

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 4538

Gateway Management Corporation,
f/k/a American Investment Management, Inc.
Allan Rappuhn

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by U.S. Representative Robert "Bud" Cramer. The Commission found reason to believe American Investment Management, Inc. (the former name of Gateway Management Corporation) and Allan Rappuhn ("Respondents") violated 2 U.S.C. § 441b(a).

NOW, THEREFORE, the Commission and Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Gateway Management Corporation, formerly known as American Investment Management, Inc. ("Gateway Management"), is a corporation within the meaning of

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2 U.S.C. § 441b(a). Gateway Management is involved in the management of low and moderate income apartment buildings.

2. Allan Rappuhn is president and sole director of Gateway Management.
3. The Alabama Republican Party-Federal Account ("ARP") is a political committee within the meaning of 2 U.S.C. § 431(4).
4. The Federal Election Campaign Act of 1971, as amended, prohibits a corporation from making contributions or expenditures in connection with any Federal election, and prohibits any officer or director of any corporation from consenting to any such contribution or expenditure. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b), (e).
5. The term "contribution or expenditure" shall include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any" Federal election. 2 U.S.C. § 441b(b)(2). *See also* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. §§ 114.1(a)(1) and 100.7(a)(1).
6. The Commission's regulations further provide that corporations and their representatives are "prohibited from facilitating the making of contributions to candidates or political committees, other than to the separate segregated funds of the corporations . . ." 11 C.F.R. § 114.2(f)(1). The regulations define facilitation to include fundraising activities by corporations which involve officials or employees of the corporation ordering or directing subordinates or support staff to plan, organize or carry out the fundraising project as part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services. 11 C.F.R. § 114.2(f)(2)(i)(A).

7. In 1996, U.S. Representative William R. Archer, chairman of the House Committee on Ways and Means, assisted the ARP in raising Federal contributions. Rep. Archer had introduced a proposal to terminate the Low Income Housing Tax Credit ("LIHTC"), an alternate method of funding housing for low and moderate income households.

8. Boston Capital Corporation ("Boston Capital") is a company which invests equity capital for multifamily housing under the Federal Housing Tax Credit Program. The chairman of the board of directors of Boston Capital is Herbert F. Collins.

9. On or about September 16, 1996, Mr. Collins telephoned Allan Rappuhn and advised Mr. Rappuhn that he was raising funds for the ARP on behalf of Rep. Archer. Mr. Collins requested Mr. Rappuhn to assist a fundraising effort for the ARP by contacting business colleagues who might also have an interest in making a contribution.

10. Through a memorandum on Boston Capital letterhead dated September 18, 1996, Mr. Collins invited Allan Rappuhn to the October 2, 1996 meeting of the Housing Advisory Group, a trade association organized to provide a forum for its members and policy makers to discuss low income housing issues. The memorandum also refers to "Chairman Archer and his efforts on behalf of the [ARP]," advises Mr. Rappuhn that "[a]nything you can do to assist us in this effort would be greatly appreciated," provides information about how to make contributions to the ARP, instructs that "[c]hecks should be sent to" David Gasson at Boston Capital's offices and that Mr. Rappuhn should call Mr. Gasson at Boston Capital if he has any questions.

11. Another memorandum from Mr. Gasson to Mr. Rappuhn on plain white paper with a Boston Capital fax cover sheet dated September 25, 1996, requests that contribution checks to the ARP be forwarded to Rep. Archer at his residence in Virginia. The memorandum

further requests that Mr. Rappuhn send a copy of his contribution check by facsimile to Boston Capital's offices.

12. Mr. Rappuhn contends that, prior to responding to Boston Capital's request, he had never raised funds for a federal political committee. By facsimile dated September 24, 1996, Mr. Rappuhn sent a solicitation memorandum to nine persons on corporate letterhead, all involved in various segments of the housing industry. The memorandum states "I have been asked by Herb Collins to assist in raising funds that U.S. Representative Bill Archer . . . will be giving to the [ARP]," and requests that contributions be sent to Mr. Rappuhn "so that I can forward them to Mr. Archer." *Id.* The only address provided in the memorandum is the corporate address. The memorandum concludes "Thanks for your help. I believe this to be a very worthy cause in our fight to convince Representative Archer to stop his efforts to Sunset the Tax Credits."

13. On October 2, 1996, Mr. Rappuhn sent another memorandum to five of the nine persons listed in the previous memorandum, requesting that they forward their checks to him. The only address appearing on the letter is that of Mr. Rappuhn's corporation, which is printed as part of the letterhead. On that same day, Mr. Rappuhn forwarded \$2,500 in contribution checks to Rep. Archer that he solicited and collected on behalf of the ARP. In a letter on corporate letterhead accompanying the forwarded contributions, a copy of which was sent to Mr. Collins, Mr. Rappuhn informs Rep. Archer that "[e]ach of these contributors are committed to the continued success of the [LIHTC]."¹ On October 7, 1996, Mr. Rappuhn forwarded ARP contribution checks to Rep. Archer totaling \$1,800. Mr. Rappuhn's signature in the letters accompanying the contributions is followed by his title as "President" of the corporation.

14. At least nine (9) individuals were solicited by Respondents, and at least six (6) individuals wrote checks to the ARP and forwarded them to Respondents. The ARP deposited at least three (3) of these checks totaling at least \$1,500.

15. Respondents' fundraising activities included soliciting prospective contributors by calling them from Gateway Management's office and using Gateway Management's equipment and materials to type and send by facsimile solicitation letters containing the corporate letterhead. Mr. Rappuhn directed a Gateway Management employee to assist him in these activities. The employee spent approximately one (1) hour on these activities. These activities constituted an in-kind corporate contribution by Respondents to the ARP. Pursuant to an internal memorandum dated November 27, 1996 and corresponding check dated December 10, 1996, Mr. Rappuhn reimbursed his corporation in the amount of \$532 for the services, equipment and materials used in these activities. Mr. Rappuhn sent a letter, dated December 10, 1996, notifying the ARP of an in-kind contribution in this amount.

V. 1. Gateway Management facilitated the making of Federal contributions on behalf of the Alabama Republican Party, in violation of 2 U.S.C. § 441b(a).

2. Allan Rappuhn, as an officer and director of Gateway Management, consented to the making of corporate contributions, in violation of 2 U.S.C. § 441b(a).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of One Thousand Eight Hundred dollars (\$1,800), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof

has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY:

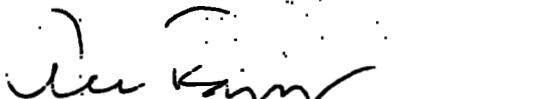


Lois G. Lerner
Associate General Counsel

4/7/00

Date

FOR THE RESPONDENTS:


Allan Rappuhn
President, Gateway Management Corp.

9/22/00

Date