

REPORTS ANALYSIS DIVISION REFERRAL
TO
ALTERNATIVE DISPUTE RESOLUTION OFFICE

DATE: June 3, 2013

ANALYST: Carolina Cavano

- I. COMMITTEE: Andre Bauer for Congress
C00504993
Randall Cole, Treasurer
P.O. Box 1597
Little River, SC 29566
- II. RELEVANT STATUTES: 2 U.S.C. § 434(b)(4)(D)
11 CFR § 104.3(b)(2)(iii)

III. BACKGROUND:

Failure to Provide Supporting Schedules (Failure to Disclose All Financial Activity)

Andre Bauer for Congress ("the Committee") amended its 2012 October Quarterly Report to disclose additional disbursements of \$102,750.00, which were not reported in the original report (Attachment 2).

On October 9 and October 11, 2012, Scott Malyerck, the Committee's campaign manager, called the Reports Analysis Division (RAD) Analyst requesting assistance with properly disclosing the source of a loan from the candidate's personal funds using the Federal Election Commission's electronic filing software (FECFile).¹ The Analyst explained how to change the source of a loan in FECFile to indicate personal funds (Attachment 3).

Later on October 11, 2012, Mr. Malyerck contacted the RAD Analyst for assistance with creating the 2012 October Quarterly Report in FECFile. The Analyst explained how to create a new report in FECFile and ensured that the Committee had the correct coverage dates for the October Quarterly period (Attachment 3).

¹ The Committee received Requests for Additional Information from RAD on the 2012 April Quarterly, 12 Day Pre-Primary, and 12 Day Pre-Runoff Reports for not disclosing the ultimate source of candidate loans.

On October 15, 2012, Mr. Malyerck called the RAD Analyst for guidance on how to disclose the forgiveness of a candidate loan in FECFile on the Committee's report. The Analyst explained how to reduce the loan by the amount that was being forgiven (Attachment 3).

Later that day, the Committee filed its original 2012 October Quarterly Report, covering the period from July 1, 2012 through September 30, 2012. The report disclosed no disbursements on Line 19(a) (Repayments of Loans Made or Guaranteed by the Candidate) of the Detailed Summary Page (Image 12972559408, Attachment 2).

On December 7 and December 16, 2012, the Committee filed Amended 2012 October Quarterly Reports that disclosed no change in disbursements (Images 12963018853 and 12963742316).

On January 30, 2013, Mr. Malyerck called the RAD Analyst requesting assistance with disclosing the repayment of a candidate loan. During the conversation, the Analyst determined that Mr. Malyerck had created two separate FECFile data files for the Committee's reports, which caused continuity issues going back to the original 2012 October Quarterly Report, received October 15, 2012. The Analyst helped Mr. Malyerck identify the correct data file, and instructed him to amend the 2012 October Quarterly Report. The Analyst then explained to Mr. Malyerck how to disclose the repayment and partial forgiveness of a candidate loan during the 2012 Year-End reporting period, and assisted him in creating the 2012 Year-End Report (Attachment 3).

Later on the same day, the Committee filed an Amended 2012 October Quarterly Report disclosing \$102,750.00 in disbursements on Line 19(a) of the Detailed Summary Page, an increase of \$102,750.00 from the original report (Image 13960574350, Attachment 2).

On March 19, 2013, a Request for Additional Information ("RFAI") was sent to the Committee referencing the Amended 2012 October Quarterly Report, received January 30, 2013. The RFAI requested clarification regarding the increase in disbursements not disclosed on the original filing (Image 13330027367).

On March 26, 2013, the RAD Analyst called Mr. Malyerck to obtain an unofficial email address in order to re-email the RFAI for the Amended 2012 October Quarterly Report. Mr. Malyerck asked about the content of the RFAI. The Analyst explained that the RFAI requested clarification for the increase in disbursements disclosed on the Amended 2012 October Quarterly Report, received January 30, 2013. The Analyst suggested Mr. Malyerck file a Miscellaneous Electronic Submission (Form 99) to clarify the discrepancy (Attachment 3).

On April 26, 2013, the RAD Analyst called Mr. Malyerck to notify him that the Committee would be referred for further Commission action for the increase in disbursements, specifically loan repayments to the Candidate, disclosed on the Amended

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2012 October Quarterly Report, received January 30, 2013. The Analyst suggested that Mr. Malyerck file a Form 99 to explain the cause of the discrepancy (Attachment 3).

On April 26, 2013, the Committee filed a Form 99 in response to the RFAI which stated, in part:

“The original October 2012 Quarterly Report was [*sic*] file using a separate dcf file from which the previous report had been filed. The amended October 2012 Quarterly Report was reported and submitted on the correct dcf file. This problem occurred because two different dcf files were mistakenly used. This is the reason for the error” (Image 13962132776).

On May 1, 2013, the RAD Analyst called Randall Cole, the Committee treasurer, and left a voicemail indicating that the Committee would be referred for further action by the Commission because of the increase in activity disclosed on the Amended 2012 October Quarterly Report, received January 30, 2013 (Attachment 3).

On May 24, 2013 the Committee filed an Amended 2012 October Quarterly Report that disclosed no change in disbursements from the previous amendment (Image 13962703622).

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

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