

REPORTS ANALYSIS REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: June 26, 2009

ANALYST: Mike Hartssock

- I. COMMITTEE: Committee to Re-Elect Vito Fossella
C00328070
Vito Fossella, Treasurer (11/11/08 - present)
Lisa Lisker, Treasurer (2/20/08 - 11/10/08)
Christopher J. Ward, Treasurer (7/13/06 - 2/19/08)
34 Dumont Avenue
Staten Island, NY 10305
- II. RELEVANT STATUTE: 11 CFR § 110.1(b)(3)
11 CFR § 102.9(e)(3)

III. BACKGROUND:

Other Violations of the Federal Election Campaign Act (Unauthorized Disbursement of Committee Funds)**Summary**

The Committee to Re-Elect Vito Fossella ("the Committee") informed RAD of an apparent unauthorized disbursement of Committee funds totaling between \$15,000.00 and \$20,000.00 during the 2007-2008 election cycle. The Committee reported this unauthorized disbursement in response to the Request for Additional Information ("RAFI") sent by the Reports Analysis Division (RAD) on the 2008 July Quarterly Report regarding the Committee's failure to refund impermissible contributions received for the 2008 Primary and General Elections. The Committee refunded most, but not all, of the impermissible contributions, and communicated that the outstanding impermissible contributions could not be refunded due to a lack of funds. According to the Committee's attorney, a former treasurer, Christopher J. Ward, apparently embezzled between \$15,000.00 and \$20,000.00 of campaign funds and also failed to deposit some of the contributions disclosed on the Committee's 2007-2008 reports into the Committee's bank account.

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Background

On February 20, 2008, the Committee amended its Statement of Organization (FEC FORM 1) to disclose Lisa Lisker as the new treasurer replacing the former treasurer, Christopher J. Ward.

On May 20, 2008, Congressman Vito Fossella announced that he would not seek re-election to New York's 13th Congressional District seat.

On July 15, 2008, the Committee filed a 2008 July Quarterly Report covering the reporting period from April 1 through June 30, 2008 (Image 28932188965). The report disclosed contributions totaling \$23,250.00 from twenty-seven (27) individuals, five (5) political action committees, and one (1) federal candidate committee that were designated for the 2008 Primary Election but received after the candidate announced he was no longer seeking re-election (Attachment 2). As the Committee did not disclose any outstanding loans or debts, the campaign was not eligible to receive debt retirement contributions.

The Committee's reports through the 2008 July Quarterly Report disclosed that the Committee received a total of \$137,975.00 in 2008 General Election contributions from fifty-five (55) individuals and sixteen (16) political action committees.

On September 18, 2008, a Request for Additional Information ("RFAI") was sent to the Committee referencing the 2008 July Quarterly Report. The RFAI noted the Committee's receipt of impermissible 2008 Primary and General Election contributions and requested that the Committee take corrective action (Image 28039833943).

On October 15, 2008, the Committee filed a 2008 October Quarterly Report covering the period from July 1 through September 30, 2008 (Image 28992594524). The Committee reported receiving additional unitemized contributions totaling \$200.00 but failed to disclose any refunds.

On October 30, 2008, a Reports Analysis Division (RAD) analyst ("the Analyst") left a voice message for the Committee's treasurer, Lisa Lisker, in regard to failing to respond to the RFAI and requested that she return the call as soon as possible (Attachment 3).

On November 6, 2008, Ms. Lisker returned the Analyst's call and stated that she was no longer the treasurer of the Committee. The Analyst informed her that the issue of impermissible contributions would be referred for additional action by the Commission if not corrected, and Ms. Lisker stated that she would pass this information to the Committee (Attachment 3).

On November 11, 2008, the Committee amended its FEC FORM 1 to disclose the candidate, Vito Fossella, as the new treasurer (Image 28934209145).

On November 12, November 20, December 10, and December 15, 2008 the Analyst communicated with various Committee representatives, including the Committee's attorney,

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Kenneth Gross, in regard to the outstanding referable issue of impermissible contributions (Attachment 3). In response to RAD's requests for corrective action, the Committee filed a Miscellaneous Electronic Document ("FORM 99") on December 16, 2008, that stated in part,

"[T]he Committee to Re-Elect Vito Fossella will refund primary contributions made after May 20, 2008, except to the extent necessary to cover any valid outstanding primary debts, and will refund all general election contributions made to the Committee. The May 20, 2008 date is being used to identify the point at which Congressman Fossella withdrew from the primary race. ... The Committee will file the appropriate reports showing the refunds" (Image 28994116619).

On January 31, 2009, the Committee filed a 2008 Year End Report covering the period from October 1 through December 31, 2008 (Image 29990928679). The report disclosed \$125,975.00 in refunds of 2008 General Election contributions. The Committee failed to refund \$12,000.00 in 2008 General Election contributions, and did not refund any 2008 Primary election contributions received after the candidate's withdrawal date of May 20, 2008 (Attachment 2).

On April 2, 2009, the Analyst contacted Mr. Gross to inform him that the Committee failed to refund \$14,300.00 in General Election contributions and \$23,250.00 in Primary Election contributions received after the candidate's withdrawal from the race. The Analyst also stated that this issue would be referred for further Commission action (Attachment 3).

On April 14, 2009, Mr. Gross called the Analyst and explained that the Committee did not have as much money in their account as the reports showed because a former treasurer, Christopher J. Ward, had embezzled committee funds. The Analyst advised Mr. Gross to file a FORM 99 to disclose this information.

On April 15, 2009, the Committee filed the 2009 April Quarterly Report, covering the period of January 1 through March 31, 2009 (Image 29933559859). Attached to the report was the following memo text:

"The accuracy of this report is in question due to alleged embezzlement of funds. The Committee is in the process of reconciling its records and will file an amended report as soon as possible" (Image 29933559863).

On April 20, April 24, and May 24, 2008 RAD Management attempted to contact Mr. Gross to follow up on the outstanding referable issue. On May 24, 2008, Mr. Gross communicated to RAD that he was not prepared to discuss the matter, and requested additional time to speak with his client (Attachment 3).

On May 26, 2009, RAD Management left a follow-up voice mail message for Mr. Gross. Mr. Gross returned the call and advised that he had no further information regarding the Committee's ability to refund outstanding impermissible contributions. He stated that

the ending cash balance disclosed on the Committee's 2009 April Quarterly Report was incorrect due to unauthorized use of campaign funds. RAD Management advised Mr. Gross that the matter would be referred for additional Commission action and encouraged him to file a *sua sponte* response regarding the unauthorized use of campaign funds. Mr. Gross stated that he was not inclined to submit a *sua sponte*, but that he would consult with his client (Attachment 3).

On June, 3, 2009, RAD Management called Mr. Gross to see if he had any additional information. Mr. Gross estimated the unauthorized use of Committee funds at \$15,000.00 to \$20,000.00. He also stated that he believed some contributions disclosed on the Committee's reports were never deposited in the Committee's account. RAD Management informed him that the Committee was being referred for further action (Attachment 3).

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

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