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BEFORE THE FEDERAL ELECTION COMMISSION

APR 24 10 01 AM '93

In the Matter of)
) MUR 4646
Amy Robin Habie, *et al.*)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

The Federal Election Commission (the "Commission") has found reason to believe (1) that Amy Robin Habie knowingly and willfully violated 2 U.S.C. § 441f by making contributions in the name of another and (2) that Carol J. Lewis, Wallace Walker, Rhea Weil, Lawrence Herman, Sonia Pinkus and Sue Sakolsky violated 2 U.S.C. § 441f by knowingly allowing their names to be used to effect a contribution in the name of another. The Commission has also found reason to believe that respondent Habie knowingly and willfully violated 2 U.S.C. § 441a(a)(1)(A) by contributing in excess of the monetary limits of the Federal Election Campaign Act of 1971, as amended, (the "Act" or "FECA"). With this Report, the Office of General Counsel now recommends granting respondents' requests for pre-probable cause conciliation.

II. ADDITIONAL RESPONDENTS

In response to a complaint, the Commission found reason to believe that Habie reimbursed Carol J. Lewis, Wallace Walker, Rhea Weil, and Lawrence Herman for contributions they made. Following a thorough review of respondent Habie's financial records, the Commission also found reason to believe that Sonia Pinkus and Sue

Sakolsky violated 2 U.S.C. § 441f by knowingly allowing their names to be used to make a contribution in the name of another.¹

To briefly summarize the results of that investigation, Habie issued a check in the amount of \$1,000 to Sonia Pinkus at roughly the same time as her reimbursement checks to Herman and Walker for their contributions to Kennedy for Senate (1994). That committee reported receiving a \$1,000 contribution from Pinkus the same day it received contributions from Herman and Walker. Habie issued a check in the amount of \$2,000 to Sue Sakolsky on the same day as Habie's reimbursement check to Walker for his contribution to Kennedy for Senate (2000). Kennedy for Senate (1994) reported receiving a \$1,000 contribution from Sakolsky the same day as Habie and Walker's contributions to Kennedy for Senate (2000). A couple of months later, Kennedy for Senate (2000) also reportedly received a \$1,000 contribution from Sakolsky.

After they were notified of the Commission's findings against them, this Office contacted these two internally generated respondents to discuss the matter. Specifically, this Office sought to determine (1) whether respondents dispute that their contributions were reimbursed and, if so, (2) respondents' explanations for Habie's checks to them (shortly before their contributions) in sums identical to their contributions. Each submitted a written response.

Sakolsky's letter states that she contributed at Habie's request, but does not address the reimbursement issue. (Attachment I.) Sakolsky goes on to state that she

¹ Specifically, the Commission found reason to believe that Habie reimbursed Pinkus for her \$1,000 contribution to Kennedy for Senate (1994) and Sakolsky for her \$1,000 contributions to Kennedy for Senate (1994) and Kennedy for Senate (2000).

would "be happy to answer whatever questions [this Office] may have." *Id.* That letter also indicates that "[i]f there is a procedure for conciliation, I would like to proceed that way, if necessary." *Id.*

In a follow up telephone conversation, Sakolsky indicated that she does not remember either Habie's check or the circumstances surrounding it.² Sakolsky also indicated that she would call Habie regarding her check and contact this Office following her conversation with Habie. Sakolsky subsequently contacted this Office via telephone to indicate that she would not be contacting Habie as she did not think that it would be "her place" to do so.

Respondent Pinkus' letter acknowledges that Habie asked her to contribute to Kennedy for Senate, but further states that she cannot recall whether she was reimbursed.³ (Attachment 2.) She also indicates that the Commission's letter "mentions a conciliation procedure, which is the way I would like to proceed (if it is explained to me fully) and if it should become necessary." In light of respondents' failure to provide *any* alternative explanation for Habie's checks, this Office believes that it is in possession of all of the

² Habie wrote a single check in the amount of \$2,000, apparently as reimbursement to Sakolsky for both of her contributions.

³ Interestingly, the wording of both respondents' letters is extremely similar to the response submitted by Weil and Herman following notification of the complaint (each contributed at Habie's request, none concedes that the contribution was reimbursed, none believes he or she did anything wrong, each requests conciliation if necessary, each hopes to avoid having to hire a lawyer). Indeed, some portions of their letters are virtually identical. Compare Attachment 1 ("Both then and now, I do not believe that I did anything wrong. . . . If there is a procedure for conciliation, I would like to proceed that way, if necessary.") and Attachment 2 ("However, neither then nor now do I believe that I did anything wrong. . . . Your letter mentions a conciliation procedure, which is the way I would like to proceed (if it were explained to me fully) and if it should become necessary.") with Weil and Herman Response ("We didn't believe at the time that we did anything wrong, and we don't believe now that we've done anything wrong. . . . If anything further is going to happen with this, we were told that there is a procedure of conciliation, and this is how we would like to proceed, if it is necessary at all.") Further, while the Weil

relevant facts regarding the contributions at issue, and is in a position to recommend entering into conciliation with respondents so as to resolve this matter.⁴

III. DISCUSSION OF PRE-PROBABLE CAUSE CONCILIATION

This Office recommends granting respondents' requests for conciliation prior to a finding of probable cause to believe.⁵ Attached for the Commission's approval are proposed agreements for Walker, Weil, Herman, Pinkus and Sakolsky

Also attached for the Commission's approval is a conciliation agreement with Habie

and Herman and Pinkus responses are handwritten, Sakolsky even indicates in her letter that she would have written it by hand, but broke it last year, making it very difficult to do so. (Attachment 1.)

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⁵ As indicated in a previous Report, counsel for Habie, Walker, Weil and Herman previously submitted a request for pre-probable cause conciliation and subsequently submitted another letter in which respondents requested that their earlier request for pre-probable cause conciliation be held in abeyance pending completion of this Office's investigation into the matter. See General Counsel's Report dated February 9, 1999, Attachments 6 and 9. As both letters were attached to that Report, they are not attached to this Report.

this Office believes it would be appropriate to depose Habie, Walker, Weil, Herman, Pinkus and Sakolsky. In order to expedite the process, we are seeking approval for subpoenas for those depositions.⁷


⁷ As this Office does not anticipate seeking documents beyond the financial documents already produced, it has attached only a sample deposition subpoena to the present Report.

IV. RECOMMENDATIONS

1. Enter into conciliation with respondents Habie, Walker, Weil, Herman, Pinkus and Sakolsky prior to a finding of probable cause to believe, and approve the attached conciliation agreements.
2. Approve the appropriate letters.
3. Approve the appropriate deposition Subpoenas to respondents Habie, Walker, Weil, Herman, Pinkus and Sakolsky.

Lawrence M. Noble
General Counsel

Date 8/23/99

BY: 
Lois G. Lerner
Associate General Counsel

Attachments:

1. Letter from Sue Sakolsky
2. Letter from Sonia Pinkus
3. Proposed Conciliation Agreements
4. Deposition Subpoena to Amy Robin Habie (sample)

Staff Assigned:

J.M. Lehmann