute Resolution Office

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MEMORANDUM

January 25, 2008 **SENSITIVE**

TO: The Commission

THROUGH: Patrina M. Clark *PMC*
Staff Director

FROM: John D. Gibson *JDG*
Chief Compliance Officer

Deborah Ruth Kant *DRK*
Director, ADR Office

SUBJECT: ADR 442 Brinker International, Inc. and Brinker International Inc. PAC ("Brinker PAC"), Charles M. Sonsteby, Treasurer, Recommendation To Dismiss¹

ADR Case: ADR 442

Source No. Pre-MUR 454

Pre-Mur Submitted by:
Brinker International Inc.
Brinker PAC
Charles M. Sonsteby

Respondents' Rep.:
Mike McNamara and Michael Zolandz

Referral: OGC

Committee Name: Brinker International Inc. PAC

Date Pre-Mur filed: 10/22/07

Date Forwarded to ADRO: 12/27/07

Committee Type: Separated Segregated Election Cycles: 1994-2008
Fund (SSF)

Summary of Case: Treasurers of political committees are required to disclose all financial activity, including receipts. 2 U.S.C. §§ 434(a) 434(b)(2), 11 C.F.R. § 104.3(a). Receipts which are contributions (here payroll deductions) collected by any person must be transmitted to the treasurer of an unauthorized committee within ten (10) days of receipt for contributions over \$50 and within thirty (30) days for contributions of \$50 or less. 2 U.S.C. § 432(b)(2), 11 C.F.R. §§

¹ The Office of General Counsel reviewed the ADR Memorandum and concurs in the description of the case.

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102.6(c)(4), 102.8(b). SSFs may use collecting agents – *i.e.*, organizations or committees who collect and transmit contributions on behalf of SSFs. 11 C.F.R. § 102.6(b)(1). Connected organizations may serve as collecting agents on behalf of a SSF/PAC. Collecting agents and SSFs/PACs are responsible for compliance with the transmittal requirements. 11 C.F.R. §§ 102.6(b)(1)(ii), 102.6(c).

In this case, Brinker International Inc. (“Brinker”) and Brinker PAC, filed a *sua sponte* submission, acknowledging unreported receipts of payroll deductions from the connected organization, Brinker, and unreported contributions made by Brinker PAC to various candidates covering a period of 1994-2007. The submission also acknowledged transfers of payroll deductions that were late, *i.e.*, were outside the 10-day and 30-day time limits set forth in the FECA. Brinker and Brinker PAC explained that their errors resulted from multiple causes: such as the absence of regular reconciliation between the PAC’s bank account, and payroll records; several data sources for preparation of FEC reports; different calendars for FEC reporting versus its fiscal accounting system for payroll; and inadequate training for staff responsible for FEC filings. Brinker PAC also alleges it has taken a number of corrective actions including, *inter alia*, updating its governing procedures and policies, conducting internal training for staff employees involved in recordkeeping and reporting, adopting the internal controls as suggested by the Commission’s April 2007 policy statement, and reviewing all payroll receipts and bank records on a monthly basis. The Committee also stated that following resolution of this matter, it intends to finalize outsourcing the reporting, recordkeeping, and accounting to a new bank who will serve as its Third Party Administrator and designated reporting agent. The new bank, Brinker PAC asserted, will process payroll deductions and result in a more integrated approach for handling receipts, transfers, and FEC reporting.

RECOMMENDATION:

- 1. Dismiss ADR 442/Pre-MUR 454 and close the file.**
- 2. Approve appropriate letters.**

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Brinker International, Inc. and Brinker) ADR 442
International Inc. PAC ("Brinker PAC"),)
Charles M. Sonsteby, Treasurer)
(Pre-MUR 454))

CERTIFICATION

I, Mary W. Dove, Secretary of the Federal Election Commission, do hereby certify that on November 06, 2008, the Commission decided by a vote of 6-0 to take the following actions in ADR 442/Pre-MUR 454:

- 1. Dismiss ADR 442/Pre-MUR 454 and close the file.
2. Approve the appropriate letters.

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

November 6, 2008
Date

Mary W. Dove
Mary W. Dove
Secretary of the Commission

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