



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3097

DATE FILMED 1/16/91 CAMERA NO. 2

CAMERAMAN AS

21040313529

06C 7120

SAM STRETTON for CONGRESS

301 SOUTH HIGH STREET • P. O. BOX 3231
WEST CHESTER, PENNSYLVANIA 19381
(215) 692-7018
(215) 696-4243

90 JUL 31 PM 2:54

HAND DELIVERED

July 30, 1990

mur 3097

Office of the General Counsel
FEDERAL ELECTION COMMISSION
999 "E" Street, N.W.
Washington, DC 20463

Dear Sir or Madam:

I am herewith filing a complaint against Louis DuPont Smith, Independent Candidate for Congress in the 5th Congressional District (PA), for what I believe may be a violation of Federal Election Law.

It is my understanding that Mr. Smith has been declared incompetent by the Common Pleas Court of Chester County (PA) to manage his financial affairs and that his assets, with the exception of a monthly allowance, have been placed in trust. Further, I understand that Mr. Smith has no access to nor control over these funds.

Mr. Smith recently petitioned the Common Pleas Court of Chester County (PA) to release \$15,000 for use in his Congressional Campaign (See attached article, Philadelphia Inquirer, July 25, 1990).

From my reading of 11 CFR § 110.10, I question whether the funds in trust are "personal funds," as defined by that section. If they are not, then it would suggest that the full \$15,000 cannot be used in Mr. Smith's campaign.

The essence of my question and the basis of my complaint is: Does Mr. Smith's lack of control over these funds render them "non-personal" and, if so, does his use of the \$15,000 for campaign expenditures constitute a violation of Federal Election Law?

Kindly contact me if additional information is required.

Very truly yours,
[Signature]
Samuel C. Stretton

Sworn to and subscribed
before me this 30th day
of July, 1990.

[Signature]
Notary Public

NOTARIAL SEAL
MICHELE M. REDDEN, Notary Public
Media Boro, Delaware County
My Commission Expires March 8, 1993

Committee to Elect Sam Stretton for Congress, Deborah Hoet, Treasurer

90 JUL 31 PM 3:30
RECEIVED
FEDERAL ELECTION COMMISSION

0104013530

7/25/90 Inquirer

Judge gives du Pont heir's political bid a lift

United Press International

A maverick heir of the du Pont family may use a portion of his inheritance to help fund a possible congressional campaign, a judge ruled yesterday in West Chester.

Chester County Judge Lawrence F. Wood approved a bank transfer of \$15,000 from the Wilmington Trust Co. to Lewis du Pont Smith's campaign finance committee.

"The intent of this order is that the said funds be transferred to Mr. Smith's campaign committee and be

accounted for by them," Wood said in a two-page order.

The court has been overseeing Smith's financial affairs since 1985 when Wood declared the Chester County resident incompetent to manage his \$10 million share of the family fortune.

Smith's parents, Newbold and Margaret du Pont Smith, petitioned the court to have Smith declared incompetent after he donated \$212,000 to organizations headed by political extremist Lyndon H. LaRouche Jr.

Smith, who has espoused LaRouche's political ideas in his campaign, has said the feud with his family centers not on his competence but on his support for LaRouche, who is serving 15 years in a federal prison for conspiracy, mail- and tax-fraud convictions.

Smith, 33, has been living on a \$180,000 a year allowance, with the remaining portion of his inheritance held in trust by the Delaware bank.

Wood continues to hold hearings on Smith's request to be declared competent to handle his financial

affairs. The next phase of the hearing is scheduled for Sept. 10, and Wood has not indicated when he will rule on the request.

Smith is not yet on the ballot in the state's Fifth Congressional District, and is stepping up his efforts to obtain the necessary 3,069 signatures from registered voters on nominating petitions by next Wednesday.

If put on the ballot, he would face Rep. Richard T. Schulze (R, Pa.) and Democrat Samuel C. Stretton, a lawyer.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 6, 1990

Samuel C. Stretton
Sam Stretton for Congress
301 South High Street
P.O. Box 3231
West Chester, PA 19381

RE: MUR 3097

Dear Mr. Stretton:

This letter acknowledges receipt on July 31, 1990, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Lewis DuPont Smith. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3097. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

91940313532



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 6, 1990

Lewis DuPont Smith
2020 Walnut Street, Apt. 4J
Philadelphia, PA 19103

RE: MUR 3097

Dear Mr. Smith:

The Federal Election Commission received a complaint which alleges that you and Lewis DuPont Smith for Congress and Philip Valenti, as treasurer ("the Committee") may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3097. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you and the Committee in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

2104031333

If you have any questions, please contact Tamara Kapper, the staff member assigned to this matter at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel



BY: Lois G. Lerner
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

21040313534



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 6, 1990

Philip Valenti, Treasurer
Lewis DuPont Smith for Congress
40 A Garrett Road, Office D
Upper Darby, PA 19082

RE: MUR 3097

Dear Mr. Valenti:

The Federal Election Commission received a complaint which alleges that Lewis DuPont Smith for Congress and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3097. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

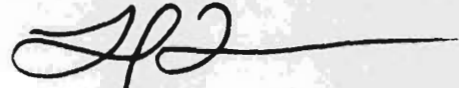
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21040313535

If you have any questions, please contact Tamara Kapper, the staff member assigned to this matter at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel



BY: Lois G. Lerner
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc: Lewis DuPont Smith

21040313536

STATEMENT OF DESIGNATION OF COUNSEL

06C 7417

MUR 3097

NAME OF COUNSEL: James D. Crawford

90 AUG 14 AM 10:14

ADDRESS: Schnader, Harrison, Segal & Lewis

Suite 3600, 1600 Market Street

Philadelphia, PA 19103

TELEPHONE:

215-751-2162

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF LEGAL COUNSEL
90 AUG 14 PM 12:45

The above-named individual is hereby designated as my
counsel and is authorized to receive any notifications and other
communications from the Commission and to act on my behalf before
the Commission.

August 9, 1990

Date

Philip Valenti
Signature

RESPONDENT'S NAME:

Philip Valenti

ADDRESS:

c/o Lewis duPont Smith for Congress Committee

40A Garrett Road, Office D

Upper Darby, PA 19082

HOME PHONE:

215-352-7730

BUSINESS PHONE:

215-734-7070

91040313537

SCHEIDT, HARRISON, SEGAL & LERNER

ATTORNEYS AT LAW

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717-231-4000

SUITE 700

ONE MONTGOMERY PLAZA

NORRISTOWN, PENNSYLVANIA 19401

215-277-7700

SUITE 1400
330 MADISON AVENUE
NEW YORK, NEW YORK 10017
212-973-8000

SUITE 1000
1111 NINETEENTH STREET, N. W.
WASHINGTON, D. C. 20036
202-463-2900

August 13, 1990

JAMES D. CRAWFORD
215-751-2162

Lois G. Lerner
Associate General Counsel
Federal Election Commission
Washington, DC 20463

Re: MUR 3097

Dear Ms. Lerner:

Philip Valenti, Treasurer of Lewis du Pont Smith for Congress, has forwarded me your letter to him written on behalf of Lawrence M. Noble, General Counsel.

We have received a copy of the attached letter of July 30, 1990 from Samuel C. Stretton, the Democratic candidate for Congress in the Fifth Congressional District of Pennsylvania and suspect that it may have been the letter which provoked your inquiry.

Rather than await clarification from the Commission, let me address the issue raised by Mr. Stretton: Lewis du Pont Smith is an independent candidate for Congress in the Fifth Congressional District of Pennsylvania. His personal wealth includes substantially more than a million dollars over which he had complete control until 1985, when his parents brought an action in the Court of Common Pleas of Chester County, Pennsylvania, seeking to impose a guardianship on those funds because Mr. Smith was using them to support political causes of which his parents disapproved. As a result of that litigation, the Honorable Lawrence E. Wood on July 23, 1986, appointed the Wilmington Trust Company as guardian of Mr. Smith's estate.

In July, 1990, Mr. Smith petitioned the court to release \$15,000 from his estate to his congressional campaign. On July 24, 1990, Judge Wood entered an order approving that transfer. Mr. Stretton's letter suggests that the funds released are not "personal funds" under 11 C.F.R. § 110.10 and that they cannot, therefore, be used in Mr. Smith's campaign. Mr. Stretton's suggestion is without foundation.

90 AUG 13 PM 10:04

90 AUG 15 PM 12:05

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK

8 3 5 3 1 8 0 4 0 1 2

Lois G. Lerner

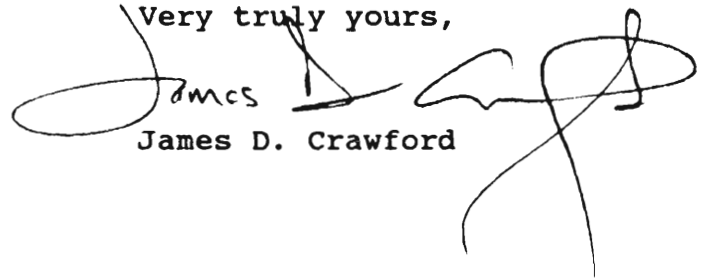
-2-

As one of Mr. Smith's counsel in litigation presently proceeding before Judge Wood to terminate the guardianship, I am intimately familiar with the pertinent facts. All of the funds held by the Wilmington Trust Company under Judge Wood's 1986 order are personal funds belonging to Mr. Smith and the use of these funds would be subject to Mr. Smith's complete discretion but for Judge Wood's 1986 order. Judge Wood's July 24, 1990 order did no more than release the constraint which the Judge had placed on those funds in 1986 so that Mr. Smith could make use of those funds.

There has never been any suggestion that the funds subject to Judge Wood's 1986 order were other than Mr. Smith's personal funds, and the Wilmington Trust Company never had any right to exercise any dominion over those funds except as guardian of the estate of Mr. Smith. I appreciate Mr. Stretton's desire to prevent Mr. Smith from using his own resources in his campaign against Mr. Stretton and the present incumbent. The Supreme Court has made it clear, however, that the Constitution protects Mr. Smith's right to use his own resources in support of his quest for public office, and any attempt to deny him the right to use the funds released from his personal estate would be both a misreading of the Federal Election Campaign Act of 1971 and the regulations under it and a violation of Mr. Smith's First Amendment rights.

If you have any questions, please let me know.

Very truly yours,


James D. Crawford

Attachment

SAM STRETTON for CONGRESS

301 SOUTH HIGH STREET • P. O. BOX 3231
WEST CHESTER, PENNSYLVANIA 19381
(215) 692-7018
(215) 696-4243

July 30, 1990

Office of the General Counsel
FEDERAL ELECTION COMMISSION
999 "E" Street, N.W.
Washington, DC 20463

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Kindly contact me if additional information is required.

Very truly yours,

Samuel C. Stretton

Sworn to and subscribed
before me this 30th day
of July, 1990.

Michele M. Redden
Notary Public

NOTARIAL SEAL
MICHELE M. REDDEN, Notary Public, Commission Expires March 8, 1993
Media Boro, Delaware County
My Commission Expires March 8, 1993

91040313540

SCHWABER, HARRISON, SEGAL & LEWIS

ATTORNEYS AT LAW

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HARRISBURG, PENNSYLVANIA 17101
717-231-4000

SUITE 700
ONE MONTGOMERY PLAZA
NORRISTOWN, PENNSYLVANIA 19401
215-277-7700

September 18, 1990

Tony Buckley
Federal Election Commission
Washington, DC 20463

Re: Lewis du Pont Smith
MUR 3097

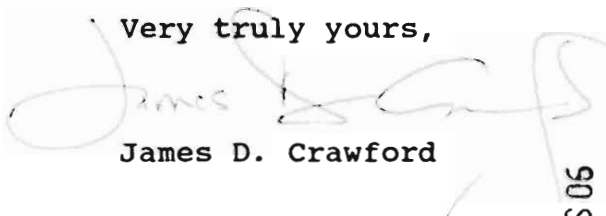
Dear Mr. Buckley:

After some difficulty, I am now in possession of the various orders of Judge Wood placing Lewis du Pont Smith's personal estate in a guardianship account at Wilmington Trust Company.

The most significant fact about that guardianship account, as I think is clear from the opinions, is that the money in those accounts would be Mr. Smith's to use without any restraint but for the court order, so that the release of funds by the court is merely a vacation of a portion of the order restraining Mr. Smith from spending those funds in the first place. Also significant is the fact that the court makes it clear that it has placed no restraint on Mr. Smith's person or activities.

If you have any questions when you have reviewed these opinions, I would be happy to provide you whatever further information you may need.

Very truly yours,


James D. Crawford

JDC:mac
5/a:25

Enclosures

cc: Lewis du Pont Smith (w/o encl.)
Philip Valenti " "

90 SEP 21 AM 10:49

RECEIVED
FEDERAL ELECTION COMMISSION

90 SEP 21 AM 11:54

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FEDERAL ELECTION COMMISSION

21040813541

SECOND SERIES

TABLE OF CASES REPORTED IN THIS VOLUME

W	
Wagner Estate (O.C. Div. Forest)	163
Wanamaker Trust (O.C. Div. Montg.)	26
Welsh Estate (O.C. Div. Montg.)	70
Will v. Grant Estate (Civil Div. Bucks)	170
Worley Estate (O.C. Div. Adams)	207
Wright Estate (O.C. Div. Montg.)	337
Wurdack Estate (O.C. Div. Allegh.) ..	29
Wyant Will (O.C. Div. Som.)	83
Y	
Young Estate (O.C. Div. Erie)	64
Young Estate (O.C. Div. Wash.)	106

ENS et al. v. LDS

Incompetents — Guardian

On petition of his parents, brothers and sisters LDS found to be incompetent and unable to resist importuning of LaRoach political organization; petitioners directed to recommend financial organization to serve as guardian of estate. (Hunter 2d — Incompetents 2(b), 3(c)).

In the Orphans' Court Division of the Court of Common Pleas of Chester County. Petition to adjudicate incompetent and appoint guardian. No. 1985-0412.

ADJUDICATION BY WOOD, J., NOV. 12, 1985:

The parents, brothers and sisters of L.D.S. have petitioned this court to adjudge him an incompetent and to appoint a guardian of his estate. After numerous hearings and after closing arguments by both counsel, we make the following

Findings Of Fact

1. Respondent L.D.S. is a 28 year old unmarried male who resides at 7003 Goshen Road, Newtown Square, Chester County, Pennsylvania.

2. Respondent's estate contains at least One Million Five Hundred Thousand Dollars (\$1,500,000) in cash and marketable securities.

3. Petitioners are L.D.S.'s parents, brothers and sisters. They presented testimony which established that respondent's personality started to change about the beginning of 1985. He went from being a friendly, "happy go lucky" sort to being a serious and withdrawn person hostile to his family.

4. The timing of the personality change coincided with L.D.S.'s increased involvement with a political organization headed by one Lyndon LaRoach.

5. Respondent thereafter became deeply involved with the LaRoach organization and lent Caucus Distributors, Inc., an arm of LaRoach, \$212,000 within a period of less than two months.

6. The only evidence of this loan was an unsecured promissory note for \$142,000. L.D.S. was also prepared to wire an additional \$75,000 when this action was commenced and we enjoined the transfer.

7. L.D.S. testified that it would not upset him if the loan

wasn't paid back and that he wasn't certain that it would be.

8. During the three years prior to the commencement of this action, L.D.S. made sundry other ill-advised business investments and incurred substantial losses as a result.

9. Psychiatrist David Halperin, M.D., who had met with the family and with L.D.S. in New York and examined various writings of L.D.S.'s, concluded that he was suffering from a schizoaffective disorder and, as a result, was liable to become the victim of designing persons.

10. L.D.S.'s medical experts, Dr. Gerald Cooke, a psychologist, and Dr. Robert Sadoff, a psychiatrist, both testified that he was suffering from a mixed personality disorder with inadequate and immature features.

11. Our own evaluation of L.D.S. from examining the various letters which he wrote and from observing his testimony is that he has a disorganized mind and compensates by setting up an oversimplified view of the world in which he is one of the good guys and "they" are conspirators bent on mischief. As such he would be and has been an easy target for anyone who pretends to support him in his efforts to combat the bad guys.

12. Originally L.D.S. resisted the LaRoach organization's requests for money and he even became a little angered by them and said that he would not give any money. He wound up doing the opposite.

Discussion

Section 5501(1) of the Probate, Estates and Fiduciaries Code defines an "incompetent" as

a person who, because of infirmities of old age, mental illness, mental deficiency or retardation, drug addiction or inebriety:

(1) is unable to manage his property, or is liable to dissipate it or become the victim of designing persons . . .

20 Pa. C.S.A. §5501(1).

We are required here to decide whether or not L.D.S. is likely to dissipate his estate or become the victim of designing persons because of a "mental illness". We may summarize the evidence as indicating that L.D.S. has some sort of mental disorder, and that he has in the past not only made unwise investments, but most recently has practically given money away to a political organiza-

value
judgment
3

tion with unusual, if not suspect, goals and motives. In analyzing whether the statute intends us under these circumstances to appoint a guardian of L.D.S.' estate, we must look first to the medical meaning (if any) of the term "mental illness"; thence to the intent of the legislature; and thence to the evidence in this particular case.

Two psychiatrists and a psychologist testified in this case. The family's psychiatrist described L.D.S. as having a mental illness, while his own psychiatrist and psychologist simply ascribed a mental disorder to him. All three experts referred to a work published by the Psychiatric Association, the Diagnostic and Statistical Manual (DSM-III), in defining the terms which they used. That manual itself does not distinguish between mental illnesses or personality disorders. Rather, it talks simply in terms of mental or personality disorders, as follows:

Personality traits are enduring patterns of perceiving, relating to, and thinking about the environment and oneself, and are exhibited in a wide range of important social and personal contexts. It is only when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress that they constitute personality disorders.

A "personality disorder", then, is a way of thinking or acting which constitutes a substantial departure from the norm, and interferes with the ability of one to cope with life in a normal or realistic way.

All three experts appear to agree that L.D.S. is suffering from a personality disorder, *at least*. The evidence itself shows the following: a history of being unable to deal successfully with financial affairs; difficulty in dealing with numbers; difficulty in organizing his life and in holding a job; difficulty in presenting his thoughts to others in a logical and rational way; an "us against them" view of life and society, and a tendency to think in terms of polarization and polemics; and difficulty in resisting the importunings of persons who profess to share his world view. We conclude that L.D.S. does indeed suffer from a personality disorder, of sufficient severity that it has significantly impaired his ability to manage his personal and financial affairs in a way appropriate to his own interests.

It has been suggested that L.D.S.' generous impulses differ

only in subject matter from those impulses which lead deeply religious persons to support generously the religion of their choice or to give to the poor. There is a difference, however, even though (like pornography) it may be difficult to define. We are reluctant to equate the importunings of the Lyndon LaRoach organization with the message of Christianity or of any of the other recognized religions.

Is this the sort of thing which the legislation regarding the appointment of guardians was intended to guard against? We conclude that it is. It seems to us that the legislation is designed to protect one who has been peculiarly disabled by his or her mental makeup from resisting the exploitation of others. The evidence indicates that the exploitation has already begun, and that L.D.S., because of his particular mental makeup, has succumbed to the blandishments of the LaRoach organization. The evidence further indicates that unless the court intervenes, L.D.S. will continue to squander his admittedly substantial resources.

We acknowledge that under normal circumstances, "[A] man may do what he pleases with his personal estate during his life. He may beggar himself and his family if he chooses to commit such an act of folly": *Bryden Est.*, 211 Pa. 633, 636 (emphasis added). Because of the serious intrusion on a person's right to manage his or her property, the proof of mental incompetency must be clear and convincing: *Myers Est.*, 395 Pa. 459; *Porter Est.*, 463 Pa. 411; *Matter of Caine*, 490 Pa. 24. For the reasons stated above, we are clearly convinced that L.D.S. is suffering from a "mental illness" as that term is used in the legislation, so that he no longer has the ability to "choose" in either a knowledgeable or totally voluntary way. All three experts who testified confirmed that he was suffering from a significant impairment in his ability to cope. We are also persuaded by the nature and character of L.D.S.'s own testimony: *Myers, supra*. "One's mental capacity is best determined by his spoken words, his acts and conduct": *Ryman's Case*, 139 Pa. Super. 212, 218. Our observations of his testimony and his writings convince us that he is not equipped to deal with his financial affairs in even a minimal way, due to the disorganized and unrealistic way he views finances and world events. He is a target for designing persons and is liable to

value judgment #2

How can they cite this + find incompetency?

dissipate his assets, and requires the protection of the court.

We will direct, however, that a financial institution and not an individual be appointed guardian.

Conclusions of Law

1. The Orphans' Court Division has jurisdiction over this matter.

2. Respondent, by reason of mental illness, is unable to manage his property, or is liable to dissipate it or become the victim of designing persons.

Decree Nisi

And Now, this 12th day of November, 1985, after hearing, we find L.D.S. to be incompetent within the meaning of 20 Pa. C.S.A. §5501 and direct petitioners to recommend to the court a financial institution of their choice to serve as guardian of respondent's estate.

This Decree Nisi shall become the final order of the court unless exceptions are filed within ten (10) days of this date.

EDITORS' NOTE: This case is annotated in *Fiduciary Review*, Feb. 1986, p. 3.

Baumbach Estate

Personal property — Personal representative's sale — Claim to ownership

Automobile, lumber and equipment found in garage and sold by personal representative found to have belonged to claimant and cash value awarded; claimant's testimony barred by Dead Man's Rule not waived by estate's cross-examination of claimant where questions did not relate to any matter prior to decedent's death. (Hunter 2d — Evidence 1(c); Executors 22(p), 24(c); Inventory 2(a)).

In the Orphans' Court Division of the Court of Common Pleas of Dauphin County. Estate of Edwin F. Baumbach, Jr., deceased. Objections to account. No. 1023 of 1982.

David A. Wion, for estate.

Robert W. Barton, for objector.

4 4 5 5 1 5 10 4 0 1 6

ORDER DATED DECEMBER 4, 1985

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

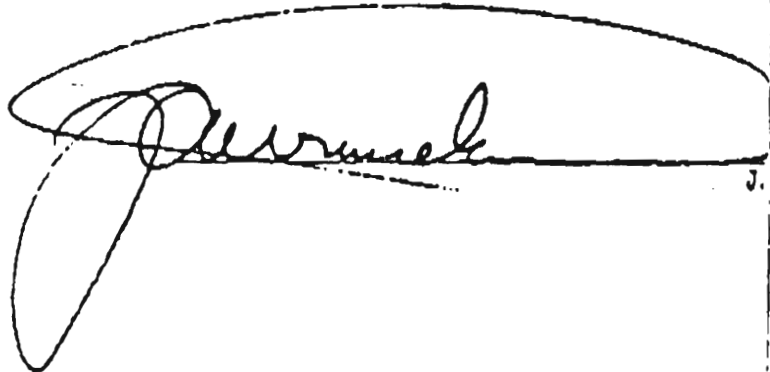
E. NEWBOLD SMITH, et al. v.
LEWIS DUPONT SMITH

NO. 1985-0412

ORDER

21040813545
AND NOW, this 4th day of December, 1985, in accordance with the attached request of counsel for the incompetent's family, we appoint Wilmington Trust Company to be guardian of the Estate of Lewis duPont Smith, temporarily pending resolution of the Exceptions filed against our prior Decree finding Lewis duPont Smith to be incompetent, and permanently in the event that those exceptions are dismissed.

BY THE COURT:



E. Newbold Smith v. Lewis duPont Smith

Incompetents — Guardian

Exceptions to adjudication and decree nisi reported at 6 FIDUC. REP. 2d 1 dismissed. (Hunter 2d - Incompetents 2(b), 3(c)).

In the Orphans' Court Division of the Court of Common Pleas of Chester County. Exceptions to adjudication and decree nisi. No. 1985-0412.

MEMORANDUM ORDER BY WOOD J., JULY 23, 1986:

And now, this 23rd day of July, 1986, after argument and upon review of the record and briefs, respondent's exceptions to our adjudication and decree nisi of November 12, 1985 are dismissed. I direct that the decree nisi be entered as the final Order of this court.

With respect to respondent's exceptions to certain of my factual findings, I will stand on the record, which, in my opinion, supports those findings.

The major legal dispute in this case was one of definition. The question was whether respondent's particular mental problem amounted to a "mental illness" as that term is used in 20 Pa. C.S.A. §5501(1). I concluded that it did because it has made respondent unable to protect himself or his estate from designing persons or from dissipating his assets. Respondent, in my judgment, has not made a knowing and voluntary choice to throw away his money on the La Rouché organizations. Instead, his mental disorder has made him unable to resist their blandishments.

Whether or not certain personality disorders are mental illnesses is a question on which those trained in the field are not in agreement. In other contexts, the distinction between one suffering from a personality disorder and one who displays a traditional mental illness has been called "too subtle to be traced definitively by the judicial mind": *State, ex rel R.S. v. Trent*, ____ W. Va. ____, 289 S.E. 2d 166, 172 (1982); see also *Johnson v. Noot*, ____ Minn. ____, 323 N.W. 2d 724 (1982). As a judge, I must be primarily concerned with behavior and its consequences. In interpreting the guardianship statutes, I must consider "the mischief to be remedied": 1 Pa. C.S.A. §1921 (c) (3).

Following argument in this matter, counsel for respondent

called to our attention a California case, *Katz v. Superior Court of California*, 73 Cal. App. 3d 952 (1977). We find that case distinguishable in two major respects: First, it dealt with the appointment of a guardian of the person, and second, it dealt with a situation where petitioners were attempting to restrain the liberty of the alleged incompetents for the purpose of deprogramming. Here, I did not restrain Lewis Smith's liberty, nor have I limited his right to speak, believe, or associate with others. I have only limited his use of his money to the extent necessary to prevent him from dissipating his assets to any substantial degree. Counsel for Lewis has consistently treated this proceeding as one dealing with Lewis's rights to free speech and free association. It is not that kind of case. Like almost every other proceeding under 20 P.C.S.A., Chapter 55, that comes before me, all I have to decide, and all I did decide, was whether Lewis, because of a mental illness, was likely to become the victim of designing persons, so that I should enter an Order protecting his estate. Lewis's First Amendment freedoms remain intact, and he may exercise them as foolishly as he wishes.

The petition of Wilmington Trust Company for approval to commence legal action is granted: See 20 Pa. C.S.A. §5521; Pa. R.C.P. 2053.

EDITORS' NOTE: See *Fiduciary Review*, Feb. 1986, p.3, for annotation of the adjudication and decree nisi of November 12, 1985 reported as *ENS et al v. LDS*, 6 FIDUC. REP. 2d 1.

Loik Estate

Election against will — Two marriages

Election against will by decedent's first wife vacated where first wife failed to carry burden of proving first marriage was not dissolved by divorce at time of decedent's second marriage. (Hunter 2d — Election by Spouse 1; Marriage 1 (a)).

In the Orphans' Court Division of the Court of Common Pleas of Montgomery County. Estate of George A. Loik, deceased. Petition to vacate election to take against will. No. 79,655.

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

NO. 1985-0412

Estate of Lewis du Pont Smith, Incompetent

O R D E R

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We have before us a Joint Motion by Counsel for Lewis du Pont Smith, (hereinafter "Smith"), and Counsel for the Guardian, Wilmington Trust Company, to amend and modify certain of this Court's prior Orders including specifically the Order of February 3, 1986. After a conference held on March 30, 1988, with counsel, and to effectuate the Court's stated intent that Smith have reasonable access to his ordinary after tax income, the Court hereby directs as follows:

1. The Guardian shall retain out of the ordinary income available to Smith after payment of income commissions to the Guardian:

(a) a reserve for current local, state and federal income tax liabilities and for real estate tax and water and sewer rent liabilities as they become due; and

(b) a reserve for payment of counsel fees of Smith and of the Guardian, which fees shall be paid subject to the approval of the Court.

2. The Guardian shall pay all short term and long

term capital gains taxes and all estimated capital gains taxes, both state and federal, from principal.

3. The Guardian shall estimate the annual ordinary income available to Smith and, after subtracting from such estimate the amounts referred to in Paragraph 1., shall pay to Smith, commencing on May 2, 1988, the lesser of (i) 1/13 of such remainder or (ii) \$10,000 per month payable on the first business day of each month for all his ordinary living expenses and debts. "Ordinary living expenses" shall include inter alia, food, clothing, utilities, vacation expenses, credit card charges, purchase of home furnishings and appliances, normal repair and maintenance of Smith's home, automobile maintenance and repairs. "Debts" shall include unpaid liabilities incurred prior to April 19, 1988 and thereafter. The amount distributed to Smith herein shall be subject to the review and adjustment by Guardian at least annually, but such amount shall not exceed \$10,000 per month without further order of this Court. The Guardian shall not be required to inquire into the use by Smith of such income, and Smith shall not be required to account to the Guardian or to the Court as to how this monthly sum is expended.

4. The balance of ordinary income not reserved by the Guardian under Paragraph 1. or released to Smith under Paragraph 3., shall be retained by the Guardian and at the end of each calendar year, the Guardian shall distribute to Smith the lesser of (i) the balance of income retained hereunder or (ii) the difference between the total monthly payments under Paragraph 3.

and \$10,000 multiplied by the number of months in the calendar year in which monthly payments under Paragraph 3. have been made. Any remaining income shall be made available to Smith only upon petition to and approval of the Court.

5. The Guardian shall arrange for the issuance to Smith of a Visa or MasterCard issued by Wilmington Trust Company having a line of credit of not less than \$5,000, which line of credit may be raised only with the consent of the Guardian. Smith shall be responsible for payment of all charges incurred with said card out of the income distributed to him under Paragraph 3.

6. The Guardian shall adopt the best combination of investments which seeks to achieve a balanced investment policy of security, income production and appreciation of principal; provided that such investment policy does not substantially reduce Smith's current ordinary income. The Guardian shall allow Smith to have an active role in the investment of his guardianship estate and of the trust funds for which he is designated in the trust instruments as the trust advisor. In this regard, (i) the Guardian shall provide Smith with a statement of the guardianship estate and of the trust funds at least quarterly, and (ii) the Guardian shall make itself available to Smith at Smith's request to receive any suggestions Smith may wish to make on the investment of the guardianship estate and trust funds and to report to Smith its reasons for its investment decisions. The Guardian is encouraged to accept the

investment suggestions of Smith when, in the opinion of the Guardian, such suggestions are based on sound analysis. However, the ultimate decision making authority concerning investments, vested in the Guardian under law and affirmed by the July 13, 1987 Order of this Court, shall remain with the Guardian. The Court will not entertain any Petition by Smith concerning investment decisions made by the Guardian with which Smith may disagree unless or until this Order is modified or vacated by a subsequent Order.

7. The Guardian shall administratively isolate the administrative and investment functions over Smith's guardianship funds and trust funds under control of the Guardian from the supervision of other accounts or trusts in which Smith's parents and/or siblings have a beneficial interest.

8. Counsel for Wilmington Trust Company, the firm of Pepper, Hamilton & Scheetz, shall administratively isolate the handling of this matter from members of their firm who have personal relationships with members of Smith's parents and/or siblings.

9. Smith shall incur no liabilities, nor make any expenditures, the result of which would be to diminish the principal value of his estate without prior written approval of this Court.

10. This Order shall amend and supercede the Order of this Court dated February 3, 1986. The following matters shall be marked Withdrawn:

(a) Smith's Petition to Amend and Modify this Court's Orders of December 4, 1985 and December 24, 1987;

(b) Smith's Petition to Amend the Order of February 3, 1986;

(c) Smith's Petition requesting the Court to direct the Guardian to Account;

(d) the Guardian's Petition requesting the Court to direct Smith to Account for his \$5,000 monthly distributions.

All other Orders of this Court shall remain in effect and are hereby reaffirmed, ..

April 19, 1988

S/Wood J.

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR # 3097
DATE COMPLAINT RECEIVED
BY OGC: July 31, 1990
DATE OF NOTIFICATION TO
RESPONDENTS: August 6, 1990
STAFF MEMBER: Tony Buckley

COMPLAINANT: Samuel C. Stretton

RESPONDENTS: Louis DuPont Smith
Louis DuPont Smith for Congress and
Philip Valenti, as treasurer

RELEVANT STATUTE: 2 U.S.C. § 432(e)(2)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
11 C.F.R. § 110.10(a)
11 C.F.R. § 110.10(b)(1)-(2).

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

On July 30, 1990, Samuel C. Stretton, a candidate for the U.S. House of Representatives from Pennsylvania's Fifth Congressional District, filed a complaint alleging that Louis DuPont Smith, a candidate for the same congressional seat, had improperly contributed an excess amount of funds which were not his personal funds to his own campaign. Attachment 1.

Mr. Stretton's complaint was based on a July 25, 1990 article in the Philadelphia Inquirer which stated that a judge in Chester County, Pennsylvania had allowed a transfer of \$15,000 from Mr. Smith's trust account to his campaign committee. The judge allowed the transfer pursuant to a petition by Mr. Smith, who

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had been declared incompetent by the court in July 1986, and whose personal estate had been placed under guardianship. A response to this complaint was received from the Respondents on August 13, 1990. Attachment 2. This response was supplemented on September 21, 1990. Attachment 3.

II. FACTUAL AND LEGAL ANALYSIS

Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person may contribute more than \$1,000 to any candidate and his authorized political committee with respect to any election for Federal office. Pursuant to 2 U.S.C. § 441a(f), it is unlawful for any committee to knowingly accept any contribution which exceeds this limitation. Pursuant to 11 C.F.R. § 110.10(a), a candidate for Federal office may make unlimited expenditures from his or her personal funds, including disbursements to the candidate's authorized political committees. "Personal funds" consist of

[a]ny assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either: (i) [l]egal and rightful title, or (ii) [a]n equitable interest. ['Personal funds' include] [s]alary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

11 C.F.R. § 110.10(b)(1)-(2).

Under Pennsylvania law, a person who has been adjudged

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incompetent is incapable of making any contract or gift or any instrument in writing. 20 Pa. C.S.A. § 5524. A court has the power to substitute its judgment for that of the incompetent with respect to the incompetent's estate, including, inter alia, the power to make gifts. 20 Pa. C.S.A. § 5536(b)(1).

Prior to becoming a candidate on or about May 7, 1990, Louis DuPont Smith was declared incompetent under Pennsylvania law, and his personal estate was placed in trust under the guardianship of the Wilmington Trust Company. Under the terms of the trust, Mr. Smith receives a monthly income of \$10,000, which is for ordinary living expenses, and for which Mr. Smith is not required to provide an accounting. See Attachment 3. Mr. Smith may not incur liabilities or make expenditures which would diminish the principal value of his estate without first obtaining written approval of the Court.

Although the concept of "personal funds" includes income from a trust set up prior to candidacy, the \$15,000 which is the subject of this matter was not derived from Mr. Smith's income from the trust; rather, the \$15,000 was composed of additional funds which Mr. Smith, under the terms of the trust order, obtained pursuant to special written approval of the Court.

Here, there is no question but that Mr. Smith had at least an equitable interest in the funds in question, as they were his in trust. However, it does not appear that he had "legal right of access to or control over" these same funds under Pennsylvania law. This conclusion is supported by the fact that, in order to turn these funds over to his own committee,

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Mr. Smith needed the approval of the court. Additionally, an October 19, 1990 Associated Press story reports that a Lancaster County, Pennsylvania judge denied a request by Mr. Smith to transfer an additional \$300,000 from the trust to his campaign. Attachment 4. Accordingly, because Mr. Smith cannot dispose of these funds without the prior written approval of the court, these funds do not appear to have been his personal funds within the meaning of the Act.

Because the funds involved did not meet the criteria for "personal funds" under the Commission's regulations at the time Mr. Smith became a candidate, any transfer of these funds by him to his campaign was subject to the limitations of the Act, and thus such transfer could only amount to \$1,000. Accordingly, of the \$15,000, \$14,000 constituted an excessive contribution to the Committee. Accordingly, this Office recommends that the Commission find reason to believe that Louis DuPont Smith for Congress and Philip Valenti, as treasurer, violated 2 U.S.C. § 441a(f), and that Louis DuPont Smith violated 2 U.S.C. § 441a(a)(1)(A). Because of the unusual circumstances surrounding the violations in this matter which do not advance the anti-corruption purposes of the Act, this Office further recommends that the Commission take no further action against all Respondents with regard to these violations, and that the

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Commission close the file and approve the attached Factual and Legal Analyses and the appropriate letters.

III. RECOMMENDATIONS

1. Find reason to believe that Louis DuPont Smith for Congress and Philip Valenti, as treasurer, violated 2 U.S.C. § 441a(f).
2. Find reason to believe that Louis DuPont Smith violated 2 U.S.C. § 441a(a)(1)(A).
3. Take no further action against Louis DuPont Smith for Congress and Philip Valenti, as treasurer.
4. Take no further action against Louis DuPont Smith.
5. Close the file.
6. Approve the attached Factual and Legal Analyses and the appropriate letters.

Lawrence M. Noble
General Counsel

Date

11/26/90

BY:



Lois G. Lerner
Associate General Counsel

Attachments

1. Complaint
2. Response
3. Supplement to Response
4. Associated Press Story
5. Factual and Legal Analyses (2)

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS *DA*
COMMISSION SECRETARY

DATE: NOVEMBER 30, 1990

SUBJECT: MUR 3097 - FIRST GENERAL COUNSEL'S REPORT
DATED NOVEMBER 26, 1990

The above-captioned document was circulated to the
Commission on Wed., Nov. 28, 1990 at 11:00 a.m..

Objection(s) have been received from the Commissioner(s)
as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u>XXX</u>
Commissioner Josefiak	<u>XXX</u>
Commissioner McDonald	<u>XXX</u>
Commissioner McGarry	<u></u>
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda
for TUESDAY, DECEMBER 4, 1990.

Please notify us who will represent your Division before the
Commission on this matter.

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /DELORES HARRIS *DAH*
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Commissioner McDonald	<u></u>
Commissioner McGarry	<u></u>
Commissioner Thomas	<u>XXX</u>

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for TUESDAY, DECEMBER 4, 1990.

Please notify us who will represent your Division before the
Commission on this matter.

21040313558

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3097
Louis DuPont Smith; Louis DuPont Smith)
for Congress and Philip Valenti, as)
treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session of
December 4, 1990, do hereby certify that the Commission
decided by a vote of 5-0 to take the following actions
in MUR 3097:

1. Find no reason to believe that Louis
DuPont Smith for Congress and Philip
Valenti, as treasurer, violated 2 U.S.C.
§ 441a(f).
2. Find no reason to believe that Louis
DuPont Smith violated 2 U.S.C.
§ 441a(a)(1)(A).
3. Close the file.
4. Send appropriate letters.

Commissioners Aikens, Elliott, Josefiak, McGarry, and
Thomas voted affirmatively for the decision; Commissioner
McDonald was not present.

Attest:

12-6-90
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 19, 1990

JED

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Samuel C. Stretton
Samuel C. Stretton for Congress
301 South High Street
P.O. Box 3231
West Chester, PA 19381

RE: MUR 3097
Louis DuPont Smith
Louis DuPont Smith for Congress
and Philip Valenti, as treasurer

Dear Mr. Stretton:

On December 4, 1990, the Federal Election Commission reviewed the allegations of your complaint dated July 30, 1990, and found that on the basis of the information provided in your complaint, and information provided by the respondents, there is no reason to believe Lewis DuPont Smith violated 2 U.S.C. § 441a(a)(1)(A), or that Louis DuPont Smith for Congress and Philip Valenti, as treasurer, violated 2 U.S.C. § 441a(f). Accordingly, on that same date, the Commission closed the file in this matter. A Statement of Reasons explaining the Commission's decision will be sent to you shortly.

The Federal Election Campaign Act of 1971, as amended ("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,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 19, 1990

James D. Crawford, Esq.
Schnader, Harrison, Segal & Lewis
Suite 3600
1600 Market Street
Philadelphia, PA 19103

RE: MUR 3097
Louis DuPont Smith
Louis DuPont Smith for Congress
and Philip Valenti, as treasurer

Dear Mr. Crawford:

On August 10, 1990, the Federal Election Commission notified your clients, Louis DuPont Smith and Louis DuPont Smith for Congress and Philip Valenti, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On December 4, 1990, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Lewis DuPont Smith violated 2 U.S.C. § 441a(a)(1)(A), or that Louis DuPont Smith for Congress and Philip Valenti, as treasurer, violated 2 U.S.C. § 441a(f). Accordingly, the Commission closed its file in this matter. A Statement of Reasons explaining the Commission's decision will be sent to you shortly.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to be "L. Lerner", is written over the typed name of Lois G. Lerner.

BY: Lois G. Lerner
Associate General Counsel

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THIS IS THE END OF MUR # 3097



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3097

DATE FILMED 4/16/91 CAMERA NO. 2

CAMERAMAN AS

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

☒ Microfilm
☐ Public Rcds
☐ Press

THE FOLLOWING DOCUMENTATION IS ADDED TO

THE PUBLIC RECORD IN CLOSED MUR 3097.

3/18/94

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Louis DuPont Smith) MUR 3097
Louis DuPont Smith for Congress)
and Philip Valenti, as treasurer)

STATEMENT OF REASONS

On December 4, 1990, the Federal Election Commission found that there was no reason to believe that Lewis DuPont Smith violated 2 U.S.C. §441a(a)(1)(A), or that Louis DuPont Smith for Congress and Philip Valenti, as treasurer, violated 2 U.S.C. §441a(f). Accordingly, the Commission closed its file in this matter. The General Counsel had recommended finding reason to believe violations occurred, taking no further action, and closing the file.

Prior to becoming a candidate on or about May 7, 1990, Louis DuPont Smith was declared incompetent by a Pennsylvania court, and his personal estate was placed in trust under the guardianship of the Wilmington Trust Company. Under the terms of the trust, Mr. Smith receives a monthly income of \$10,000 from his estate to pay ordinary living expenses for which he is not required to provide an accounting. Furthermore, Mr. Smith may make additional expenditures from the principal value of his estate after obtaining written approval of the court.

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In July, 1990, Mr. Smith petitioned the court to release \$15,000 from his estate for use in his congressional campaign. On July 24, 1990, the court entered an order approving that transfer. On July 30, 1990, a complaint was filed alleging that Mr. Smith had improperly contributed an excess amount of funds which were not his personal funds to his own campaign.

The Commission determined that the monies involved in this matter were the "personal funds" of Mr. Smith. In relevant part, Commission regulations define "personal funds" to include those assets in which a candidate had an equitable interest and legal right of access. See 11 C.F.R. §110.10(b). The court-mandated trust is composed of personal funds held by Mr. Smith prior to the declaration of incompetency. Despite the creation of the trust, Mr. Smith retained an equitable interest in the monies contained in that trust; indeed, that was the express intent of the court when creating the trust. See Memorandum Order by Judge Wood, July 23, 1986 (The court "only limited his [Mr. Smith's] use of his money to the extent necessary to prevent him from dissipating his assets to any substantial degree." (emphasis added)). In addition, Mr. Smith has a legal right of access to these personal funds as evidenced by his receipt of the \$15,000 from the trust which triggered this matter.

Because the funds at issue in this matter were the personal funds of Mr. Smith, the Commission voted to find no reason to believe and close the file.

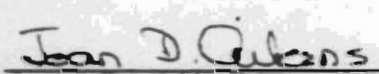
Date

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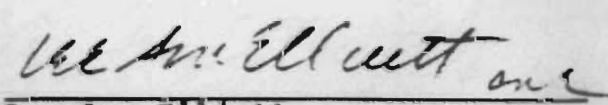

John Warren McGarry
Chairman

Date

1/14/91

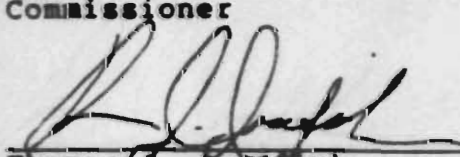

Joan D. Aikens
Vice Chairman

Date


Lee Ann Elliott
Commissioner

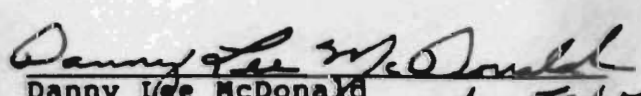
Date

1-15-91


Thomas G. Jozefiak
Commissioner

Date

1-14-91


Danny Lee McDonald
Commissioner by F.H.D.

Date

1/14/91


Scott E. Thomas
Commissioner

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