



**Federal Election Commission
Washington, DC 20463**

March 22, 2012

Thomas J. Josefiak, Esq.
Holtzman Vogel PLLC
45 North Hill Drive, Suite 100
Warrenton, VA 20186

Re: ADR 590 (RAD 11L-24)
Marco Rubio for U.S. Senate and Keith A. Davis, Treasurer

Dear Mr. Josefiak:

Enclosed is the signed copy of the agreement resolving the referral initiated on November 7, 2011 by the Federal Election Commission ("FEC/Commission") involving Marco Rubio for U.S. Senate and Keith A. Davis, Treasurer ("Respondents"). The agreement for **ADR 590 (RAD 11L-24)** was approved by the Commission on **March 19, 2012** – the effective date of the agreement.

Note the specific time frames for compliance in paragraph 6 of the agreement. **Please forward to this office, a statement certifying Respondent's compliance with the terms listed in the aforementioned agreement.** The letter should note the dates on which Respondents satisfied each of the terms listed in paragraph 6, and contain the ADR caption and case number. **The civil penalty payment should be sent to the attention of the Accounting/Finance Office of the FEC. The civil penalty under the agreement is due on or before April 19, 2012.¹ Please put the ADR case number on the civil penalty check as well, to ensure crediting to the correct case.**

As you are aware, the settlement agreement will be made part of the record that is released to the public. The Commission will also place on the record copies of the referral, correspondence exchanged between your office and this office prior to our entry into settlement negotiations and reports prepared for the Commission by this office to assist in its consideration of this matter. The Commission is obliged by Federal statute to place on the public record documents in closed enforcement and alternative dispute

¹ Please note, if the Commission refers an unpaid civil penalty to the US Treasury or third party collection agent, additional costs and fees will be assessed.

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resolution cases; accordingly, copies of documents relative to this matter will be forwarded shortly to the FEC's Public Information Office.

This agreement resolves the matter that was initiated by the Commission pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities regarding violations of federal election campaign laws. I appreciate your assistance in effectively resolving this matter and bringing the case to a mutually acceptable conclusion.

Sincerely,

Lynn M. Fraser, Director
Alternative Dispute Resolution Office
202-694-1665

Enclosure: Agreement

cc: Gwen Holmes, Finance and Accounting Office
Room 819

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Federal Election Commission
Washington, DC 20463

Case Number: ADR 590
Source: RAD 11L-24
Case Name: Marco Rubio for U.S. Senate

NEGOTIATED SETTLEMENT

This matter was initiated by the Federal Election Commission (Commission) pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. Following review of the matter, and in an effort to promote compliance with the Federal Election Campaign Act of 1971, as amended, (FECA) and resolve this matter, the Commission entered into negotiations with Thomas J. Josefiak, Esq. and Michael Bnyes, Esq., representing Marco Rubio for U.S. Senate and Keith A. Davis, in his official capacity as Treasurer (the Committee or Respondents). It is understood that this agreement will have no precedential value relative to any other matters coming before the Commission.

Negotiations between the Commission and Respondents addressed the issues raised in this referral. The parties agree to resolve the matter according to the following terms:

1. The Commission entered into this agreement as part of its responsibility for administering the FECA, and in an effort to promote compliance on the part of Respondents. The Commission's use of alternative dispute resolution procedures (ADR) is guided by "The Administrative Dispute Resolution Act of 1996," 5 U.S.C. § 572 and is an extension of 2 U.S.C. § 437g.
2. Respondents voluntarily enter into this agreement with the Commission.
3. The Reports Analysis Division (RAD) referred Respondents for receiving prohibited, excessive, and other impermissible contributions totaling \$210,173.09 for the 2010 Primary and General Elections. The Committee did not refund, reattribute, or redesignate these contributions within the appropriate timeframes.
4. No person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$2,400. 2 U.S.C. §§ 441a(a) and (f), 11 C.F.R. §§ 110.1(b), 110.9. (2010). The contribution limits are indexed for inflation in odd-numbered years.
5. Respondents contend that although they refunded all contributions noted in the referral, an internal audit of the Committee financial records demonstrate that the actual amount of excessive contributions not refunded, reattributed or redesignated timely was \$61,958. Respondents acknowledge that an additional \$22,400 in contributions clearly stated on the check or transmittal device that the funds were a joint contribution, but the

ADR 590 (RAD 11L-24)

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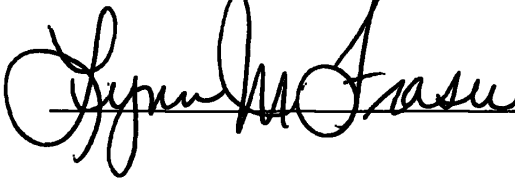
Committee failed to send the letter requesting written verification of the joint contribution pursuant to 11 C.F.R. § 110.1(k). Respondents acknowledge some designations and/or attributions were lost during transition from one compliance vendor to another, due to the fact that some data was sent to both vendors and each assumed the other was dealing appropriately with the information. In addition to the new compliance vendor, the Committee attested that all relevant reports were amended following their internal audit and reconciliation.

6. Respondents, in an effort to avoid similar errors in the future, agree to: (a) send a representative to a FEC conference within twelve months of the effective date of this agreement; (b) develop and certify implementation of a compliance operations manual which includes internal controls consistent with the Commission's Best Practices for Committee Management (2009 update) and a process to track receipt of, and response to, communications with the Commission within sixty (60) days of the effective date of this agreement; (c) certify the appointment of a Committee compliance specialist to interface with the compliance vendor within thirty (30) days of the effective date of this agreement; and (d) pay a civil penalty of \$8,000 within thirty (30) days of the effective date of this agreement.
7. Respondents agree that all information provided to resolve this matter is true and accurate to the best of their knowledge and that they sign this agreement under penalty of perjury pursuant to 28 U.S.C. § 1746.
8. The parties agree that if Respondents fail to comply with the terms of this settlement, the Commission may submit any unpaid civil penalty to the U.S. Treasury for collection or undertake civil action in the U.S. District Court for the District of Columbia to secure compliance.
9. This agreement shall become effective on the date signed by all parties and approved by the Commission. Respondents shall comply with the terms of this agreement as set out in paragraph 6 above, and shall certify compliance with the above settlement terms in writing to the Alternative Dispute Resolution Office on or before the date each term becomes due.
10. This Negotiated Settlement constitutes the entire agreement between the parties on ADR 590 (RAD 11L-24), and resolves those issues identified in paragraph 3 above. No other statement, promise or agreement, either written or oral, made by either party, not included herein, shall be enforceable.

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FOR THE COMMISSION:

Lynn M. Fraser, Director
Alternative Dispute Resolution Office



3/19/2012
Date Signed

FOR THE RESPONDENTS:



Thomas J. Josefiak, Esq.
Representing Marco Rubio for U.S. Senate
and Keith A. Davis, Treasurer

1/13/12
Date Signed

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