




FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**SENSITIVE**

**MEMORANDUM**

**TO:** The Commissioners  
Staff Director  
Deputy Staff Director  
General Counsel

**FROM:** Office of the Commission Secretary 

**DATE:** August 7, 2002

**SUBJECT:** Statement Of Reasons for MUR 4530 - Dennis E. Eckart

Attached is a copy of the Statement Of Reasons for MUR 4530  
signed by Chairman David M. Mason, Vice Chairman Karl J. Sandstrom,  
and Commissioner Bradley A. Smith.

This was received in the Commission Secretary's Office on  
Wednesday, August 7, 2002 at 11:21 a.m.

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

Attachment

EE-04-405-5070



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

Dennis E. Eckart

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**MUR 4530**

**STATEMENT OF REASONS**

***I. BACKGROUND***

On July 10, 2001, by a vote of 1-5,<sup>1</sup> the Commission failed to approve the Office of the General Counsel's recommendation to find probable cause to believe that Dennis E. Eckart ("Respondent") violated 2 U.S.C. § 441e(a) by accepting or receiving<sup>2</sup> a \$100,000 contribution from Global Resource Management, Inc. ("GRM") to the Democratic National Committee ("DNC") by check dated August 12, 1996 and take no further action. Instead, by a vote of 6-0, the Commission voted to take no further action against Respondent and closed the file as it pertains to him.<sup>3</sup> This Statement of Reasons provides the basis for the Commission's determination.

***II. LAW***

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits the solicitation, acceptance, or receipt of any contribution from foreign nationals. 2 U.S.C. § 441e(a); 11 C.F.R. § 110.4(a). Commission regulations prohibit foreign nationals from directly or indirectly participating in any decision-making process of any person, such as a corporation, with regard to such person's federal or non-federal election-related activities, including

<sup>1</sup> Commissioner Wold dissented.

<sup>2</sup> Although the General Counsel's Brief Re: Dennis E. Eckart dated June 13, 2001 ("Brief") had stated that the Office of the General Counsel was prepared to recommend that the Commission find probable cause to believe that Respondent violated 2 U.S.C. § 441e(a) by soliciting, accepting and receiving this foreign national contribution, the Office of the General Counsel ultimately recommended that the Commission find probable cause to believe that Respondent violated 2 U.S.C. § 441e(a) by accepting and receiving a foreign national contribution and take no further action.

<sup>3</sup> On June 2, 1998 the Commission found reason to believe that the DNC, Global Resource Management, Inc., Arter & Hadden and Dennis E. Eckart each violated 2 U.S.C. § 441e(a) in connection with this contribution. After an investigation, the Commission voted to find probable cause to believe that GRM knowingly and willfully violated 2 U.S.C. § 441e(a); to take no further action against Arter & Hadden and close the file as it pertains to them; and to reject the Office of the General Counsel's recommendation to find probable cause to believe that the DNC violated 2 U.S.C. § 441e(a) with respect to this contribution.

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contributions or expenditures. 11 C.F.R. § 110.4(a)(3). The prohibitions apply to federal, state, and local campaigns, including donations to the non-federal accounts of national party committees. *Id.*; *United States v. Kanchanalak*, 192 F.3d 1037, 1049 (D.C. Cir. 1999).

### **III. FACTUAL AND LEGAL ANALYSIS**

#### **A. Facts**

The basic facts in this matter are described in the General Counsel's Brief at 2-3 and developed by the Reply Brief dated June 28, 2001 at 5-13. GRM was incorporated in Ohio on May 20, 1996. Respondent, a partner at Arter & Hadden, was approached by Dr. Ahmed Abdulshafi, who represented himself as a principal of GRM. They met to discuss a construction-related contractual matter in Saudi Arabia in which GRM may have had a claim. Respondent recommended that GRM contact International Planning and Analysis Center (IPAC), a consulting firm with specialized experience in this type of matter. GRM apparently retained IPAC soon after. Respondent and IPAC principal David J. Wimer, along with others, traveled to Saudi Arabia several times to obtain information relevant to the matter, meeting during their first trip with foreign national Dr. Mohammed Amin El Naggar, whose connection to GRM at the time went undisclosed, according to Respondent. During the course of his contacts with GRM, Respondent was apprised of GRM's other U.S. activities and concluded that GRM was a legitimate United States corporation. GRM and IPAC were interested in contacting a former ambassador to Saudi Arabia, Ray Mabus, who, as a prominent individual knowledgeable about that country, might possibly assist them in their efforts. Respondent then learned and later informed Dr. Abdulshafi that Mr. Mabus was involved in President Clinton's 50<sup>th</sup> Birthday Celebration on August 18, 1996 and was also too busy to meet in the near future. According to Respondent, Dr. Abdulshafi and GRM President Jeffrey Niemeyer told Respondent that perhaps GRM officials could meet with Ray Mabus at the birthday event. Respondent's colleague obtained information about the event, and on July 12, 1996 GRM made a \$100,000 contribution to the DNC by a check forwarded first to Arter & Hadden's Washington office and then to the DNC. Mr. Wimer, Dr. Abdulshafi and Dr. Naggar attended the event; Respondent did not.

#### **B. Analysis**

The Commission failed to find probable cause to believe that Respondent violated the Act because he neither solicited, accepted or received this contribution, and even if his actions were deemed such, there was insufficient evidence that Respondent knew or had reason to know<sup>4</sup> that the funds for the contribution were derived from a foreign national. Although the Commission concluded that the GRM contribution was prohibited, the available evidence and testimony fail to

<sup>4</sup> Vice Chairman Sandstrom dissents as to this standard but agrees it has not been met. The Section 441e standard Commissioner Sandstrom applied required that a recipient of a contribution either had actual knowledge that the contribution was from a foreign national, or was aware of facts that would lead a reasonable person to conclude that there was a substantial probability that the source of the contribution was a foreign national.

establish that Respondent's involvement rises to the level of solicitation, acceptance or receipt of a foreign national contribution. In addition, the Commission has considered the knowledge of respondents alleged to have solicited, accepted or received foreign national contributions. The bases for this conclusion rests in the Commission view of Respondent's role in the contribution and the evidence and testimony presented by the Office of the General Counsel and that presented by the Respondent's Reply Brief dated June 28, 2001.

Section 441e prohibits persons from soliciting, accepting or receiving foreign national contributions. The Office of the General Counsel declined to advance the solicitation theory because the facts could not properly support it.<sup>5</sup> The testimony cited by the Office of the General Counsel supports Respondent's contention that the idea of making the contribution originated with the principals of GRM, not Respondent. See General Counsel's Report in MUR 4530 dated July 5, 2001 at 6 (because "it appears that Eckart may not have solicited the GRM contribution," the Office of the General Counsel recommends that the Commission take no further action against Respondent as to the solicitation aspect of the alleged violation). Therefore, a Commission finding would have to rest on Respondent's acceptance or receipt of this contribution. Respondent had no formal role in fundraising for the birthday event or on behalf of the DNC. Respondent's status in this regard is not wholly determinative of his liability but is highly relevant because the Commission must establish that he acted in more than a ministerial capacity in connection with the contribution. The GRM check was sent to Respondent's law firm, his staff forwarded it to the recipient, and Respondent never handled the contribution check. See FEC Deposition of Dennis E. Eckart, May 9, 2001 ("Eckart Dep.") at 124. Respondent's law firm and staff were, no doubt, integral to effectuating the GRM contribution. Respondent provided key information to Mr. Wimer about how GRM could contribute to the fundraiser, Eckart Dep. at 133-134, and in turn forwarded the contribution check and provided information to the DNC. Eckart Dep. at 134-135. In the context of how the contribution arose, however, and in light of the evidence and testimony before the Commission, to find liability here the Commission would certainly be operating at the margins of its power to enforce this section of the Act because to do so would extend the "acceptance" or "receipt" theories of liability too far. See Eckart Dep. at 137-138 ("The DNC did not call me to make this contribution.... I was not given a quota. I was not given a fund-raiser.... I had no commitment. I had no goal.").

The prohibition on acceptance or receipt of a foreign national contribution applies most obviously to a recipient candidate or political committee. This prohibition, since it encompasses "any person," is also reasonably applied to employees and agents of political committees. In this matter, Respondent was not an employee of the DNC and there is no suggestion or evidence that Respondent was an agent of the DNC. Thus, he cannot be held to have accepted or received the contribution on behalf of the DNC. Nor can Respondent's and his firm's actions in securing

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<sup>5</sup> See General Counsel's Report in MUR 4530 dated July 5, 2001 at 6 ("Additionally, Wimer stated that Eckart did not solicit the GRM contribution (Eckart Reply Brief, Attachment 3 at 2). GRM's response confirms this point, stating that 'the company decided to make a contribution' and turned to Wimer, not Eckart, for assistance in determining the amount. GRM's Response at 2.").

information about the fundraising event and subsequent forwarding of the contribution at the request of a client, without more, be held to be the acceptance or receipt of a contribution by Respondent or the firm. In sum, the Commission would survive obliged to follow a weak acceptance or receipt theory in the face of scant support for concluding that Respondent knew certain facts that made this contribution impermissible. Hence, the Commission did not find probable cause to believe that Respondent violated the Act.

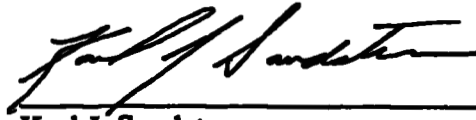
#### **IV. CONCLUSION**

Based on the above, the Commission failed to approve the Office of the General Counsel's recommendation to find probable cause to believe that Respondent violated 2 U.S.C. § 441e(a), because he neither accepted nor received this contribution, and even so there was insufficient evidence that Respondent knew or had reason to know that the contribution was impermissible.

August 5, 2002



David M. Mason  
Chairman



Karl J. Sandstrom  
Vice Chairman



Bradley A. Smith  
Commissioner