

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Boston Capital Corporation

Herbert F. Collins

MUR 4538

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 Boston Capital Corporation and Herbert F. Collins ("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. Boston Capital Corporation ("Boston Capital") is a corporation within the meaning of 2 U.S.C. § 441b(a), that among other activities invests equity capital for multifamily housing under the Federal Housing Tax Credit Program.

2. Herbert F. Collins is chairman of the board of directors of Boston Capital.

22-04-405-4782

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.

8. 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.

22.04.405.4783

Mr. Rappuhn is president of Gateway Management Corporation (known at that time as American Investment Management, Inc.), which is in the business of managing low and moderate income apartment buildings. 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.

9. Through a memorandum on Boston Capital letterhead dated September 18, 1996, Mr. Collins 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, and 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. Through this memorandum, Mr. Collins also invited Mr. Rappuhn to attend the October 2, 1996 meeting of the Housing Advisory Group, a trade association established as a forum for discussion of low income housing issues.

Rep. Archer, who had introduced a proposal to terminate the Low Income Housing Tax Credit, an alternate method of funding housing for low and moderate income households, was a speaker at this meeting.

10. Another memorandum from Mr. Gasson to Mr. Rappuhn on plain paper with a Boston Capital facsimile 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.

11. In addition to soliciting Mr. Rappuhn, Respondents solicited other prospective contributors by calling them from Boston Capital's offices and using Boston Capital's equipment and materials to type and send by facsimile solicitation letters

11824-504-40-22

containing the corporate letterhead. Mr. Collins directed Mr. Gasson to assist him in these activities.

12. Thirteen (13) individuals appear to have responded to Respondents' solicitations by writing contribution checks totaling approximately \$11,000 to the ARP. Some of these checks were forwarded to Boston Capital's offices.

13. Respondents' fundraising activities on behalf of the ARP constituted an in-kind corporate contribution by Respondents to the ARP. By check dated November 25, 1996, Mr. Collins reimbursed his corporation in the amount of \$146.66 for services, equipment and materials used in these activities. He informed the ARP of an in-kind contribution of this amount by letter to Mike Burton, Executive Director of the Alabama Republican Party, dated November 20, 1996.

V. Respondents facilitated the making of corporate contributions to the Alabama Republican Party in 1996, in violation 2 U.S.C. § 441b(a).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Ten Thousand dollars (\$10,000), 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.

22-04-405-4785

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

Date

7/26/00

FOR THE RESPONDENTS:


Herbert F. Collins

June 29, 2000

Date

22.04.405.4786