

REPORTS ANALYSIS REFERRAL
TO
ALTERNATIVE DISPUTE RESOLUTION OFFICE

DATE: June 2, 2008

ANALYST: Leah S. Palmer

I. COMMITTEE: Schwarz for Congress
C00395822
Robert Hans Schuler, Treasurer
P.O. Box 2063
Battle Creek, MI 49016

II. RELEVANT STATUTE: 11 CFR § 110.1(b)(3)(i)
2 U.S.C. § 441a(a)

III. BACKGROUND:

Receipt of Primary and General Election Contributions after the Primary and General Elections with No Reported Debts or Loans

Schwarz for Congress ("the Committee") received apparent excessive contributions totaling \$32,750.00. The excessive contributions were made by 136 individuals and one non-party multi-candidate political committee. The contributions in question were designated for either the 2006 Primary or General Election and received after the date of the designated election. They were neither refunded nor redesignated within sixty (60) days from the date of receipt nor within sixty (60) days from the date of the initial notice sent to the Committee by the Reports Analysis Division (RAD).

On August 29, 2007, the Committee filed the 2007 April Quarterly Report covering the period from January 1 to March 31, 2007. The report disclosed contributions designated for prior elections. Schedule A (Itemized Receipts) disclosed 128 contributions designated for the 2006 Primary Election, totaling \$26,750.00. Schedule A also disclosed nine (9) contributions designated for the 2006 General Election, totaling \$6,000.00. The Committee reported outstanding loans totaling \$4,500.00 owed to John Schwarz ("the Candidate") on Line 10 (Debts

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and Obligations Owed by the Committee) and Schedule C (Loans); however, the loans were incurred during the 2007 April Quarterly reporting period, well after the 2006 Primary and General Elections.

On September 19, 2007, a Request for Additional Information ("RFAI") was sent to the Committee referencing the 2007 April Quarterly Report. The RFAI noted the Committee's receipt of excessive contributions and requested that the Committee take corrective action (Image 27039524634).

On October 29, 2007, the Committee filed a statement indicating that amongst changes in staffing after the loss in the General Election, the Committee had been tracking and paying outstanding invoices. The Committee recognized that they may have erred in reporting debts and requested further assistance (Image 27039554505).

On November 30, 2007, the RAD Analyst contacted the Campaign Manager, Paul Egnatuk, to discuss his response to the RFAI. The RAD Analyst explained that his response was inadequate because the debts and loans owed should be reported on the report. Mr. Egnatuk stated that he did not understand the debt reporting process. The RAD Analyst explained the process to him and suggested that he review the Campaign Guide and FECFile Manual for information on how to report debts and loans. Mr. Egnatuk stated again that he did not understand the process and that the Committee would need to get someone to take care of the reporting issues. The RAD Analyst advised him that the Committee needed to file an adequate response by December 7, 2007, or the Committee would be referred for legal action (Attachment 2).

On December 7, 2007, Mr. Egnatuk left a message on the RAD Analyst's voicemail stating that the Committee had found someone to work on the reporting issues, and they would likely be calling the Analyst on December 10, 2007 (Attachment 2).

On January 4, 2008, a RAD Analyst left a message for Mr. Egnatuk stating that the Commission had not yet received a response regarding the receipt of excessive contributions. The RAD Analyst stated that an adequate response must be received by January 11, 2008 or the Committee may be referred for legal action for receiving excessive contributions. On the same day, Mr. Egnatuk returned the call stating that he was under the impression that the Committee's attorneys had been in contact with the Commission to address the issue. He said the Committee should be able to file the response by the deadline (Attachment 2).

On January 7, 2008, a RAD Analyst contacted Mr. Egnatuk to get an update on the Committee's status of filing a response regarding the receipt of excessive contributions. Mr. Egnatuk informed the RAD Analyst that he would attempt to contact the attorneys for further information (Attachment 2).

On January 9, 2008, a RAD Analyst called Mr. Egnatuk to get an update on the Committee's status of filing a response regarding the receipt of excessive contributions. The RAD Analyst explained that the Committee cannot receive contributions designated for a past

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election unless the Committee has net debts outstanding connected to that election. According to the filed reports, the Committee had zero net debts outstanding. Mr. Egnatuk understood that the Committee would need to amend the necessary reports to disclose debts connected to the past elections, or the contributions would remain excessive. The RAD Analyst advised Mr. Egnatuk to file a Miscellaneous Electronic Submission (FORM 99) disclosing all debt information by January 11, 2008 and subsequently file the necessary amendments to disclose all Schedule D activity (Attachment 2).

On January 10, 2008, a RAD Analyst called Mr. Egnatuk to get an update on the Committee's status of filing the FORM 99 in response to the issue of excessive contributions. Mr. Egnatuk informed the RAD Analyst that the Committee would be filing the response on January 11, 2008 (Attachment 2).

On January 11, 2008, the Committee filed a FORM 99 which included a list of debts incurred for 2006 Primary Election (Image 28930032150). Also on January 11, the Committee filed a Miscellaneous Text Submission (FORM 99) with the same information (Image 28039590762).

On February 12, 2008, a RAD Analyst left a message for Mr. Egnatuk stating that the Committee will be referred to the Office of General Counsel (OGC) because the debts disclosed on the FORMS 99 filed on January 11, 2008 could have been paid for by the Committee's cash on hand. The RAD Analyst advised Mr. Egnatuk to file a FORM 99 by the close of business on February 15, 2008 if the Committee wanted to provide further information (Attachment 2).

On February 15, 2008, a RAD Analyst left a message for Mr. Egnatuk restating the advice given on February 12, 2008. Mr. Egnatuk later returned the call asking for advice on what to include in the FORM 99. An Analyst stated the guidance given on February 12, 2008 and informed him that further advice on what to include in the statement could not be provided.

On February 15, 2008, the Committee filed a FORM 99 which stated in part:

"The Schwarz for Congress Committee solicited addition primary contributions in 2007 for the purposes of settling 2006 primary election debt with our vendors. At the time we solicited those donations, our reported cash on hand was incorrect. We have been attempting to discover the source of the problem, but as of right now have failed to confirm the error. Our actual cash on hand is \$400.25³. The discrepancy was reported to us and the reason given by the bookkeeper was that we had previously used the free software provided by the FEC and the software created the errors. Once the 2004 elections were over, the Committee entered into a contract with Aristotle to provide FEC reporting software. We believe the reports during that time were accurate, with the single exceptions of the cash on

³ On the 2008 April Quarterly Report (1/1/08-3/31/08), the Committee disclosed ending cash on hand balance of \$59,144.09. According to the Committee's FORM 99, its actual cash on hand was \$400.25 on 2/15/08. While the report does not allow to ascertain the exact cash on hand balance as of 2/15/08, since none of the transactions (\$300 in receipts and \$55.47 in disbursements) are itemized, the cash on hand discrepancy can be estimated at \$58.5K.

hand. Following the 2006 primary, we resumed using the free FEC software and again, we believe the reports to be accurate with the exception of cash on hand" (Image 28039640422).

On March 5, 2008, a RAD Manager called Mr. Egnatuk pursuant to the statement made in the FORM 99 regarding the Committee's disclosure of inaccurate cash on hand since 2004 to inform him that the Committee would be required to amend all necessary reports. Mr. Egnatuk explained that the Committee's use of different software vendors and reports preparers during that time would make filing the amendments very difficult. Mr. Egnatuk said he would get back to the RAD Manager after speaking to the Candidate and Treasurer (Attachment 2).

On March 6, 2008, a RAD Manager left a message for Mr. Egnatuk informing him that the Committee would need to correct the cash on hand discrepancies and amend the necessary reports over the next two or three weeks in order to avoid referral for legal action. The RAD Manager also stated that RAD would assist the Committee in correcting the reporting issues and that the Committee could raise money if they have net debts outstanding from the applicable elections after including the expenses associated with hiring staff to file the amendments (Attachment 2).

On March 7 and 10, 2008, a RAD Manager left messages for Mr. Egnatuk regarding the requested amendments. The RAD Manager asked that he return the call to receive updated information that may help the Committee comply with the Commission's request of filing all necessary amendments (Attachment 2).

On April 14, 2008, a RAD Manager called Mr. Egnatuk to ask for an update on the Committee's status of amending their reports. Mr. Egnatuk stated that the Committee had made no progress since the last communication and was waiting to hear from the Commission on how to proceed on filing the amendments. The RAD Manager reminded him that the Committee was previously advised to work on correcting the cash on hand discrepancy as soon as possible in order to avoid referral for legal action. Mr. Egnatuk stated that this would require the Committee to revamp their database back through 2004, and the Committee did not know how to raise the necessary funds to make this possible. Mr. Egnatuk mentioned that he believed some reports filed around the 2004 Primary and General Elections may not have disclosed all financial activity. The RAD Manager suggested that rather than revamping the entire electronic database, the Committee go through their records and compare the records from that time period to the activity disclosed on the reports. If the Committee was able to determine which transactions were misreported and then file a detailed explanation of the activity with the Commission, a referral for legal action may be avoided. Mr. Egnatuk said he would get back to the RAD Manager after speaking to the Candidate and Treasurer (Attachment 2).

On May 6, 2008, a RAD Manager left messages for Mr. Robert Schuler, Treasurer, and Mr. Egnatuk asking for an update on the Committee's status of correcting the cash on hand discrepancies and filing the necessary amendments. On the same day, Mr. Egnatuk returned the call and left a message stating he was working on identifying the missing disbursement entries that resulted in inflated cash on hand balance. He mentioned that the Committee's resources

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were limited, and he did not know exactly how long it would take to correct the problem (Attachment 2).

On May 14, 2008, a RAD Manager left a message for Mr. Egnatuk notifying him that the Committee was going to be referred for legal action for failure to resolve reporting issues. On the same day, the RAD Manager also attempted to contact Mr. Schuler, but was only able to speak to his executive assistant. The RAD Manager left a message with the executive assistant asking her to notify Mr. Schuler that the Committee was going to be referred for legal action for failure to resolve reporting issues (Attachment 2).

On May 15, 2008, Mr. Egnatuk returned the RAD Manager's call and informed her that while he understood that the Committee was being referred, he had not yet been able to determine the disbursement discrepancies and would continue to work on the issue (Attachment 2).

To date, no further communications have been received from the Committee regarding this matter.

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