



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**SENSITIVE**

**MEMORANDUM**

**TO:** Commissioners  
General Counsel Norton  
Staff Director Pehrkon

**FROM:** Office of the Commission Secretary *VJN*

**DATE:** July 30, 2002

**SUBJECT:** Statement of Reasons for MUR 4530

Attached is a copy of the Statement of Reasons for MUR 4530  
signed by Commissioner Sandstrom . This was received in the  
Commission Secretary's Office on Tuesday, July 30, 2002 at  
3:53 p.m.

**cc:** Vincent J. Convery, Jr.  
OGC Docket (5)

**Attachments**

22-04-405-5078



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
)  
DNC Services Corporation/Democratic ) MUR 4530  
National Committee and its treasurer )

**STATEMENT OF REASONS**

On July 10, 2001, by a 3-3<sup>1</sup> vote, the Commission failed to find probable cause to believe that DNC Services Corporation/Democratic National Committee and its treasurer ("DNC") violated 2 U.S.C. § 441e(a) with respect to \$150,000 in contributions accepted by the DNC from Jessica Elnitiarta and Panda Estates Investment, Inc.

Elnitiarta was a permanent resident of the United States who made a \$100,000 contribution to the DNC by check dated February 19, 1996. Panda Estates, a U.S. real estate company formed in 1993, was apparently owned and controlled by Elnitiarta. DNC Reply Brief at 55. Panda Estates made a \$100,000 contribution to the DNC by check dated July 12, 1996. The Office of General Counsel averred that the \$100,000 contribution from Elnitiarta originated with funds from Elnitiarta's aunt, a foreign national, and that \$50,000 of the Panda Estates contribution was made with funds from a foreign corporation.<sup>2</sup>

The Office of General Counsel [OGC] does not contend that the DNC knew the contributions originated from foreign sources. Rather, the OGC Brief recommends the Commission proceed in this matter regardless of whether the DNC had knowledge of the foreign source of the funds. OGC describes the evidence that points to the contributions originating from foreign funds and concludes, "Thus, the DNC received an impermissible foreign national contribution. See 2 U.S.C. § 441e(a)." OGC Brief at 111. OGC's position appears to be that it is irrelevant whether or not the DNC knew or had reason to know the contribution was illegal. The unstated premise of OGC's brief is that the

<sup>1</sup> Commissioners Mason, Smith and Wold voted in the affirmative.

<sup>2</sup> The DNC avers that Elnitiarta made a subsequent \$50,000 contribution to the DNC from the same Panda Estates account used to make the July 12 contribution of \$100,000. Elnitiarta transferred \$47,000 from another Panda Estates account to cover the contribution. DNC Reply Brief at 58 (citing Senate Minority Report Vol. 4 at 5583). The FBI Agent assigned to analyze the bank records found that all the transfers were supported by normal activity and OGC does not question this contribution in its brief. *Id.* at 59.

receipt of a foreign contribution under 2 U.S.C. § 441(e) is a strict liability offense. The Commission has rejected this reading of the statute.

Absent a finding based on strict liability, there is no basis for concluding that the DNC had sufficient actual knowledge of the potential foreign source of the contributions to impute liability. To the contrary, what the DNC knew was that in May 1997, counsel to Elnitiarta (Michael Madigan of the law firm Akin, Gump, Strauss, Hauer & Feld) claimed that "All of her [Elnitiarta's] contributions have been lawful and properly documented." DNC Reply Brief at 55.<sup>3</sup> It is undemonstrated that the DNC had any information that the contributions were anything but lawful.

It is important to note that some six months prior to this vote, the Commission determined that the solicitor of these contributions did not violate section 441e(a) in connection with these contributions. Because the solicitor of the contributions, John Huang, was a paid employee for the DNC, the Commission might have found the DNC liable based upon his knowledge. However, there the Commission rejected OGC's recommendation to find probable cause to believe Huang violated section 441e(a) by a 5-1 vote (Commissioner Smith the sole dissenter). No evidence is proffered that the DNC had information that was unavailable to the solicitor himself. Indeed, OGC does not even allege such a scenario.

The undersigned concluded there was insufficient evidence that the DNC violated 2 U.S.C. § 441e(a) with respect to the contributions from Jessica Elnitiarta and Panda Estates Investment, Inc.

7/30/2002  
Date

  
Karl J. Sandstrom, Vice Chairman

<sup>3</sup> "A four-year plus investigation by the U.S. Department of Justice has not resulted in any charges being filed against Elnitiarta or any member of her family." *Id.* at 55. Furthermore, the Senate Minority Report found that Panda Estates appeared to have had generated "sufficient domestic revenues to cover the political contributions drawn from that account," and that "the company enjoyed a rental income of over \$900,000 in years 1995 to 1996." DNC Reply Brief at 58 (quoting Senate Minority Report Vol. 4 at 5583). Even today the source of the contributions remains a matter of dispute.